

With more than 20 states and a number of tribes now having legal sports betting and the regulations in many of those jurisdictions taking shape, a comparative analysis of the laws in each of those jurisdictions can help us to identify the requirements imposed by most of the U.S. jurisdictions, as well as the few jurisdictions that are taking a different approach. Are the majority taking the best approach, or do those striking out on their own have a better way? This article will provide a summary of the different approaches taken by U.S. jurisdictions with regard to certain key issues in the regulation of legal sports betting.

required for those who manage or control games or wagers, maintain or operate a sports betting system, or receive a percentage of revenue. Vendor Minor licenses are required for those who provide any other services to a sports betting establishment related to the sports betting operation.<sup>1</sup>

Illinois does not distinguish between different types of suppliers. In addition to systems providers, supplier licensing is required for any person who provides maintenance or repair services for systems, provides gaming data (including but not limited to lines and odds) provides security services, or provides any other “goods, data or services” if the Illinois Gaming Board determines that they “impact the integrity or security of the sports wagering operation.”<sup>2</sup>

# THE COMMON DENOMINATORS OF U.S. SPORTS BETTING REGULATION AND THOSE STATES SWIMMING AGAINST THE TIDE

By Scott Scherer and Melissa Thevenot

## 1. Licensing.

Every U.S. jurisdiction with legal sports betting (referred to hereinafter simply as “Jurisdictions”) requires licensing of operators of retail sports books or online betting sites. They also require licensing of key suppliers to the sports betting operator, such as the manufacturers of sports betting systems. What is required, however, with regard to other suppliers, such as those who provide data feeds, line setting services, geo-location, or financial services?

In some cases, full licensing is required. Other Jurisdictions require only a lower level of licensing or registration. In a couple of Jurisdictions, the licensed operator is required to report the names of its service providers and provide copies of contracts, but those service providers are not required to apply for licenses or registrations.

For example, Colorado requires suppliers to sports betting operations to obtain either Vendor Major or Vendor Minor licenses. Vendor Major licenses are

Nevada requires registration as a manufacturer and distributor of associated equipment for retail sports systems that do not include wagering accounts.<sup>3</sup>

Registration is a much simpler and less expensive process than licensing. If wagering account functionality is included, licenses as a manufacturer and distributor of cashless wagering systems is required.<sup>4</sup> Those who provide data, information, lines and directly to



a sports betting operator are required to have a license as an information service.<sup>5</sup> Anyone who shares in gaming revenues is also required to be licensed.

New Jersey requires providers of software or systems that accept wagers and vendors with control over wagers at any stage to be licensed. Payment processors, odds-setting companies and geolocation providers require a lower level of license, and any providers of wagering information must register with the Division of Gaming Enforcement.<sup>6</sup>



Iowa, on the other hand, requires licensing of manufacturers and distributors of gaming devices and “implements of gambling,”<sup>7</sup> but does not generally require licensing of service providers. In this context, licensing would be required for system providers, but not necessarily for providers of information used in setting lines or odds. The Iowa Racing and Gaming Commission does, however, require licensees to identify service providers and may require filing of copies of contracts or other information regarding those service providers.

Similarly, New Hampshire required bidders to identify subcontractors and to identify any ethics or integrity issues with those subcontractors, but does not appear to have required separate filings on behalf of those subcontractors.

While licensing helps to ensure integrity, burdensome licensing requirements may limit the pool of companies willing to provide services to licensed operators, especially in smaller markets, thereby restricting the operators from obtaining the best possible services or most competitive prices. Jurisdictions need to balance the potential benefits of licensing against the burdens imposed by the licensing process.



## 2. Age Requirements.

Most Jurisdictions where sports betting is run by private operators require players to be at least 21 years of age to place bets. Several Jurisdictions where sports betting is operated by state lotteries, including New Hampshire, Rhode Island and Washington, D.C., only require players to be 18 years of age. Presumably, this is because one need only be 18 years of age to purchase lottery tickets in those Jurisdictions.

One unique Jurisdiction is Michigan, where players are required to be 21 to engage in sports betting and online gaming but only 18 to engage in fantasy sports contests.<sup>8</sup> Nevada does not distinguish between commercially-operated fantasy sports contests and sports betting. Michigan’s distinction for purposes of the required age appears to be unique.



