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Centerpiece

No safe bet: Millions lost as a result of inaction on sports wagering in New York

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When the Supreme Court ruled the Professional and Amateur Sports Protection Act (PASPA) unconstitutional in May, Buffalo Bills and Sabres fans likely had visions of placing a little side action on their favorite teams this fall.

But inaction by the state Legislature ensured no (legal) bets will be placed on those or any other teams by New York residents in the 2018-19 season. That could cost better bettors some money once the NFL, NBA and NHL seasons begin.

Definitely missing out, though, will be governments and other entities across the state that can't collect millions in proceeds.

New York passed a law in 2013 that allowed for sports wagering in person, if PASPA were ever overturned, at four private casinos, the closest of which is Seneca County's del Lago Resort & Casino. Those properties are run by the state Gaming Commission, which is looking for a boost for those properties after first-year combined revenue fell \$230 million short of projections, according to numbers released in February.



Batavia Downs would need about 45 days to convert space for a sportsbook once the state legalizes sports wagering at race tracks and OTBs. A proposed law to do so stalled out this year.

Del Lago and FanDuel already have vendors in place – DraftKings Inc. and FanDuel, respectively – to run sportsbooks. Brad Maione, the commission’s director of communications, said the next step would be for the agency to roll out regulations on how wagering would take place there and at the other properties.

“We have the capability of putting the regulations together, but we just haven’t yet,” said Maione, who declined to say if there was any chance of that happening this year.

A wide-ranging rollout of gambling would require a new law from the Legislature. Bills presented to their respective houses by Assemblyman Gary Pretlow, D-Mount Vernon, and Sen. John Bonacic, R-Mount Hope, would allow for wagering at horse-racing tracks and off-track betting parlors, as well as mobile wagering, which isn’t in the law that was passed.

The Senate held off on a vote until the Assembly bill passed that house, but Bonacic said Assembly leaders couldn’t muster up the votes before the 2017 session ended in June. He blamed the stalled bill in part on Gov. Andrew Cuomo, saying that Cuomo downplayed the importance of getting something passed in 2018.

“I don’t think he wanted to deal with sports betting in an election year,” Bonacic said of Cuomo.

The governor is seeking a third term in November and faces a primary challenger in Cynthia Nixon, as well as a general election opponent in Republican Marcus Molinaro.

“As a result, New York state lost an opportunity to regulate the industry from the black market,” Bonacic said. “We could have taxed it, regulated it, put consumer protections in.”

Cuomo’s office did not respond to a request for comment.

The state Gaming Commission can issue regulations as it sees fit, said Robert McLaughlin, a lawyer who chairs Hodgson Russ LLP’s gaming group from the Albany office.

“I hope the goal would be to be able to get in before the start of football season, both college and professional, and then get in in time for the start of the baseball

playoffs," he said, noting the cash that could be brought in by the Yankees' likely playoff appearance this season.

Gaming Commission action would give Native-run casinos the option to offer gambling, as McLaughlin said they can operate under the same rules as commercial casinos.

The Oneidas, who run Turning Stone Casino in Central New York, have a vendor contract in place to offer gambling when authorized. The Mohawks, who run Akwesasne Mohawk Casino in Franklin County, and the Senecas, who run three Western New York properties, are in talks on the issue, McLaughlin said.

Through a spokesman, the Seneca Nation declined comment for this story.

There were some concerns, McLaughlin said, about commercial casinos putting other entities at a disadvantage if regulations would allow them to offer wagering this calendar year. That's because racinos such as Hamburg Gaming at Buffalo Raceway, off-track betting operations and other venues can't legally offer wagering without new legislation passing.

"It was disappointing. I was a little surprised that we weren't able to fashion a good piece of legislation," said Henry Wojtaszek, president and CEO of Western Regional OTB and Batavia Downs Gaming and Hotel, which could raise an estimated \$2 million a year through wagering. "The demand is there, there's no question. We tested it during racing season. Patrons were looking to place bets but couldn't."

Placing their bets

The proposed New York legislation would tax wagers at a rate of 8.5 percent, with 0.20 percent of all wagers going to the leagues in which the bets are made. The legislation estimates that could bring in between \$10 million and \$30 million per year for the state, but Bonacic said that may be on the low side based on early returns in New Jersey, where betting was legalized this summer.

