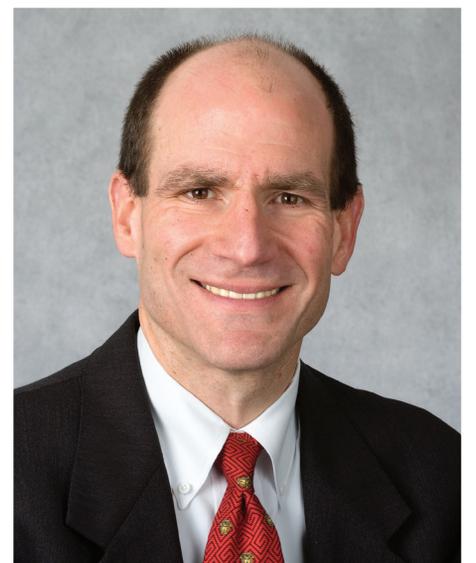


iLottery Appears to be Viewed Differently than Online Sports Betting by Most State Legislators

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It is an understatement to say that 2020 – 2021 have been years of great change in the online gaming industry. COVID-19 has brought significant changes to the way we live day-to-day, and among the changes that have occurred in the past year and a half, there has been an explosion of online gaming. This has been led largely by legislative action authorizing sports betting.

Through the first eight months of 2021 alone, legislation authorizing online (i.e., via a mobile app and/or website) sports betting was passed in Arizona, Connecticut, Florida (pending federal approval of a Tribal Compact), Louisiana, Maryland, New York and Wyoming. In addition, Nebraska, South Dakota and Washington authorized certain on-premises sports betting. Since the Supreme Court’s May 2018 decision that struck down the federal Professional and

Amateur Sports Protection Act (the “PASPA”), sports betting of some form has been authorized in 29 U.S. states and the District of Columbia, making thirty-one U.S. jurisdictions (including Nevada, where sports betting was legalized in 1949) in which some form of sports betting currently is authorized (although it has yet to go live in some of those states).

In some cases – for example Arizona, Connecticut and Pennsylvania – laws that authorized sports betting also authorized the state lottery to sell lottery games online, via lottery websites and mobile applications (so-called “iLottery”). This has been unusual, however, as in most cases, state sports betting legislation has not included an expansion of the state lottery’s sales channels.

According to one state legislation tracker, the following U.S. state lotteries now offer lottery games for sale via websites

or mobile applications (and Arizona and Connecticut have been added, as iLottery was authorized in those states after this tracker’s legislative map was published):

- Arizona* (on premises four-minute keno a draw game)
- Connecticut* (a four-minute draw game)
- Georgia (draw and instant)
- Illinois* (draw only)
- Kentucky (draw and instant)
- Maine (draw only, by subscription)
- Maryland* (draw only, by subscription)
- Massachusetts (draw only, by subscription)
- Michigan* (draw and instant)
- New Hampshire* (draw and instant)

New York* (draw only, by subscription)
North Carolina* (draw only)
North Dakota (draw only, by subscription)
Pennsylvania* (draw and instant)
Rhode Island* (instant only)
Virginia* (draw and instant)
Washington D.C.* (draw and instant)

* Those states marked with an asterisk (*) also have some form of sports wagering.

If one excludes from the above list those lotteries whose only online lottery product sales are subscriptions, the result is that only twelve of the 46 U.S. lottery jurisdictions (45 states and the District of Columbia) sell draw or instant lottery games online.

While the reasons for this are unclear and likely vary state-by-state, one reason appears to be that state legislators view online sales of lottery products differently than

online sports betting. In Massachusetts, for example, Treasury Secretary Deb Goldberg – who oversees the Massachusetts Lottery – sent state lawmakers a bill that would authorize online lottery sales. One lawmaker noted at the time that “[i]t’s impossible to envision the lottery surviving without going online.”

But the bill was not voted out of committee. Similar bills introduced in 2020 and 2021 also failed to advance, yet in July 2021, a bill that would authorize online sports betting in the Commonwealth passed the Massachusetts House by a 156-3 margin. Clearly Massachusetts legislators view online sports betting differently than iLottery.

When her online lottery bill failed to advance in 2020, Treasurer Goldberg stated:

It is disappointing that the House Ways & Means Committee did not include authorization of online Lottery as part of their most recent economic development bill, despite authorizing sports betting. As gaming and retail commerce both continue their rapid shift to online and mobile transactions, it is vital that the Lottery be able to sell products using these methods to keep pace with consumer preferences and demands.

An online Lottery in Massachusetts is not just a matter of convenience. It is a necessity in order to uphold our commitment to supply reliable local aid to our cities and towns and to avoid layoffs for teachers and first responders.

But the Massachusetts Lottery seems to be a victim of its own success. Notwithstanding sales that collapsed in March and April of 2020 as the COVID-19 pandemic closed many businesses and changed consumer habits, and contrary to Treasurer Goldberg’s assertion that survival of the Massachusetts Lottery depends on the legalization of online sales, in fiscal year 2020 the Massachusetts Lottery had its third-best year in terms of revenue and projected that it would return \$979 million in profit to the state to use as local aid.

STATE LEGISLATORS VIEW SPORTS BETTING AS A SIGNIFICANTLY DIFFERENT GAMING PRODUCT THAN ILOTTERY.

Depending on the state, there also may be resistance to iLottery from lottery retailers. In Massachusetts, lottery retailers argued that “brick-and-mortar retailers fuel the success of the Massachusetts Lottery and in turn benefit from foot traffic from players. Allowing the lottery to move online would destroy small businesses and threaten the lottery’s success.” This view was challenged, however. At the same hearing where the lottery retailers voiced their objections, New Hampshire Executive Lottery Director Charlie McIntyre testified:

[Selling online has] been a significant growth for [the New Hampshire Lottery]. We are the fastest growing lottery east of the Mississippi [River]. So our growth in the past year is 16 percent. So the suggestion that [selling online] cannibalizes, that it attacks, the traditional lottery would be inaccurate. Our retailers will receive a record year of income this year.

In addition, an article published in January 2018 concluded that, “according to available evidence, [online gambling] seems to be mainly complementary to existing gambling products. This leads to more overall growth for the gambling market.”

Regardless of the experience of other states and regardless of the position the studies support, state legislators will continue to be influenced by the views of their constituents, and thus retailer opposition to iLottery (if it exists) is a factor they will be taken into account when considering legislation that would authorize online sales of lottery products. Online sports betting, however, does not appear to be subject to similar opposition, likely because sports bets are not traditionally sold in bricks-and-mortar general retail stores.

Moreover, the authors of the January 2018 article noted above concluded that “[n]o studies have investigated the impacts of sports betting on other forms of gambling, and this is an area in need of future research attention.” Although after two months of online sports betting in Michigan, there was “no evidence that on-

line sports betting has negatively impacted the [Michigan] Lottery,” more data is needed in this regard before a conclusion can be made.

In summary, as a general matter but with some notable exceptions, it does not appear that language authorizing online lottery sales (“iLottery”) is being included in legislation that would authorize online sports betting. While the reasons for this are unclear, and likely depend on the state, one reason appears to be that state legislators view sports betting as a significantly different gaming product than iLottery. In addition, iLottery is subject to possible opposition by traditional lottery retailers, while online sports betting is likely not to be subject to such opposition, because sports bets are not traditionally sold by similar bricks-and-mortar retail locations. ■