## 3. Integrity Fees and League Data Requirements

Initially, the major sports leagues actively advocated for the payment of so-called “integrity fees.” Essentially, they wanted a percentage of every wager that would be collected by the state from sports betting



operators and paid to the leagues to pay for policing their leagues. In addition, the sports leagues have requested that sports betting operators be required to use “official league data” that they would have to purchase from the leagues.

To date, all of the Jurisdictions have rejected integrity fees. Sportsbooks operate on a small profit margin, such that even a small percentage of handle paid to the major sports leagues would substantially decrease total revenue from sports wagering. Instead of imposing integrity fees, many of the Jurisdictions have introduced requirements to contract with an independent integrity monitor. The independent integrity monitor collects reports of suspicious betting activities, determines whether other licensed operators are reporting similar activities and works with the appropriate regulator, law enforcement agency and/or the sport’s governing body to have the suspicious activity investigated. Jurisdictions requiring an independent integrity monitor include Colorado,<sup>9</sup> New Jersey,<sup>10</sup> and Indiana.<sup>11</sup>

As for official league data, all of the early movers on legal sports betting rejected requests to require the use of official league data. There were concerns that the leagues’ monopoly on official league data would give them too much power over sports betting operators who would be required to use the data. Several of the Jurisdictions to legalize sports betting more recently, however, have required the use of official league data for in-play wagers if the official league data is available on commercially reasonable terms. These Jurisdictions include Tennessee,<sup>12</sup> Michigan,<sup>13</sup> Illinois,<sup>14</sup> and Virginia.<sup>15</sup> New Hampshire required its operator, by contract, to use official league data where commercially reasonable.



#### 4. Eligibility for Licenses.

Most of the Jurisdictions require some tie to bricks and mortar establishments, typically casinos, but also racetracks, off-track betting facilities (OTBs), and, in some cases, sports arenas. For example, Illinois allows

sports betting at racetracks and at up to 3 OTBs owned by each racetrack, casinos, and up to 7 sports facilities with capacities of more than 17,000 people.<sup>16</sup>

Illinois also allows bidding for up to 3 online-only sports betting licenses<sup>17</sup> and sports lottery terminals, where only parlay wagers are allowed, at up to 5,000 lottery retail locations in the next two years.<sup>18</sup> Other Jurisdictions may allow operators to conduct sports betting using “skins” under contracts with the authorized bricks and mortar facilities, but prohibit sports betting without that relationship.<sup>19</sup>

Some Jurisdictions require no direct connection to bricks and mortar facilities. Those Jurisdictions tend to be Jurisdictions where sports betting is run by the state lottery, including Tennessee, New Hampshire, Oregon, and Washington, D.C. Certain lottery retailers in these Jurisdictions may be allowed to offer retail sports betting as well. Not all lottery Jurisdictions allow sports betting without a bricks and mortar connection, however. In Delaware, sports betting is connected to the three licensed racinos<sup>20</sup> and in Rhode Island, the lottery offers sports betting through two existing casinos operated under the lottery’s auspices.<sup>21</sup>



#### 5. Prohibited Wagers.

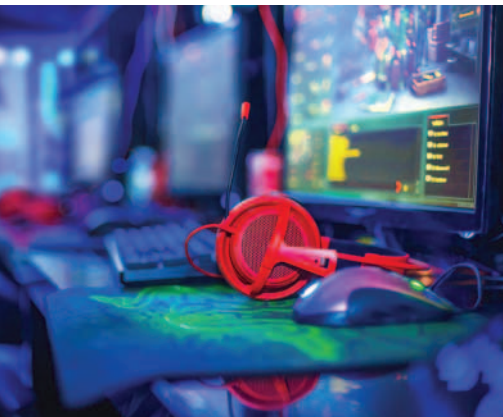
Some states allow wagering only on “sporting” or “athletic” events or contests, and have specific definitions for those events. In Iowa, for example, wagering is allowed only on “a professional sporting event, collegiate sporting event, international sporting event, or professional motor race event.”<sup>22</sup> North Carolina allows betting only on “the outcome of professional and collegiate sports contests.”<sup>23</sup> Other Jurisdictions, including Nevada and Michigan,<sup>24</sup> allow wagering on certain “other events” authorized by regulators. Over the years, Nevada has allowed

wagering on a variety of different sports awards, including post-season sports awards such as the winner of league or championship MVP awards or the Heisman trophy, and various e-Sports events.<sup>25</sup>

