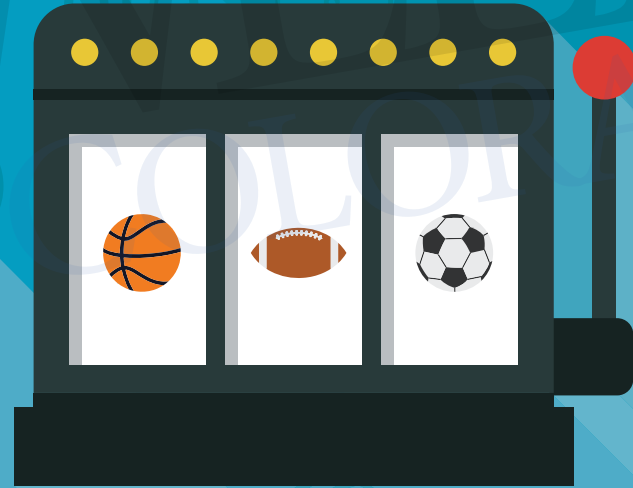


GAMING LAW



Bets Are On

Online sports betting sweetens the pot for industry hit by pandemic shutdowns, table tennis tops in proceeds

JESSICA FOLKER
LAW WEEK COLORADO

The pandemic has thrown a wrench into a lot of best-laid plans. But one thing that managed to stay on schedule was Colorado's sports betting launch on May 1, even though casinos and major sports leagues were mostly shut down.

Sports betting was legalized in Colorado with the passage of Proposition DD at the ballot box in November. After the election, the Colorado Division of Gaming and Limited Gaming Control Commission had mere months to come up with a regulatory scheme for the brand-new industry. After a series of stakeholder meetings, a set of rules was adopted in February and the state began issuing its first licenses for online and retail sports betting.

In the first month of legalized sports betting in May, the total amount wagered was \$25.6 million, a figure Division of Gaming director Dan Hartman called an "encouraging predictor of the potential for the Colorado sports betting market." Wagers increased nearly 50% in June for a total of \$38.1 million, and Hartman expects numbers to continue to rise as major sports resume and more operators launch.

PING PONG CLEANS UP

"The biggest impediment to launching sports betting in Colorado has been the fact that there haven't really been any sports," said Sarah Mercer, shareholder at Brownstein Hyatt Farber Schreck.

The pandemic has caused an unprecedented disruption in big-league

sports. Starting in March, the NBA suspended its season for more than four months, finally returning July 30 to play out the rest of the season in a bio-secure bubble at Walt Disney World. The NHL halted its season on March 12 (but resumed July 26), Major League Baseball pushed its regular season start date back from late March to late July, and the NFL is slated to start its season in September.

According to Hartman, the shake-up in professional sports schedules led some licensed sports betting operators to delay their launch until the end of

July or even later in the summer or fall, but others decided to move ahead with their May 1 start date with the sports offerings available.

Table tennis has emerged as the unlikely winner in bringing in betting proceeds while the Big Four sports leagues have been on break. In May, wagers placed for table tennis totaled \$6.6 million — more than the total for the next four sports combined. The paddle sport continued to dominate in June, when wagers exceeded \$9 million, with soccer in second place at \$4.1 million.

"Folks kind of gravitated to ... other sports that are being played in Europe and Asia and in other places as the pandemic rolled out of those places," Hartman said. Even before COVID emerged, operators had asked for a varied sports catalog, he said, and the list of approved events and wagers spans the globe, from Australian football to Caribbean cricket. Offering a "wide world of sports" to Colorado bettors helped soften the pandemic's impact on proceeds, Hartman said, and "maybe we pulled a few people away from their Xbox."



With professional sports paused during the first months of the coronavirus, many people turned to more obscure sports like table tennis or cricket to take advantage of Colorado's new sports betting law. / **LAW WEEK FILE**

GAMING LAW

“I think it’s giving them another option for entertainment, and they found within the catalog something they liked, whether it’s table tennis or European soccer or baseball from Korea,” he said.

BEATING THE ODDS?

A year ago, legislative analysts said sports betting would deliver around \$10 million in tax revenue in fiscal year 2020-2021, most of which would go to the Colorado Water Plan. But even before the pandemic, the Division of Gaming projected a more modest \$1.5 to \$1.7 million for the same period — about enough to repay the legislature for startup costs but not enough to fund the water plan in the first year. Actual taxes due from sports betting in May and June totaled just over \$310,000.

“Our numbers were very conservative, and I think industry and some other folks were wildly optimistic,” Hartman said of the pre-pandemic projections. “I think when we hit COVID, we kind of threw out all of that speculation and really looked at watching it, getting it running and seeing where the numbers really go.”

Casino closures in the first six weeks of sports betting wiped out any potential retail earnings. In May, all betting proceeds came from six online operators, while June earnings reflect those online operators plus one retail sportsbook. Casinos in Cripple Creek,

Black Hawk and Central City reopened in mid-June after Gilpin and Teller counties were exempted from provisions of the governor’s safer-at-home order, and there are now nine online operators and seven retail operators in business.

