



BRIEF

Prediction Markets: A New Frontier in State Regulatory Authority

What States Need to Know About the Fastest-Growing Legal Dispute in Gaming and Financial Markets

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In less than 18 months, prediction markets have gone from a niche financial product to one of the most controversial regulatory battlegrounds in the country.

At the heart of the conflict is a simple question: Is placing money on the outcome of an event a financial trade or a wager? The answer determines whether your state has any authority over these platforms. Billions of dollars in potential tax revenue, consumer protection obligations and tribal gaming compacts hang in the balance.

This brief provides state legislators and legislative staff with an understanding of what prediction markets are, where the legal fight stands and what policy levers may be available as this issue

continues to unfold in 2026.

What Are Prediction Markets?

A prediction market is a platform where participants buy and sell contracts whose value depends on the outcome of a future event. These are structured as “event contracts,” which are essentially a yes/no bet: Will Team A win the Super Bowl? Will the Federal Reserve raise rates? Will Taylor Swift get married this year?

If a participant’s prediction proves correct, they receive a payout. If they are wrong, they lose their stake. The mechanics are nearly identical to a wager at a sportsbook or casino, but the platforms argue that because these contracts are classified as financial derivatives under federal law, they are fundamentally different and subject to federal, not state, oversight.



The two dominant U.S. platforms are Kalshi and Polymarket. Together, they facilitated an estimated [\\$44 billion](#) in contracts in 2025. Kalshi alone reported weekly trading volumes exceeding [\\$1 billion](#) by late 2025 and offered contracts on more than 3,500 markets. [Sports-related](#) contracts accounted for roughly 75%–90% of Kalshi’s volume and approximately 50% of Polymarket’s activity. Major financial players and sportsbooks, including Robinhood, FanDuel, DraftKings and Fanatics, have entered or announced entries into the space.

The Federal–State Conflict: Who Has Authority?

The central legal dispute turns on whether federal law, specifically the [Commodity Exchange Act](#) (CEA), “preempts” state gaming and gambling regulations when prediction market platforms operate on a federally licensed exchange.

THE INDUSTRY’S ARGUMENT

Platforms argue that Congress granted the Commodity Futures Trading Commission (CFTC) exclusive jurisdiction over transactions on designated contract markets, leaving no room for states to regulate sports event contracts traded on a federally regulated exchange. Under this theory, state gaming laws simply do not apply and platforms may legally operate in all 50 states, including those like Texas, California and Georgia that prohibit sports wagering entirely.

THE STATES’ ARGUMENT

States and gaming regulators counter that the CEA does not displace state authority in the realm of gambling. Federal law only displaces state law where compliance with both is impossible, or where state regulation poses a clear obstacle to federal objectives. Multiple courts have been skeptical that a desire for nationwide uniformity alone clears that bar, particularly given states’ longstanding power to regulate gambling and protect consumers. Adding to the skepticism is that Congress has enacted statutes specifically recognizing state authority and limits within the gaming industry (IGRA, Wire Act, PASPA). And States and Tribes have carefully considered the type and scope of offerings within their specific jurisdictions.

Beyond the legal argument, states argue that sports event contracts are functionally indistinguishable from sports bets. Massachusetts Attorney General Andrea Campbell, who sued Kalshi in September 2025, [noted](#) that more than 75% of Kalshi’s trading volume in the first half of 2025 was on sports and that the platform makes a larger share of its money from sports than DraftKings or FanDuel, companies explicitly regulated as sports betting operators.

Fiscal Note

New York State, the largest legal sports betting market in the country, taxes online gambling revenue at 51% and generated over \$1 billion in tax revenue from that activity in 2025. If prediction markets are classified as federally regulated derivatives rather than gambling, states lose the authority to tax that activity under their gaming frameworks which is a potentially significant fiscal impact.

Where the Litigation Stands

As of early 2026, more than 20 lawsuits and cease-and-desist actions are pending across the country, filed by state attorneys general, gaming regulators, tribal governments and private plaintiffs. No case has yet reached a final resolution, but several early rulings have begun to outline a fragmented legal map.