All of the Jurisdictions prohibit betting on high school events<sup>26</sup> and most prohibit wagering on amateur events where the majority of participants are under 18 years of age. With regard to collegiate events, the rules vary widely, with some Jurisdictions prohibiting wagers on teams domiciled in that Jurisdiction or collegiate events taking place within the Jurisdiction.<sup>27</sup>

Tennessee prohibits all proposition bets on collegiate sports;<sup>28</sup> that is, any bet on a circumstance during the play of a game which does not directly affect its final outcome. Iowa prohibits proposition bets on the individual performance of participants from Iowa colleges and universities or on the individual performance of athletes in Olympic events, if any participant in the event is under 18 years of age.<sup>29</sup> Illinois prohibits proposition bets on the performance of a participant under 18 years of age or on injuries.<sup>30</sup> Tennessee also prohibits bets on injuries, penalties or other occurrences contrary to public policy.<sup>31</sup>

As noted above, Nevada has allowed wagering on certain e-Sports under the Nevada Gaming Control Board's authority to allow wagering on "other events." Colorado,<sup>32</sup> New Jersey,<sup>33</sup> and West Virginia<sup>34</sup> have also allowed wagering on e-Sports, except where participants are under 18 or are part of a high school team. Wagering on e-Sports is expressly prohibited in Pennsylvania<sup>35</sup> and Indiana.<sup>36</sup>



Whether e-Sports might be allowed in Jurisdictions that allow wagering only on "sporting" or "athletic" events likely depends on the future of e-Sports. As governing bodies develop and are recognized, and

as more professional or collegiate e-Sports events take place, it will be easier to make the argument that e-Sports wagering should be allowed under such statutes. Other Jurisdictions provide regulators the flexibility to allow wagering on other events or competitions of relative skill, including Michigan and Illinois, but the regulators have not yet authorized wagering on any particular e-Sports events.



## 6. Prohibited Participants.

All Jurisdictions prohibit wagering by athletes, coaches, and referees participating in a particular sporting event.<sup>37</sup> Most Jurisdictions extend the prohibition to others who may have influence over a particular team, competitor or event, including managers, athletic trainers,<sup>38</sup> and medical professionals.<sup>39</sup> Indiana expressly extends the prohibition to a "relative living in the same household" with any of the above.<sup>40</sup>

Colorado provides something of a safe harbor by requiring sports books to ban only those on lists provided by the applicable sport's governing body through the Division of Gaming.<sup>41</sup> Otherwise, only commercially reasonable efforts to prohibit wagering by such individuals is required.<sup>42</sup> Pennsylvania also allows sports leagues to provide a list of prohibited participants to the Pennsylvania Gaming Control Board.<sup>43</sup>

In New Jersey, owners holding a 10 percent or more interest in a sports team, franchise or league are not permitted to wager on any event governed by the same affiliated league or governing body.<sup>44</sup> No individual may place wagers who holds a position of authority sufficient to exert influence over the event participants, or where participation may otherwise undermine integrity.<sup>45</sup> Any employee of a league or sports team who is not otherwise prohibited from participation, must register with the Division of Gaming Enforcement before placing a sports pool wager.<sup>46</sup> As with Colorado and Pennsylvania, a sports governing body may identify prohibited persons identified by providing a list to the Division.<sup>47</sup>



## 7. Mobile Wagering.

The majority of Jurisdictions allow both retail and mobile wagering within the borders of the Jurisdiction.<sup>48</sup> Those that do not permit mobile wagering include Arkansas, Delaware, Mississippi, New Mexico, New York, and North Carolina. Tribal sports betting operations in New Mexico, Oregon, and North Carolina could potentially offer mobile wagering, but it would be limited to players within the borders of their tribal lands, absent another arrangement with their respective states. Michigan gaming tribes reached an agreement with the State of Michigan whereby tribal gaming operations may obtain sports betting operator licenses to offer state-wide mobile wagering.<sup>49</sup>

Some Jurisdictions may prohibit mobile wagering due to problem gambling concerns – they do not want to make it too easy for problem gamblers to place sports wagers. Others may want to drive traffic to the bricks and mortar facilities and fear that allowing mobile wagering will encourage players to avoid those facilities. In most Jurisdictions that allow mobile wagering, it provides convenience to the residents of the Jurisdiction and is a significant (relative to the retail offerings) source of revenue to the operators and of tax revenue to the Jurisdictions.