Prior to the pandemic, industry insiders predicted casinos would see a modest revenue bump from sports betting, but it wouldn’t be a jackpot due to the relatively low margins involved. But Hartman said Colorado’s decision to launch mobile and retail operations at the same time — some states with sports betting have started with retail only — led to a successful launch and an important backup revenue stream amid pandemic closures in the spring.

“With the casinos closed, we would have had nothing,” Hartman said. Considering all the setbacks, Hartman said he was “very encouraged” by the first month’s earnings and noted preliminary figures for July show a continuation of the upward trend seen in June.

NEW PLAYERS, NEW RULES

The debut of sports betting introduced international companies to Colorado’s gaming market, which has historically featured “mom and pop” casinos due to the limited stakes allowed, according to Mercer, who rep-

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You Can Bet On It

While games of chance and Ukrainian table tennis are no-gos, there is a wide world of sports for Coloradans to bet on beyond the Big Four of the MLB, NBA, NFL and NHL.



Hunger Games

Wagers are approved for Nathan’s Famous Hot Dog Eating Contest, held on Coney Island every July. Bettors can win if they guess the “over X” for total hot dogs eaten in the men’s or women’s competitions or if they correctly predict who wins and by how many. In the 2020 contest, Major League Eating champ Joey Chestnut set a new world record with 75 hot dogs and buns while Miki Sudo out-ate her competitors in the women’s division with a total of 48.5.



Nothing but Net

A mostly antipodean affair, the women-dominated world of pro netball includes Australia’s Suncorp Super Netball and New Zealand’s ANZ Premiership leagues — both of which are on Colorado’s catalogue of approved events and wagers. The game derives from early versions of basketball. But unlike basketball, netball baskets don’t have backboards, so shooters have to be right on target.



Win with Finns

Finland’s national game is pesäpallo, which means “nest ball” in the Nordic country’s main tongue, but it’s sometimes known as “Finnish baseball.” Unlike America’s pastime, a catch doesn’t mean the batter is out but forces all players on base to make a run for the next one. Like its bat-and-ball cousins baseball and cricket, pesäpallo has been approved for bets in Colorado.



Bend it Like Turkmen

While Europe and the Americas may dominate the World Cup, the beautiful game’s influence stretches into the steppes of Central Asia. Coloradans will be able to place bets on Turkmenistan’s top pro soccer league, Yokary Liga, where eight teams vie for the championship title long held by FC Altyn Asyr of capital city Ashgabat.

Gill & Ledbetter, LLP

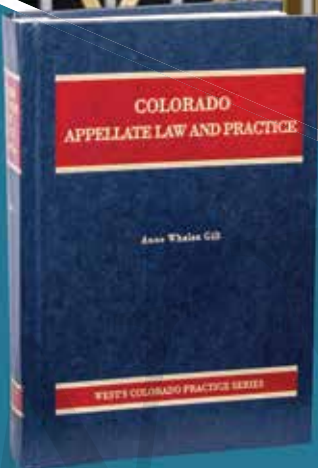


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Online and retail wagers (in millions)

MAY

Table Tennis	\$6.59
MMA	\$1.74
Baseball	\$1.66
Soccer	\$1.53
Golf	\$1.42

JUNE

Table Tennis	\$9.15
Soccer	\$4.14
Golf	\$3.44
MMA	\$2.16
Tennis	\$1.34

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LOWDOWN

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Pepple. “Our clients have grown accustomed to a high level of service and we will continue to exceed their expectations.”

HANCOCK APPOINTS DEPUTY CITY ATTORNEY

Denver Mayor **Michael Hancock** last week appointed **James Fisher** as deputy city attorney. He will begin working in the role in mid-September.

“James is a well-respected leader and attorney who brings 20 years of experience in all levels of govern-

ment as well as private practice in such areas as employment and labor law, education law, civil rights, and public projects,” Hancock said.

Fisher has served as chief of staff and deputy manager at Denver’s Department of Transportation and Infrastructure, formerly the Denver Public Works Department, since 2018. He replaces Michael Hyman who recently became town attorney in Castle Rock.

As deputy city attorney, Fisher will be responsible for overseeing the day-to-day operations of more than 100 attorneys and 100 staff who serve as the in-house legal team for Denver City Council, the Mayor’s

Office, and every city agency, board and commission as required by the Denver City Charter.

“We are in an unprecedented and challenging time in our city. We need creative thinkers, problem solvers and drivers of change – James has shown himself to be just that kind of leader,” City Attorney **Kristin Bronson** said.

“I look forward to serving with him and am grateful that he has chosen to advance his career with the City.”

Before joining DOTI, Fisher served as labor and employment attorney for the American Federation of Government Employees in Washington, D.C., where he provided legal

counsel related to policies on collective bargaining agreements between federal and municipal agencies in the areas of labor and employment law. Previously, he worked as associate general counsel at the Prince George’s County Public Schools in Maryland, as senior associate at the Thatcher Law Firm in Greenbelt, Maryland, and in various legal roles at the District of Columbia Public Schools.

