



## Trust and Safety: Protecting Consumers in Online Sports Betting and Paid Fantasy Sports

### *Abstract:*

As of January, 2021, sports betting is legal in 30 states plus Washington, DC and Puerto Rico. Additional states are continuing to take affirmative steps to authorize and regulate sports betting. 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 and 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 the Professional and Amateur Sports Protection Act, 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 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. The FBI has noted that illegal sports betting is a favored tool for money laundering by organized crime organizations, which may use the proceeds of illegal sports betting to fuel other criminal activities.<sup>iii</sup> Additionally, the FBI and state gaming regulators have warned consumers of the risks of identity theft associated with providing personal information to unregulated gaming websites.<sup>iv</sup>

Gambling is one of the most heavily regulated industries in the United States 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>v</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 and supplant with these illegal outlets.

Tens of millions of Americans have taken part in the enormous illegal market for sports betting, and significant number of customers in new regulated markets will be converts from the illegal market. According to a study, only one out of every ten sports bettors in New Jersey had started betting on



sports within the past year. In other words, nine out of ten New Jersey customers were placing bets through illegal channels before legal options became available.<sup>vi</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. In states that offer a robust regulated sports betting marketplace, the revenue potential for states is extraordinary – New Jersey generated over \$100 million in new tax revenue from sports betting in 2021.<sup>vii</sup>

### **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 negative incident in one state will soon become known to others by virtue of the ongoing license and renewal process, and operators have a duty to report such incidents in all jurisdictions of operation.

#### 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, which sets the minimum age at 18. State laws also require operators to properly identify customers prior to placing a bet, and provide operating standards for all 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. Finally, the majority of states maintain an exclusion list – gambling entities in a state may not directly market to or provide their services to anyone on this list.

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

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

In order 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. 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 or the last four digits of a Social Security number.

### **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 are able to precisely determine the user's location. The location of the customer at the time they place a bet is determinative for purposes of state-level taxation.

For example, User A lives in Hawaii. While in Hawaii, 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 to Arizona (where mobile sports betting is permitted) on vacation and signs up for an account with an online sportsbook, she will be able to use that sportsbook to place bets while within Arizona. When she returns to Hawaii, the operator's geolocation technology will detect her location and she will no longer be able to place bets, however she can still access her account information and withdraw any funds in her account. If User A returns to Arizona or any other state in which sports betting has been authorized, the geolocation process will verify that she is in a legal jurisdiction and she will be permitted to place a bet using her previously verified account. This ensures that User A is in compliance with the relevant laws at all times, and that tax revenue is properly attributed to the state in which she 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>viii</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 of time. This time period 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 or spend within a set period of time. This restricts customers from spending beyond their means, or engaging in harmful or impulsive behavior over a short period of time. Additionally, sports betting operators may require customers to provide income or asset verification if certain deposit or wagering thresholds are met.

### **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, he has bet approximately \$100 a week during football season. However, during the last 24 hours he has bet and lost \$500 and has just deposited an additional \$1000. Customer service may choose to intervene to check on User B's state of mind and make him 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 typically 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.<sup>1</sup> 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 and online sportsbooks 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>x</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>x</sup>. These requirements include using all indicators and available information to

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<sup>1</sup> Some jurisdictions require retail sportsbooks to collect customer information for large bets, typically \$10,000 or more within a period of 24 hours.

detect suspicious transactions and patterns taking place through mobile devices and filing suspicious activities reports<sup>xi</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. As additional states begin to regulate sports betting and interstate cooperation amongst regulators increases, this effect will continue to grow.

### **Legal Sports Betting Increases Access to 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 can bolster or create robust support networks to mitigate any potential negative impacts associated with an increase in sports betting activity, should state regulation cause such an outcome. However, there is little evidence to suggest that access to regulated sports betting creates new problem gaming issues within the population.

It is unlikely that the regulation of sports betting alone leads to significant increases in problem gambling, even if it creates an increase in measurable sports betting activity. Studies suggest that a large portion of “new” sports bettors in the regulated market are people who previously placed sports bets through illegal channels such as offshore websites or local bookies.<sup>xii</sup> People who bet through illegal channels may already have the markers of problem gaming activity, but this goes largely undocumented and untreated as illegal channels do not offer the problem gambling mitigation and support infrastructure that is required of operators in the regulated market.

Furthermore, sports betting is just one of myriad opportunities for Americans to take part in gambling activities - 44 states have a state lottery, with 11 states making lottery games available online. As of 2021, there are 987 commercial and tribal casinos across 45 states.<sup>xiii</sup> Twelve states allow electronic gaming machines in non-casino locations, and many more states struggle to combat unauthorized gambling devices.<sup>xiv</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. The Fantasy Sports and Gaming Association and its member companies are committed to furthering these objectives through compliance in the jurisdictions that choose to regulate sports betting, as well as ongoing education and awareness initiatives.

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- <sup>i</sup> *Murphy v. National Collegiate Athletic Assn.* 138 S.Ct. 1461 (US Supreme Court, 2018). Available at [https://www.supremecourt.gov/opinions/17pdf/16-476\\_dbfi.pdf](https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf) [Accessed December 18, 2019].
- <sup>ii</sup> American Gaming Association, 97% of Expected \$10 Billion Wagered on March Madness to be bet Illegally, March 12, 2018. Available at <https://www.americangaming.org/new/97-of-expected-10-billion-wagered-on-march-madness-to-be-bet-illegally/> [Accessed December 18, 2019].
- <sup>iii</sup> <https://www.fbi.gov/news/testimony/law-enforcement-implications-of-illegal-online-gambling>
- <sup>iv</sup> <https://www.michigan.gov/mgcb/0,4620,7-351-79263-573473--,00.html>
- <sup>v</sup> Aixa Pascual, Offshore Betting: The Feds Are Rolling Snake Eyes, *Bloomberg Business*, August 27, 2000. Available at <https://www.bloomberg.com/news/articles/2000-08-27/offshore-betting-the-feds-are-rolling-snake-eyes> [Accessed December 18, 2019].
- <sup>vi</sup> NASPL, Legal Sports Betting; One Year Later, July, 2019.
- <sup>vii</sup> <https://www.nj.gov/oag/ge/docs/Financials/PressRelease2021/December2021.pdf>
- <sup>viii</sup> Responsible Gaming Council, Remote Gambling Research, Interim Report on Phase II, August, 2017. Available at [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) [Accessed December 18, 2019].
- <sup>ix</sup> US Treasury Financial Crimes Enforcement Network, Casino Recordkeeping, Reporting, and Compliance Program Requirements. Available at <https://www.fincen.gov/frequently-asked-questions-casino-recordkeeping-reporting-and-compliance-program-requirements-0> [Accessed December 18, 2019].
- <sup>x</sup> US Treasury Financial Crimes Enforcement Network, Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the 12th Annual Las Vegas Anti-Money Laundering Conference, August 13, 2019. Available at <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-12th-annual-las-vegas-anti> [Accessed December 18, 2019].
- <sup>xi</sup> *Id.*
- <sup>xii</sup> <sup>xii</sup> Ipsos, Legal Sports Betting; One Year Later, NASPL Presentation, July, 2019.
- <sup>xiii</sup> <https://www.americangaming.org/state-of-play/>
- <sup>xiv</sup> Chris Hayes, Crackdown on illegal video gambling machines may be the start of a \$90 million battle, Fox2now St. Louis, February 21, 2019. Available at <https://fox2now.com/2018/02/21/crackdown-on-illegal-video-gambling-machines-may-be-the-start-of-a-90-million-battle/> [Accessed December 18, 2019].