

### Abstract

With the U.S. Supreme Court's Decision to invalidate the Professional and Amateur Sports Protection Act, or *PASPA*, states are taking affirmative steps to authorize and regulate sports betting under state laws. The creation of legal sports betting will likely increase both the amount of sports betting and the number of people partaking in sports betting in these states, which raises concerns about the prevalence of problem gambling issues.

The regulated sports betting industry is a far safer environment for customers than the unregulated, illegal market alternatives that still thrive today. The Fantasy Sports & Gaming Association (FSGA) fully supports regulation to ensure that problem gambling issues are recognized and encourages companies within the sports betting and fantasy sports industry to implement safeguards to ensure a safe and responsible gaming environment. Measures such as age limits, player identification, voluntary and involuntary exclusion methods, readily available access to problem gambling resources and information, player deposit limits, and staff training for problem gambling issues, are currently standard practice among sports betting and paid fantasy sports operators. In addition, mobile sports betting provides further safeguards that in-person sports betting at casinos does not.

### Legal Sports Betting vs. the Illegal Market

Prior to the repeal of *PASPA* in May 2018<sup>i</sup>, sports betting on single events was largely illegal in every U.S. state, with the notable exception of Nevada. While Nevada thrived as a hub of sports betting activity during this time, people in other states were hardly discouraged from finding alternative means to place sports wagers. Increasingly, they turned to local bookies and, as the internet became ubiquitous, websites run from foreign territories where gambling laws were less stringent than the U.S. mainland. Prior to the repeal of *PASPA*, the illegal black market for sports betting grew each year, with estimates that U.S. residents wagered approximately \$150<sup>ii</sup> billion each year through offshore sportsbook websites.

Gambling is one of the most heavily regulated industries in the U.S. today, so many lawmakers share the concern that the offshore and underground sports betting market operates entirely free of regulation or consequences for operators who take advantage of customers. Because states lack the tools and resources to take meaningful enforcement action against offshore operators<sup>iii</sup>, and illegal sports betting has generally been regarded as a low priority for enforcement action on the federal level, most state-level efforts have been focused on creating the framework for a well-regulated and legal sports betting marketplace to compete with these illegal outlets.

Tens of millions of Americans have taken part in the enormous illegal market for sports betting, and a significant number of customers in new regulated markets will be converts from the black market. According to a recent study, only one out of every 10 sports bettors in New Jersey had started betting on sports within the past year. In other words, nine out of 10 New Jersey customers were placing bets through illegal channels before legal options became available<sup>iv</sup>. As New Jersey experience shows, with

legal options available, customers will increasingly gravitate away from the offshore market to safe, regulated and legal sports betting options.

### **The State's Role in Protecting Consumers**

As customers move from the offshore market to the regulated market, the enhanced consumer protection features of regulated sports betting operators will more effectively address the negative outcomes associated with problem gambling, even as sports betting activity increases. Below are some of the common features of a well-regulated sports betting market:

#### **1) Licensing and Registration of Sportsbook Operators**

Without exception, states require any sports betting operator to undertake some form of licensure or registration, which includes a background check of the company's key employees, executives and shareholders. If an operator is not found suitable, they will not be able to operate in a state. Additionally, a violation or disqualifying event in one state will soon become known to others by virtue of the ongoing license and renewal process.

#### **2) Setting Age Minimums and Properly Identifying Customers**

By law, most states set the legal minimum age for sports betting at 21, with the exception of Oregon, where the minimum age is 18. State laws also require operators to properly identify customers prior to placing a bet and provide operating standards for operators to follow.

#### **3) Problem Gambling Help**

Most states require casinos and online sportsbooks to post information on responsible gambling, including contact information for gambling addiction resources. In addition, states may choose to divert a percentage of sports betting revenue to problem gambling programs.

### **How Regulated Online Sports Betting Companies Comply - and Take Protection Further**

#### **Age and Identity Verification**

To ensure that sports betting customers are properly identified, of legal age, and in compliance with the laws of the jurisdiction where they are placing a bet, all regulated online sports betting and paid fantasy sports companies require each prospective customer to submit to a rigorous identity verification procedure. In short, identity verification, also known as "Know Your Customer" or KYC, is the backbone of consumer protection.

