

Sports Betting: Where the Future Is Online

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Although the U. S. Professional and Amateur Sports Protection Act of 1992 (PASPA) previously prohibited most states from legalizing sports betting, the Supreme Court found in 2018 that PASPA was unconstitutional, clearing the way for states to legalize sports betting. Now, sports betting is legal in a plurality of states, though the regulatory scheme looks dramatically different from state to state.

Background

Up until PASPA was struck down, Nevada was the only state that offered any form of sports betting. Within weeks of the Supreme Court's decision that PASPA was unconstitutional, New Jersey and Delaware legalized sports betting, and, within a year, five different states followed suit.

Today, the stats are much different:

- **30 states** plus Washington, D.C. have launched legal sports betting operations in some manner;
- **Three states** have legalized but not yet launched sports betting;
- Most of the remaining states are considering or have considered legalized sports betting in some way, shape or form.

The State of the Industry Today

In an era of budget shortfalls due to the COVID-19 pandemic, states are eager to find new ways to bring in tax revenue. With a total of \$4.29 billion in revenue in 2021 alone — up from \$1.5 billion in 2020 and \$328 million in 2019 — the sports betting industry has proven to be a lucrative one that offers significant potential tax revenue for states that opt in.

As states continue to authorize sports betting, there are a number of differences in how the industry can operate in each state.

The biggest divide is whether or not the state enables online betting, or whether betting needs to be conducted in-person at licensed casinos or other betting operations. As the chart on the next page shows, those states that allow online sports betting are able to derive significantly more tax revenue than those that allow users to place bets in person only, with the ten states that only allow

SPORTS BETTING

in-person betting collecting less than 6.5% of sports bets in 2021. Granted, the COVID-19 pandemic made it difficult or impossible for users to place bets in person, so in-person revenue certainly suffered as a result, but the ability to place a bet from anywhere has a definite impact on the total amount wagered in a given state. It is a small wonder, then, that New York began allowing online betting starting this year.

There are other differences that affect how the industry operates in a given state. For example, Delaware’s sports betting is controlled by the Delaware State Lottery, which licenses sports betting to third-party providers and retains 50% of revenue. Some states also have limits on the number of licenses that they will grant; for example, New York launched online sports betting earlier this year, but only offered nine licenses. Most states also have restrictions on betting for college sports, with some states prohibiting betting on in-state college teams and others allowing the practice but prohibiting propositional bets for in-state college teams.

For businesses operating within the sports betting ecosystem, including marketing agencies and other service providers, by far the biggest consideration is whether to register with the state’s regulators. Some states — including New Jersey and Pennsylvania — broadly require all companies that provide services to gaming licensees to register. In contrast, some states — like Illinois —

have specifically indicated that advertising companies do not need to register. In yet others, marketing “affiliates” — publishers or other companies that drive traffic to sports betting sites — need to register, though the states differ about whether various revenue models (for example, cost per acquisition, cost per click, cost per thousand impressions, etc.) make a third party an “affiliate.”

In addition, many states have imposed content-based restrictions on advertising for sports betting. Most states require advertising to include a toll-free number for problem gamblers to seek help, as well as disclosures indicating that gambling is only available for individuals who are 21 years of age or older. In addition, a number of states prohibit certain misleading advertising claims regarding potential winnings.

What Businesses Can Do Now

- In just three years, sports betting has grown from a kernel of opportunity to a \$4.29 billion industry, and the revenue potential will continue to draw in more and more states.
- The opportunities for agencies, publishers and others seeking to jump in the mix are seemingly a jackpot in waiting, and will only grow in the coming years.

2021 Commercial Sports Betting Handle (\$B)

States with Online Betting Available	94% of the market
*Other Markets In-Person Only (\$3.7 B)	6% of the market
Arkansas	New York
Delaware	North Carolina
Maryland	North Dakota
Montana	South Dakota
New Mexico	Washington

