

In the Redzone, not the Endzone: Sports Betting in Louisiana

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When voters in 56 of Louisiana's 64 parishes chose to authorize sports betting in the November 2020 election, gaming operators and sports fans alike enthused over the possibility that legal sportsbooks may soon be coming to the state. Sports wagering promises to provide an additional revenue source to the state (via taxation on operators' sports betting revenue) and satiate those clamoring to place legal sports bets here—many of whom already wager through illegal and unregulated offshore sportsbooks or by crossing over to Mississippi and Arkansas. A Comprehensive Gaming Analysis prepared for the Louisiana Department of Economic Development in 2019 estimated that Louisiana could generate between \$237 million and \$332 million in sports betting revenue annually, including revenues from digital/mobile sports betting should it be allowed.¹

Louisiana bettors, however, should not look to cash their tickets just yet. The legislature must enact a tax and regulatory framework, and regulations must thereafter be promulgated and finally adopted, before November's election results can be parlayed into full legalization. Several potentially contentious questions regarding the scope of sports wagering remain. Even if legislators can parse through the various issues, early 2022 might be an appropriate—if not optimistic—"over/under" for when patrons will be able to bet on a Saints win or on the number of points Zion Williamson will score.

This past summer, the Louisiana Legislature passed Senate Bill No. 130, signed into law by Governor John Bel Edwards as 2020 Act No. 215. As required by the Louisiana Constitution for any proposed new form of gaming, the law triggered a referendum election in each parish on the issue of whether sports wagering should be allowed. The vast majority of parishes, including all parishes in which licensed casinos and/or racetracks are presently located, voted overwhelmingly to approve sports wagering. However, no sports wagering operations can commence until the Legislature passes laws "providing for the licensing, regulation, and taxation of such activity." The earliest that the Legislature can pass the required legislation is during its 2021 session, slated to begin in April.

Now that the state's voters have so emphatically declared their support for the legalization of sports betting, there seems to be considerable momentum in favor of passing enacting legislation as soon as possible. That legislators can agree on a framework for what sports wagering actually looks like in the state, however, is far from a guarantee. Disagreements over the scope of permitted sports wagering that derailed a sports wagering bill in 2019 may well re-

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For instance, the Legislature could opt to allow participants to wager on sports not only at casinos or racetracks but online or from mobile apps in the parishes where sports wagering is authorized. Of those states that have legalized sports betting since the Supreme Court overturned the nationwide ban on sports wagers in 2018, those that have allowed online and mobile gaming have hauled in considerably more revenue. Sports wagering in New Jersey, for instance, has generated more than \$93 million for the state as of January 5, 2021, with as much as 80 percent of that revenue stemming from online and mobile betting.² Louisiana legislators will want to consider online and mobile sports betting if the goal is to maximize accessibility of, and revenue from, this form of gaming.

The bill that passed the Louisiana Senate in 2019, on the other hand, would have limited sports wagering activities to bets placed while the bettor is physically present at a licensed casino or racetrack. Mississippi opted for a similar approach and currently allows patrons to place bets only on casino premises. A restriction of sports betting to on-premises wagers at casinos and racetracks would likely garner the state significantly less revenue than would widespread mobile and online wagering. But proponents of this more tempered approach cite the likelihood that on-premises sports wagering will increase overall traffic at casinos and racetracks, which in turn may be expected to generate increased spending on entertainment, food and beverage, hotel stays, and the existing forms of gaming at the venue. Casino and racetrack operators, of course, relish the possibility of this "gateway" effect—particularly given the sharp downturn in casino traffic inflicted by the COVID-19 pandemic. Some observers, including legislators, have suggested that this strategy could further serve as a stepping-stone to eventual widespread online and mobile legalization.

Another issue relates to whether the state's 1700-plus video poker establishments, including restaurants, bars, and truckstops, should be allowed to offer sports wagering activities. Some are wary of such a broad embrace of retail sports betting, which could conceivably result in hundreds of de facto brick-and-mortar sportsbooks operating throughout the state. An amendment adopted by a House committee in 2019 that would have, among other things, expanded sports wagering to include video poker establishments, created some controversy.

Questions also linger over the appropriate tax rate on the revenues generated by sports wagering. Most states tax between 5 to 15 percent of revenue; in Mississippi, for instance, operators pay 8 percent of proceeds to the state and 4 percent to local municipalities. A handful of states, however, such as Rhode Island (51 percent) and Pennsylvania (36 percent) have opted for significantly higher rates. Although higher tax rates would obviously result in Louisiana receiving a higher proportion of the revenue generated by sports wagering, excessively high rates could discourage operators from doing business in the state. In addition, should the state decide to legalize online and mobile betting, differing tax rates could apply to online and in-person betting.³ The Legislature recently approved a tax rate of 8 percent on revenues generated by daily fantasy sports contests, which 47 parishes authorized in 2018.

Of course, a significant number of Louisianans remain opposed to any form of legalized sports betting or, for that matter, any actions that they deem to represent an expansion of gaming. Even if opponents of sports wagering constitute the minority in the Louisiana Legislature, their presence means that any squabbling over the particulars of sports wagering regulation or the tax rate could imperil any potential legalization bill.

If legislators can agree on the scope of sports wagering in those parishes that have authorized it, the Louisiana Gaming Control Board will wield "regulatory authority, control, and jurisdiction over all aspects of sports wagering activities and operations," including enforcement.⁴ The Gaming Control Board will have to promulgate regulations (subject, as always, to legislative oversight) before operators can begin to offer sports wagering.

So while the November 2020 election marked a crucial victory for proponents of sports betting in Louisiana, some hurdles and challenges remain. Wagering on daily fantasy sports, which voters authorized in 47 parishes in 2018 and which involves comparatively fewer regulatory dilemmas, is still not live in the state. Legislators have difficult questions to answer regarding how sports betting will actually function in the state, with a diverse array of interests—including established large-scale gaming operators, local video poker licensees, and staunch opponents of any expansion of gambling—angling for a say. Whether Louisiana sports bettors are able to place wagers at some point within the next 12-18 months may hinge on whether stakeholders can present a "united front" with respect to the scope of sports wagering—something former Gaming Control Board Chair Ronnie Jones said they failed to do in 2019.⁵ To put it in the appropriate parlance: sports wagering in Louisiana has a lead and some momentum. But it hasn't covered the spread quite yet.

¹ *Comprehensive Gaming Industry Analysis: State of Louisiana*, Spectrum Gaming Group, at x, 193,

http://lgcb.dps.louisiana.gov/docs/Comprehensive_Gaming_Industry_Analysis.pdf.

² *U.S. Sports Betting Revenue*, Legal Sports Report, <https://www.legalsportsreport.com/sports-betting/revenue/>.

³ See N.J. Stat. § 5:12A-16 (establishing an 8.5 percent tax rate on all land-based sports wagering revenue earned by casinos and racetracks, a 13 percent tax rate on online-based sports wagering revenue for casino operators, and a 14.25 percent on online-based sports wagering revenue for racetrack operators).

⁴ La. R.S. 27:15.1 (effective January 1, 2021).

⁵ Brett Smiley, *Chief Louisiana Regulator: Driving Toward Legalizing Sports Betting In 2020*, USBETS (Dec. 16, 2019), <https://www.usbets.com/louisiana-sports-betting-chairman-ronnie-jones/>.