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iGaming regulation in California: the odds are improving

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After years of stasis and despite many stakeholders such as Indian tribes and racetracks still to agree on a number of key issues, California-based gaming lawyer David Fried says the odds are improving for California to pass igaming legislation.

In the long legislative sessions when informational hearings were the pattern and legislators' votes were predicted but never taken, I pegged the odds for successful online poker legislation in California at never better than 40%.

Indeed, noting that California will never pass legislation became the conventional view, often with quips and observations about the divisive politics here, combative stakeholders, the declining markets elsewhere, and policymakers dulled by repetition. This year could be different however.

The difference is that the key person in the Legislature on gaming issues is now Assemblyman Adam Gray, Chair of the Assembly Government Organization Committee, the committee that hears gambling bills.

Adam Gray is a moderate Democrat from the central valley. He worked as a key staffer in the Legislature for more than a decade prior to his election, including a stint as a consultant to the former chair of the Senate Governmental Organization Committee.

Gray is, by training and experience, a skilled legislator with his own vision of how legislation should read and a toughness that allows him to press for solutions but not at the expense

of currying favor with industry lobbyists.

He is at his core a pragmatist from farm country. Gray passed his iPoker bill through the Government Organization Committee last year. He wants to move these bills all the way through the Legislature this year.

iPoker

Last year Gray introduced and passed through the Assembly Government Organization Committee his bill authorising online poker, AB 431. The bill was a 3-page shell bill, meaning that it lacked detail and would be written more completely as testimony.

A coalition of Indian tribes vowed to oppose even the shell bill because they are opposed to operator licenses for race tracks and wanted bad actor/tainted asset provisions, neither of which the bill addressed. Adam Gray pushed the bill through his committee despite their opposition.

The bill was placed in the inactive file pending work on two issues:

1. The licensing of racetracks as operators, which the tracks were insisting upon and the tribal coalition opposed; and
2. specific provisions regarding bad actors and tainted assets (most notably Amaya/Pokerstars).

Recently, Chairman Gray dangled a US\$60m carrot in front of horse racing, offering them an off-the-top revenue stream from the State's iPoker tax revenues rather than operator licenses. (The proposed tax is 15% of GGR, less specified expenses).

There is also a required US\$15m advance due upon licensing against the annual tax. The tracks have accepted the offer in principle, with some details still to be ironed out. While many tribes may be taken aback by the generosity of racings' bequest, they remain opposed to legislation for other reasons.

These include the proposed tax rate and fees, and the unresolved issue of those companies or their successors that in the past operated, or still do, illegally, and the use of the resulting assets.

Fantasy sports

Gray wants to see a comprehensive framework in place. He has introduced and [passed through his committee and the State Assembly his fantasy sports bill, AB 1437](#). The bill would license, tax and regulate fantasy sports operators. The tax rate has not yet been specified.

Some Indian tribes may oppose the bill because of a variety of reasons: they may have genuine concerns, want part of the market themselves, and/or because they are seeking leverage on other gambling bills.

They may attempt to derail the bill by obtaining a legal opinion from the California Attorney General or Legislative Counsel that fantasy sports violate the state constitution's prohibitions on banking and percentage games.

If so, the proponents would have to design the games around these limitations. Should that happen it would contribute to a balkanization of this market, with various states creating effectively ring-fenced markets outright or because of differences in legislation, which can hurt player liquidity.

Retail sports betting

The Third Circuit Court of Appeal is hearing a case from New Jersey testing to what extent states can permit or cease regulating sports wagering, in that case permitting licensed casinos to offer sports betting. The rationale of the court will determine what other states, including California, may do.

There is an ever increasing realisation that sports-betting is already happening and state regulation and licensing of the sector is preferable. If legalised offline, why not legalise it online? This year, even venerable media outlets have been supportive of a comprehensive approach for licensing and regulating internet gambling markets.

Given the public shift in gambling attitudes and mores, there may be the votes and support to legalise sports wagering here in California. The usual issues would result, including whether a bill would limit operations to card rooms and tribes; and whether the issue of licences for tracks could re-surface.

Similarly, the tribes may also argue that sports wagering violates the prohibitions on banking and percentage games. However, that would not necessarily preclude all forms of sports betting.

Stay Tuned to California, the odds are improving.

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