FACTORS SHAPING REGULATORY POLICY IN THE DIGITAL AGE

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Paul Jason: There are currently 11 or 12 U.S. jurisdictions which have iLottery. Can you describe the status of states that appear to be on the brink of regulating iLottery, states like Connecticut and Massachusetts, and others that PGRI may not know about?

Scott Gunn: There are two states close to offering iLottery – Arizona and Connecticut. Both of these states legalized iLottery in 2021 by virtue of their governors negotiating amended tribal gaming compacts – these compacts were amended primarily to allow the tribes to offer sports betting. Essentially, the Arizona and Connecticut tribes gained the ability to offer sports betting in exchange for allowing the state to offer iLottery products, among other things. When it comes to iLottery though, the question most often asked is did COVID-19 accelerate the legalization of iLottery? The jury is still out on that as only 10 states and D.C. currently offer iLottery and just two states legalized it in 2021. But looking at the overall landscape demonstrates that there is an evolution occurring right now in the digital lottery and gaming space. Sports betting – more specifically, mobile sports betting – is helping to pave the way for both iLottery and iGaming. My experience has been that state legislatures have not viewed sports betting, and in most cases Daily Fantasy Sports (DFS) before that, through the same high gaming- expansion lens as they do other traditional gaming-expansion issues. They viewed sports betting, office pools, and DFS betting as an activity that enjoyed widespread acceptance with their constituents – "everybody does it!" This has allowed sports betting, and more specifically, mobile sports betting, to become the proverbial camel's nose under the tent, with regard to mobile betting in general. The critical issue over the next few years will be whether policy makers allow this first-mover mobile advantage to benefit all gaming entities, including lotteries, or if the mobile gaming product expansion will, in most states, extend through the mobile sports betting ecosystem.

What states do you think might be closest to moving into the stage of actively exploring the regulatory options for iLottery and getting bills approved for iLottery within the next 12 months? How about two years?

S. Gunn: I know most lotteries and lottery leadership are enthusiastic about digital evolution, including iLottery. The challenge is finding a path to authorization, which can be administrative, legislative, and in some cases constitutional. In 2021, there were almost a dozen states that introduced legislation for iLottery, and while legislation may still be pending in a few states, there is little expectation that legislation will be approved in the remaining months of 2021. As policy makers and regulators become more and more comfortable with the concept of digital gaming/lottery offerings and see mobile sports betting becoming a viable option in the portfolio to help generate tax revenue, you will see more states embracing iLottery. Sports betting has ramped up quickly – since the U.S. Supreme Court decision in 2018, there are now more than 30 states where single bet games have been legalized. In the vast majority of those states (approximately 22), we are seeing states allow for both retail and online sports betting, and this is changing the overall policy and regulatory environment.

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What are the biggest obstacles for state legislatures that impinge on their willingness to authorize iLottery? Retailer opposition? Opposition from anti-gambling groups? How about sports betting interests – are they opposing iLottery and is that a factor? What or who else is impeding iLottery implementation?

S. Gunn: All of the stakeholders you mention are relevant to the debate, as Speaker Tip O'Neill said, "all politics is local." iLottery has been in the United States for nearly a decade after Illinois and Georgia launched programs in 2012. It has been difficult to move the iLottery needle from a policy perspective, but new legal developments and changing attitudes among key stakeholders are shifting. As with most every lottery and gaming innovation, the adoption of iLottery will be dependent on the politics that surround gaming issues in each state. The challenge for lotteries is ensuring they have a seat at the table and voice in the legislative and policy discussion. This is challenging because a lottery functions as a "gaming" operator, but without the flexibility and resources of other commercial gaming operators. Another challenge is the historic opposition from the National Association of Convenience Stores (NACS) and their local affiliates. NACS opposition was very much aligned with the Coalition to Stop Internet Gambling and their political activities at the federal level. Now that the Coalition to Stop Internet Gambling is not as engaged as they were previously, I think the main opposition will be with the state-based retail associations and organizations. I have found that their opposition is more politically motivated than objectively based on the fact that their business will be harmed by iLottery. I think the solution for lotteries is two-pronged: ensure that fact-based objective information is injected into the debate and develop a political plan that addresses all opposition, including purely politically motivated opposition. I have found lotteries to be savvy and sophisticated in their approach to working with legislatures to ensure they have a full understanding of the policy alternatives that exist for digital gaming expansion. As the market for digital products continues to liberalize in the U.S., and more states become comfortable with answering consumer demand for anytime, anywhere products on any device, iLottery will gain a foothold and become more commonplace. The stage is definitely being set for more states to embrace iLottery in the next five years.

As I look at the totality of the situation, lotteries are well positioned to benefit from digital gaming expansion. It will require engagement in the political process that is sensitive to the unique circumstances of each lottery and their role in the approval process in their state.

A coalition-based approach, that brings together the supporters of lottery in general, and iLottery in particular, and utilizes the resources of those coalition partners, is the best path to success. There are many stakeholders in this process that should be heard and will have a role in the discussion, including considerations around Responsible Gaming, so that players, the public, and lottery beneficiaries will benefit from the addition of iLottery and the increased funding it provides. That is an indisputable fact, and one that should be central to any discussion about expanding a lottery's portfolio to include iLottery. ■

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also think it's very helpful that the successful iLottery states are regionally distributed. You have Pennsylvania and Virginia in the Mid-Atlantic, Michigan and Illinois in the Midwest, New Hampshire and Connecticut in New England, and Georgia and Kentucky in the South. Their neighboring states will eventually feel pressure to keep up with the same product and channel offering.

Do legislators study how these issues are unfolding in other states? Is the process of building a regulatory framework informed by the experience of other jurisdictions or do legislators focus on their own in-state issues and environment?

H. Glaser: Unless they are assessing the competitive threats from neighboring states, legislators focus on what's happening in their state more than anything else, and then build to suit their own state-specific public policy objectives. Legislators sometimes underestimate the complexity of market-driven businesses like lottery, iLottery and sports betting. Of course, there are professionals like lottery directors and technology partners like Scientific Games and others who make sure the business is operated effectively and will always work hard to protect current lottery revenues, ensure business continuity, and position the business for long-term growth.

One thing we hope for is that legislators will appreciate the importance of moving forward with iLottery in tandem with iCasino gaming. That should be a goal for all lottery stakeholders as it would disadvantage them if iCasino gaming were to launch before iLottery launches. Launching them in tandem would provide the entire range of games to appeal to the broadest range of play styles. Providing that diversity from the start enables players to embark on their digital gaming journey with full and equal exposure to iLottery. It may be hard for iLottery to attract players if iLottery is launched after iCasino gaming. I think the best chance to expedite iLottery legislation is to join iGaming and have both of them proceed down the path together to legislative approval.

In closing …

H. Glaser: We want to look for the common ground shared by diverse interest groups so that we all – lotteries, sports-betting operators, iGaming and casinos – work together to expand the diversity of choices for players. Delivering the widest variety of games through all the different channels of distribution is not only the best way to meet the needs of the consumer, but it is the best way to foster creativity and innovation within the industry so that we lead the way and exceed consumer expectations and the expectations of all our stakeholders including the retailers, our political constituents, and the good causes supported by lottery funding. ■