## 8. Funding of Mobile Wagering Accounts.

Funding of mobile wagering accounts varies by Jurisdiction. Some, including Illinois,<sup>50</sup> Indiana,<sup>51</sup> New Jersey,<sup>52</sup> Nevada,<sup>53</sup> Pennsylvania,<sup>54</sup> Virginia,<sup>55</sup> Washington, D.C.,<sup>56</sup> and West Virginia,<sup>57</sup> allow the use of credit cards to fund mobile accounts, while others, including Iowa<sup>58</sup> and Tennessee,<sup>59</sup> prohibit the use of credit cards.

Most Jurisdictions also allow funding of mobile accounts with debit cards, pre-paid cards, cash, checks, and ACH transactions.<sup>60</sup> Some Jurisdictions, including Nevada<sup>61</sup> and Rhode Island,<sup>62</sup> permit the issuance of casino credit, with various restrictions.

The use of credit cards and the issuance of credit for gaming is controversial due to problem gambling concerns. Credit use can be a substantial convenience for players and may enhance their safety by eliminating the need to carry cash. The overwhelming majority of credit players use casino credit responsibly. Moreover, with proper credit checks and appropriate controls, many problem gamblers may be identified



and should not be eligible for gaming credit. It is impossible, however, to identify all problem gamblers, especially in the early stages of problematic behavior, and some Jurisdictions take the conservative approach by banning all use of casino credit or credit cards.

## 9. Conclusion.

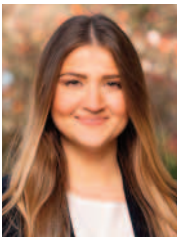
The regulatory provisions discussed above are just a few of those that should be considered by any state or tribe considering legal sports wagering. In addition to those issues discussed above, virtually all of the Jurisdictions have some type of reserve requirement (especially if sports wagering is conducted by private commercial interests as opposed to state lotteries) and some type of dispute resolution mechanism. These issues were not discussed in more detail here because there is little variation between the Jurisdictions, but they are still important components of any sports wagering law.

Hopefully, this summary of the different approaches taken by U.S. Jurisdictions on these issues will be beneficial not only to those interested in entering the sports betting business in a particular Jurisdiction, but especially to those states that are still considering the details of their sports betting legislation or determining whether to amend their existing legislation and/or regulations.



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<sup>1</sup> Colorado Department of Revenue, Division of Gaming, Sports Betting Rule 3.1.  
<sup>2</sup> 11 Ill. Adm. Code §1900.150(c).  
<sup>3</sup> Nev. Rev. Stat. § 463.0136 and 463.665.  
<sup>4</sup> Nev. Rev. Stat. § 463.014 and 463.650.  
<sup>5</sup> Nev. Rev. Stat. § 463.01642 and 463.160.  
<sup>6</sup> N.J. Admin. Code § 13:69J-1.2(c)-(d) and (f).  
<sup>7</sup> Iowa Code 99F.1 (definition of "manufacturer"); 99F.17.  
<sup>8</sup> Compare MCL §§ 432.403(e) and 432.411(1) with MCL § 432.506.  
<sup>9</sup> Colorado Department of Revenue, Division of Gaming, Sports Betting Rule 8.1.  
<sup>10</sup> N.J. Admin. Code § 13:69N-1.6.  
<sup>11</sup> Indiana Gaming Commission, Emergency Rule LSA #19-641, Chapter 4, § 1.  
<sup>12</sup> Tenn. Code Ann. § 4-51-316.  
<sup>13</sup> MCL 432.410a.  
<sup>14</sup> 230 ILCS 45/25-25(g).  
<sup>15</sup> Va. Code Ann. § 58.1-4036.  
<sup>16</sup> 230 ILCS 45/25-10, 25-30, 25-35 and 25-40.  
<sup>17</sup> 230 ILCS 45/25-45.  
<sup>18</sup> 230 ILCS 45/25-70.