New York City-area residents need only drive to Victory Sports Bar & Club at Meadowlands Racetrack in East Rutherford, N.J., across the Hudson River from Manhattan. That site was authorized in June to offer sports wagering as of last month, with sites in and around Atlantic City authorized, too. The Garden State

brought in \$17 million in the first month of wagering — before football season opened.

“We are twice as big in terms of population as New Jersey,” Bonacic said. “The states around us are going to eat our lunch.”

Mississippi was close behind New Jersey, authorizing wagering as of Aug. 1. The direct impact there is estimated at between \$35 million and \$150 million, according to the Tunica Tourism Commission. Rhode Island is set to open up wagering Oct. 1, with the move expected to generate \$23.5 million for the state in fiscal 2019, according to the state’s legislature.

Those states were beaten in the race to legalize wagering by Delaware, where wagering went live June 5. Sports bets can be placed at sports books located in the state’s three state-run racetracks.

A report from the state’s lottery commission, DE Lottery, which runs the racetracks, showed \$7 million in bets in the first 20 days after the law took effect – \$1 million above the state projection. Of that, \$1 million was profit.

On this side of New York state, would-be gamblers don’t have as many cross-border opportunities. Pennsylvania passed a law in 2017 to allow the state’s casinos to open sportsbooks if and when the Supreme Court made its favorable ruling. But none have yet to take part because of the \$10 million one-time licensing fee that casinos would have to pay, as well as a 34 percent tax on gross revenue and other fees.

New Jersey, by comparison, charges \$400,000 for a license and charges a tax of between 9.25 percent and 17.5 percent, depending on whether bets are made in person or online.

Bettors can also go to Ontario, where limited wagering is allowed at Fallsview Casino and Casino Niagara. Rui Brum of Ontario Lottery and Gaming, the agency that oversees the province’s casinos, couldn’t break out how many bets were placed by U.S. residents but said sports wagers at the two Niagara properties brought in \$297.9 million in fiscal 2016-17.

Big-time money

Industry professionals say New York will someday overtake Nevada. The report “U.S. Sports Betting: Sizing the Post-PASPA Opportunity” by GamblingCompliance of Washington, D.C., predicts New York will become the No. 1 state in the nation in terms of annual gross gambling revenue by 2023.

“The online-betting opportunity in the Empire State alone will be worth well in excess of a half-billion dollars in annual revenue,” said the report’s authors, James Kilsby and Daniel Stone.

That doesn’t mean accountants in Albany and other state capitals can start writing blank checks, said Howard Gleckman of the Urban-Brookings Tax Policy Center. The agency, based in Washington, D.C., cautions that governments should temper an “if you build it, they will come” mentality.

“We have learned from casino gambling that consumer demand is relatively fixed,” Gleckman said. “When one state opens a new casino, it is more likely to take customers from casinos in nearby states than increase overall gambling activity. The early movers may see something of a revenue windfall but it may shrink as more jurisdictions share the action – and the tax take.”

Using Nevada as a model, even when a lot of betting takes place, the tax revenue isn’t always there, he said. Last year that state collected \$15 million on nearly \$5 billion in sports bets, he said.

“Such revenue-sharing will narrow margins for bookmakers, which will inevitably be reflected in odds or fees, making legal betting less attractive,” he said.

Not if but when

Sports wagering remains attractive nonetheless for many in the Empire State. Bonacic said he wouldn’t be surprised to see it as part of the next state budget that the governor will release over the winter.

However it happens, the sentiment is that it will happen before 2020.

“We are forgoing business from our customers who want to place bets,” said Wojtaszek, who said the infrastructure is in place to convert part of Batavia Downs to a sportsbook within 45 days.

“Done correctly, with the proper safeguards and regulations, I think we will obtain that business,” he said. “People want to go to a place where they feel comfortable.”

Home is often the most comfortable place for bettors, and Bonacic said legislation would enable mobile gaming. Mobile platforms would be located at sites where gambling is permitted, he said. But sign-ups and bets could be done at home, with restrictions in place to ensure wagering is done within the state by users age 21 or older. This was added in, he said, because the thought was that more money would come in from bets placed off-site than on.

This would help the state capture bettors who have habitually placed illegal wagers electronically for years, McLaughlin said.

“Younger players conveniently use offshore sites, make a wager before work from home,” he said. “It would just make the most sense in the world because it opens up wagering to everybody in the state. Whether you’re in Buffalo, Jamestown, Long Island ... you can make your wager. It removes the cloud.”

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