When creating an account, each customer must provide personal identifying information such as name, address, date of birth, and other relevant information as requested by the sports betting operator. This information is then cross-checked against known information from a number of public sources to confirm a positive identification. If this process cannot confirm the customer's identity, the operator may ask for additional information, including government-issued identification.

#### **Location Verification**

Online sports betting operators must not only know their customers, they must know the physical location of their customers when registering and placing a bet. This ensures that sports betting operators are in full compliance with the laws and regulations of the jurisdiction in which the customer

is physically located. By using “geolocation” technology, a combination of GPS, WiFi and IP address screening, operators can precisely determine the user’s location. For taxation purposes, the location of the customer when they place a bet determines the tax to which they are subjected.

*For example, User A lives in New York. While in New York, User A cannot set up a sports betting account using a regulated website because mobile sports betting is not permitted in that state. If User A goes on vacation to New Jersey (where mobile sports betting is permitted) and signs up for an account with an online sportsbook, he will be able to use that sportsbook’s website to place bets while within New Jersey. When he returns to New York, the operator’s geolocation technology will detect his location and he will no longer be able place bets on this website. However he can still access his account information. If User A returns to New Jersey, the geolocation process will verify that he is in a legal jurisdiction and he will be permitted to place a bet using his previously verified account. This ensures that User A is in compliance with the law of the correct jurisdiction at all times, and that tax revenue is properly attributed to New Jersey, the state in which he places the bet.*

### **Problem Gambling Help**

There are multiple ways in which regulated online sports books go above and beyond to detect problem gambling and protect consumers who exhibit signs of a gambling problem.

Problem gambling research<sup>v</sup> has identified multiple behavioral markers that, when combined, make it more likely that a person suffers from a problem gambling disorder. These behavioral markers include: 1) the volume and value of a person’s betting, and whether they increase over time; 2) how often a person bets and how much time elapses between bets or gaming sessions; 3) betting late at night; 4) the frequency and amount of time between deposits; 5) whether a person sees extreme variation in wins and losses; 6) whether a person uses multiple payment types, has had failed deposits, or has canceled a scheduled withdrawal of funds in order to keep playing.

### **Self-Exclusion Options**

One of the most prevalent harm mitigation strategies is self-exclusion, which allows a person to restrict their access to gambling at any time. If a customer has concerns about their gambling, they can self-exclude, which cuts off their ability to access a sports betting website for a set period. This time can last from a day to a year or even the customer’s lifetime, and once instituted cannot be reversed.

### **Access to Problem Gambling Resources**

On regulated sports betting websites and apps, help for a problem is never more than a few clicks away. Online sports betting operators provide information, advice, and help resources like 1-800 numbers to their customers.

### **Customer Service Training**

Regulated sports betting operators train customer service personnel to look for indications of problem gambling and provide appropriate assistance.

### **Customer Limits**

Regulated sports betting operators allow customers to set limits on play including, most importantly, limits on how much they can deposit within a set period of time. This restricts customers

from spending beyond their means or engaging in harmful or impulsive behavior over a condensed period.

### **Using Customer Play History to Detect Problems**

Because regulated online operators require each customer to establish an account, they have access to the customer's betting history. In most states, the operator is required to retain this information for a period of three years, which has also become standard industry practice. Online operators use these betting records to detect patterns or indications of problem gaming behavior, allowing them to flag accounts for customer service intervention if a customer continues to exhibit concerning betting activity. This access also allows operators to detect potential fraud if recent activity does not match prior history.

*For example, User B has been using online sportsbook X for 18 months. During that time, she has bet approximately \$100 a week during football season. However, during the last 24 hours she has bet and lost \$500 and has just deposited an additional \$1,000. Customer service may choose to intervene to check on User B's state of mind and make her aware of available problem gambling resources.*

*In the same scenario, Operator may also look for indications of fraud – such as whether User B's recent location matches her usual location or whether a new method of payment is used. Operator may reach out to User B to make sure that these transactions were authorized.*

Because in-casino sportsbooks do not require that customers create an account, this betting history is not readily available and in-casino sportsbooks cannot provide this increased level of protection. For this reason, regulated online sports betting operators provide the most comprehensive consumer protections available today.