<sup>19</sup> 58 Pa. Code § 1401.5(c); W. Va. CSR § 179-9-12.  
<sup>20</sup> 29 Del. C. §§ 4819 and 4825(c).  
<sup>21</sup> R.I. Gen. Laws Section § 42-61.2-2.4.  
<sup>22</sup> IAC 491-13.1(99F).  
<sup>23</sup> Chapter 14, Section 292.2(e)(3) of the North Carolina General Statutes. Race wagering is also allowed. G.S. § 14-292.2(e)(4).  
<sup>24</sup> MCL §§ 432.403(bb) and 432.405(4).  
<sup>25</sup> See Nev. Gaming Comm'n Reg. 22.120(5) and 22.1201; see also <https://gaming.nv.gov/index.aspx?page=83> for a list of previously approved events.  
<sup>26</sup> See, e.g., Colorado Department of Revenue, Division of Gaming, Sports Betting Rule 5.3.; 230 ILCS 45/25-25(h).  
<sup>27</sup> See, e.g., 230 ILCS 45/25-25(d); N.J. Admin. Code § 13:69N-1.1 (definition of "Prohibited sports event").  
<sup>28</sup> Tenn. Code Ann. § 4-51-314(a)(1)(B).  
<sup>29</sup> IAC § 491-13.1(99F) (definition of "Authorized sporting event").  
<sup>30</sup> 11 Ill. Adm. Code 1900.1310(c).  
<sup>31</sup> Tenn. Code Ann. § 4-51-314(a)(1)(A).  
<sup>32</sup> See <https://www.colorado.gov/pacific/enforcement/sports-betting-catalog> for Colorado's list of events approved wagering.  
<sup>33</sup> N.J. Admin. Code § 13:69N-1.1 (definition of "Prohibited sports event").  
<sup>34</sup> W. Va. Code § 29-22D-3(15) (definition of "Sports event").  
<sup>35</sup> 58 Pa. Code § 1401.6(b); see also <https://www.playpennsylvania.com/esports-betting-not-in-pa/> for comments from Pennsylvania Gaming Control Board spokesperson regarding esports.  
<sup>36</sup> Ind. Code § 4-38-5-4.  
<sup>37</sup> See, e.g., Colorado Department of Revenue, Division of Gaming, Sports Betting Rule 6.11(1)(b).  
<sup>38</sup> Id. Rule 6.11(1)(c).  
<sup>39</sup> 11 Ill. Adm. Code 1900.1120(a)(5).  
<sup>40</sup> Ind. Code § 4-38-9-3.  
<sup>41</sup> Colorado Department of Revenue, Division of Gaming, Sports Betting Rule 6.11. A list provided by a sport's governing body is deemed confidential. Id. Rule 6.11(1)(f).  
<sup>42</sup> Id. Rule 6.11(3).  
<sup>43</sup> 58 Pa. Code § 1401.8(f).  
<sup>44</sup> N.J. Admin. Code § 13:69N-1.11(b).  
<sup>45</sup> N.J. Admin. Code § 13:69N-1.1 (definition of "Prohibited sports pool participant")  
<sup>46</sup> *Supra*, n. 47.  
<sup>47</sup> *Supra*, n. 48.  
<sup>48</sup> See, e.g., 230 ILCS 45/25-30, 25-35 and 25-40;  
<sup>49</sup> MCL § 432.406(1)(b).  
<sup>50</sup> 11 Ill. Adm. Code 1900.1220(d)(1).  
<sup>51</sup> Indiana Gaming Commission, Emergency Rule LSA #19-641, Chapter 7, § 4.  
<sup>52</sup> N.J.A.C. § 13:690-1.3(d)(2).  
<sup>53</sup> Nev. Gaming Comm'n Reg. 5.225(9)(d).  
<sup>54</sup> 58 Pa. Code § 812.7(a)(3).  
<sup>55</sup> Va. Code Ann. § 58.1-4031(D).  
<sup>56</sup> D.C. Code Mun. Regs. tit. 30 § 2122.10.  
<sup>57</sup> W. Va. CSR § 179-9-14.4.2.  
<sup>58</sup> Iowa Code 99F.9.7.  
<sup>59</sup> Tennessee Education Lottery, Sports Gaming License Rules, Regulations And Standards, Rule 5.1.8(G).  
<sup>60</sup> See, e.g., 11 Ill. Adm. Code 1900.1220(d)(4) and (5); Nev. Gaming Comm'n Reg. 5.225(9); 58 Pa. Code § 812.7(a).  
<sup>61</sup> Nev. Rev. Stat. § 463.368.  
<sup>62</sup> R.I. Gen. Laws Section 42-61.2-3.2.