State-Level Actions

STATE	ACTION TAKEN	STATUS
Nevada	First cease-and-desist; federal court ruling that sports parlay-style contracts fall under state gaming law	Ongoing litigation; stay pending appeal
New Jersey	Cease-and-desist letters to Kalshi and Robinhood	Pending
Maryland	Cease-and-desist; 38 states filed amicus brief in support of Maryland's position	Pending; major multistate coalition formed
Massachusetts	Attorney general sued Kalshi for illegal sports wagering; won injunction partially restricting operations	Only state to obtain injunction to date
New York	Kalshi sued New York regulators; two competing legislative bills introduced (ORACLE Act and Prediction Market Regulation Act)	Litigation and legislation ongoing
Ohio	Attorney General filed enforcement action; Kalshi counter-sued	Active litigation
38-State Coalition	Filed amicus brief supporting Maryland in federal court	Brief filed December 2025

A noteworthy decision came in Nevada, where a federal district court initially granted Kalshi an injunction and then reversed course, ruling in late 2025 that Kalshi's sports parlay and player-prop-style markets closely resemble sportsbook bets and are therefore not swaps under the CEA. The ruling was a setback for the industry's preemption argument, though Kalshi immediately filed for an emergency stay pending appeal.

A consumer class action was also filed in November 2025, alleging that Kalshi violated state gambling laws and misled users about how the platform operates and expanding the legal front beyond just regulatory authority into consumer protection claims.

THE FEDERAL REGULATOR'S POSITION

The CFTC, under Chairman Michael Selig, appointed by President Trump, has moved to expand the commission's role in overseeing event contracts. Chairman Selig has argued that state gambling laws do not apply to CFTC-regulated event contracts and has signaled plans to pursue new federal rulemaking that would support prediction markets. Critically, the commission withdrew a 2024 proposed rule that would have broadly prohibited sports-related event contracts and directed staff to withdraw a related advisory letter.

Legislative Activity: What States Are Doing

While most states have pursued regulatory and litigation strategies, some are moving to establish legislative frameworks. New York has seen the most active legislative debate, with two competing bills introduced in early 2025:

- The ORACLE Act ([A9251](#)) would prohibit prediction markets from offering contracts on "sensitive matters" including elections, sports events, wars and natural disasters without first obtaining a state gambling license.
- The Prediction Market Regulation Act ([S8889](#)) would require any prediction market operator to obtain a license from the New York Department of Financial Services, subjecting them to financial disclosure requirements, consumer protection standards, anti-money laundering rules, and regular audits.



CHENG XIN/GETTY IMAGES

Industry players have responded by forming the [Coalition for Prediction Markets](#), a lobbying group led by Crypto.com with members including Coinbase, Kalshi, Robinhood, and Underdog. The coalition advocates for a federal regulatory framework and CFTC-governed oversight, explicitly seeking to distance its members from offshore platforms like Polymarket that have faced separate scrutiny over potential insider trading.

Tribal Gaming Interests

Federally recognized tribes and tribal gaming groups have been among the most vocal opponents of the current prediction market model. In [March 2025](#), multiple tribal organizations wrote to the CFTC arguing that prediction markets violate the Indian Gaming Regulatory Act (IGRA). In [January 2026](#), the Nevada Gaming Control Board filed a civil action against Polymarket's U.S. affiliate alleging the platform must hold a state gaming license. The [Nevada federal court](#) subsequently ordered Polymarket to temporarily stop offering event contracts in the state.

Key Policy Questions for State Legislators

Whether or not your state has legalized sports betting, prediction markets raise a range of policy issues:

1. Consumer Protection

Prediction market platforms currently operate with fewer consumer protections than state-regulated sportsbooks. Responsible gaming standards, age verification requirements, problem gambling resources, and dispute resolution mechanisms vary widely and are not uniformly required at the federal level.

2. Fiscal Impact and Tax Revenue

States that have legalized sports betting gain significant tax revenue from those operations. New York's 51% tax on online gaming revenue generated over \$1 billion in 2025 alone. If prediction markets are federally classified as derivatives and not gambling, that activity may be entirely beyond state taxing authority, potentially displacing revenue that would otherwise flow to states.

3. Gaming Integrity

Major sports leagues including the NFL, NBA, and MLB have expressed concerns about prediction markets' impact on game integrity. MLB sent a [memo](#) to players directly prohibiting their engagement with baseball event contracts. [NCAA](#) President Charlie Baker characterized the current regulatory environment as potentially "catastrophic."

4. Tribal Compact Obligations

Legislators in states with tribal gaming compacts should review whether those agreements include exclusivity provisions that could be implicated by prediction market activity. Several tribal governments are actively litigating this question, and the outcome could affect the financial terms of existing state-tribal relationships.

Resources and Additional Information

Anyone seeking to engage with this issue further may find the following resources useful:

- [American Gaming Association](#)
- [National Association of Attorneys General](#)
- [National Council of Legislators from Gaming States](#)
- [National Indian Gaming Association](#)
- [Commodity Futures Trading Commission](#)



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