### **Legal Sports Betting Cracks Down on Money Laundering**

Casinos are subject to rigorous federal requirements to gather customer information and report certain high-dollar and high-volume transactions under the Bank Secrecy Act<sup>vi</sup>. The Financial Crimes Enforcement Network (FinCEN) has made it clear that sports wagering entities will be required to follow these same stringent requirements, both at in-casino sportsbooks and online<sup>vii</sup>. These requirements include using all indicators and available information to detect suspicious transactions and patterns taking place through mobile devices and filing suspicious activities reports<sup>viii</sup>. The regulation of sports betting will allow unprecedented transparency and will allow operators and law enforcement to better understand and protect against potential financial crimes.

### **Legal Sports Betting Protects Sports Integrity**

In a regulated market, the likelihood of detecting sports corruption is far greater than in an unregulated market. A regulated sports betting marketplace will allow the collection and sharing of vital betting information, which can be used to detect irregularities in betting activity that could be indicative of match fixing or other sports integrity concerns. Sports betting operators will be required to share this information with their local regulators, and in some instances, other interested parties such as sports league governing bodies. There are also third-party compliance solutions that protect the industry and sports integrity by analyzing and aggregating data to detect concerning events or patterns. With this robust framework for data sharing and transparency, the regulated market acts as a powerful deterrent and enforcement mechanism against match fixing.

## Legal Sports Betting Increases Potential Problem Gambling Resources

Because sports betting will be taxed by states that authorize it, lawmakers may choose to use a percentage of this revenue to assist in problem gambling support efforts. In addition to efforts already undertaken by sports betting operators, this additional funding will create a powerful support network to mitigate any potential negative impacts associated with an increase in sports betting activity, should state regulation cause such an outcome.

Sports betting is just one of myriad opportunities for Americans to take part in gambling activities, and it is unlikely that the regulation of sports betting alone will lead to significant increases in problem gambling, even if it creates an increase in measurable sports betting activity. Forty-four states have a state lottery, with 11 states making lottery games available online. As of 2018, there were 465 commercial casinos in 24 states, and 29 states have tribal gaming operations<sup>ix</sup>. Twelve states allow electronic gaming machines in non-casino locations, and many more states struggle to combat unauthorized gambling devices<sup>x</sup>. All forms of gambling should have effective regulatory structures to protect consumers, and states may consider diverting tax revenues from other forms of gambling to fund problem gambling initiatives as well.

## Conclusion

Protecting customers and providing problem gaming help are crucial policy objectives for lawmakers, and the FSGA and its member companies are committed to furthering these objectives through compliance in the jurisdictions that choose to regulate sports betting.

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<sup>i</sup> *Murphy v. National Collegiate Athletic Assn.* [https://www.supremecourt.gov/opinions/17pdf/16-476\\_dbfi.pdf](https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf)

<sup>ii</sup> American Gaming Association - <https://www.americangaming.org/new/97-of-expected-10-billion-wagered-on-march-madness-to-be-bet-illegally/>

<sup>iii</sup> <https://www.bloomberg.com/news/articles/2000-08-27/offshore-betting-the-feds-are-rolling-snake-eyes>

<sup>iv</sup> NASPL – Legal Sports Betting; One Year Later – July, 2019

<sup>v</sup> [https://about.gambleaware.org/media/1549/gamble-aware\\_remote-gambling-research\\_phase-2\\_pwc-report\\_august-2017-final.pdf](https://about.gambleaware.org/media/1549/gamble-aware_remote-gambling-research_phase-2_pwc-report_august-2017-final.pdf), page 48

<sup>vi</sup> <https://www.fincen.gov/frequently-asked-questions-casino-recordkeeping-reporting-and-compliance-program-requirements-0>

<sup>vii</sup> <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-12th-annual-las-vegas-anti>

<sup>viii</sup> *Id.*

<sup>ix</sup> American Gaming Association: State of the States 2019 [https://www.americangaming.org/wp-content/uploads/2019/06/AGA-2019-State-of-the-States\\_FINAL.pdf](https://www.americangaming.org/wp-content/uploads/2019/06/AGA-2019-State-of-the-States_FINAL.pdf)

<sup>x</sup> See <https://fox2now.com/2018/02/21/crackdown-on-illegal-video-gambling-machines-may-be-the-start-of-a-90-million-battle/>