

Sports Betting In New Mexico Heats Up, Despite Lack Of New Legislation

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Everywhere you look, there is another state looking at new legislation designed to facilitate sports betting, but in one state, both a tribal casino and the state lottery have started taking bets, or announced plans to, without a single legislative change.

The New Mexico Lottery Authority approved a new sports game last week that would effectively be a parlay card, requiring players to correctly guess three or more results correctly.

In addition, sports betting has already begun in New Mexico at one tribal casino, the [Santa Ana Star Casino and Hotel](#).

The compact between the state and 18 state tribes, including the Pueblo of Santa Ana, which owns the casino, authorizes the tribes to offer any or all forms of Class III gaming, which includes sports betting.

The state lottery maintains that existing law gives it the authority to offer such a parlay because the game meets the spelled-out qualifications, which includes that “a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules.”

“In New Mexico, lottery games provided by the New Mexico Lottery Authority must meet the requirements of the New Mexico Lottery Act,” the lottery said in a statement. “The new sports lottery game, which is in the suite of online games, is a lottery game which is permissible under New Mexico law.”

Stephen Hart, a partner at Phoenix-based Lewis Roca Rothgerber Christie, said he believed the moves made could help spur discussions for a sports-betting framework that benefits all parties, and the communities they serve.

“There are some challenges, and there will have to be some meaningful negotiations between the tribes and the state government,” Hart said.

Hart pointed out that part of the compact included exclusivity provisions that would need to be settled, as well as provisions that would allow for mobile gaming outside reservations, which is not currently permitted or offered.

“I’m not saying these are insurmountable hurdles,” he added. “I’m just saying that when you bring a new game in with the kind of magnitude of sports betting, it’s not surprising that you’re going to have to have some negotiations between the principal players to account for the changes that are occurring.”

Hart pointed out that a broad scope of gaming is not always the case in tribal compacts, pointing to states such as Mississippi, where sports betting has already been introduced, and North Dakota, where it has not yet, as examples of states that have broader allowances as opposed to specific types of gaming permitted.

On the state lottery end, however, New Mexico move could provide a template for some state lotteries looking to get into the sports-betting industry, particularly in states where legislation is a difficult sell.

“It could be used as an entry into sports betting, but it’s not what people usually think of when they think of full-on Nevada-style sports betting,” said Mark Hichar, a shareholder in the gaming practice at Greenberg Traurig in Boston.

Hichar pointed out that the proposed New Mexico game is similar to what the Delaware Lottery has been offering for years, even predating the U.S. Supreme Court ruling in May overturning of the Professional and Amateur Sports Protection Act (PASPA), and which has held up despite legal challenges.

“There’s already this existing state precedence that the parlay game is one where chance predominates over skill,” Hichar said. “Which is not to say Delaware court decisions would necessarily carry the day in other states, but they would be very helpful.”

In New Mexico’s case, he said, if existing law permits the lottery to offer games like the proposed parlay game, there is no need for the lottery to seek express permission.

“Much of our legislation is of the type where if it’s not prohibited, it’s allowed,” Hichar said. “If this is permitted to the lottery, there really isn’t a reason to go back and ask for permission again.”

At least one state legislator, Republican Representative Jason Harper, has already voiced disagreement with that, according to the

Albuquerque Journal.

“When the Supreme Court ruled, it did not change any laws in New Mexico,” Harper told the Journal, adding that he would introduce legislation to clear up the lottery’s authority.

“So why the lottery thinks it can do sports betting now again shows we have a rogue lottery in our state,” Harper said.

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