Fisher began his legal career as an associate attorney at Conlon Frantz Phelan & Pires in Washington, D.C.

He is a graduate of the University of Maryland School of Law and Howard University. •

TITLE VII

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illustrate why sex-plus claims under Title VII are important for workers, according to Orshan, because it would have been “almost impossible” to prove discrimination on the basis of sex without being able to use sex-plus-age. The plaintiffs had evidence to show older women at the casino were treated worse than any other group, she said, but they didn’t have data showing the same for women in general.

“I think it’s important for plaintiffs to bring their cases based on what is true to them,” said Hogan. “And if what is true seems to be based on more than one thing, we ought to have a theoretical framework that allows that.”

“I think this 10th Circuit case recognizes that is what we need to be evolving toward, because Title VII, after all, reflects Congress’s intent to broaden the scope of discriminatory actions that they want to protect against, and not limit them.”

Meanwhile, the lessons for employers are “the same as they usually

are,” Hogan said: Document everything, make good decisions and don’t consider irrelevant characteristics or criteria beyond job performance when terminating employees.

The Frappied decision “requires employers to be much more circumspect in their termination decisions with respect to women,” Painter added. When companies are going through a reduction in force, he said, they’ll want to consider potential sex-plus claims when doing an adverse impact analysis.

Affinity filed a petition for rehear-

ing en banc last week but, Orshan said, the petition is “not really making any arguments they didn’t make to the panel.” Still, she thinks there is a “decent chance” of it being granted because the 10th Circuit was the first circuit court to reach the decision it did.

But while there are “ebbs and flows” when it comes to discrimination law, Painter said, “I think that Affinity Gaming and its analysis of gender-plus is certainly here to stay in the 10th Circuit, at least for the foreseeable future.” •

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LEGAL AID FOUNDATION

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vices has seen increased need for legal aid for collection actions, bankruptcies, foreclosures and getting public benefits, all poverty-related issues exacerbated by the pandemic.

“It’s right now more than eviction defense and domestic violence, as important and voluminous as those two areas of legal need are,” he said. “We still don’t meet [all] the need in any of those areas,” but he added the fundraising gives Colorado Legal Services flexibility for providing services in myriad areas of law.

Poole added money raised by the Legal Aid Foundation could also be

used to fill gaps left by funding cuts from the state legislature. For the current fiscal year that started July 1, Colorado’s legislature cut \$500,000 from the Family Violence Justice Fund grant program.

“In addition to addressing essential areas of need that aren’t allowed with the state money, it could also be used to augment state money if the need in those particular areas need more funding,” she said. The legislature also cut \$150,000 from the Eviction Legal Defense Fund’s appropriation, but the fund received an additional \$350,000 from the CARES Act.

Poole said the Legal Aid Foundation fundraiser had an initial goal of raising \$1.9 million for Colorado

“Given everything that’s going on, we were very grateful to have done as well as we did.”

—Diana Poole, Legal Aid Foundation Executive Director

Legal Services. She said although the \$150,000 shortage is felt, especially at a time when needs for legal aid have jumped, the organization’s fundraiser still did well. A news release stated the campaign received

nearly half its donations during the pandemic.

“Given everything that’s going on, we were very grateful to have done as well as we did,” Poole said. •

—Julia Cardi, JCardi@circuitmedia.com

SPORTS BETTING

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resents gaming industry clients.

“We had a flood of interested parties and very sophisticated players in the gaming space wanting to come into Colorado,” she said. These include FanDuel and DraftKings, two leaders in mobile sports betting, the latter with a valuation in the billions. But the mom-and-pops still hold the key, as online operators and third-party sportsbook vendors must partner and share revenue with brick-and-mortar casinos in Colorado.

“The gaming association really advocated for this model, in part to really protect the assets of our mountain town casinos here and to protect the integrity of our limited gaming industry,” Mercer said.

There are other safeguards in place to protect the industry and bettors, including integrity monitoring to make

sure all the sports allowed on the state’s events and wagers catalogue, from tennis matches in Uzbekistan to motorcy-

cle racing in Poland, are sanctioned and have a governing body and integrity policies. Integrity monitors can analyze

bets placed through multiple operators to flag patterns that seem fishy. For example, Hartman had to pull his ap-

proval for a handful of Ukrainian table tennis events where there were “some shenanigans going on.”

Colorado rules also prohibit people from betting on things that are based solely on chance, Hartman said, such as the Super Bowl coin flip.

Finally, the apps all have protections to help ensure a pandemic pastime doesn’t become a full-blown gambling addiction. These include user-defined controls on betting limits, how often to fund the account and when to take a break.

“We certainly encourage people to go in and use those tools to set their speed bumps, if you will, as they get into sports betting and start to enjoy it,” Hartman said.

In addition to user-set limits, he said, most operators have internal controls that will shut the app down or prompt a company representative to reach out if a user appears to be escalating their activity in a harmful way. •

—Jessica Folker, JFolker@circuitmedia.com

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