



Contract Sport: Prediction Markets and State Gambling Authority

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KEY TAKEAWAYS

- Prediction markets are online exchanges where users buy and sell contracts on future events, including sports outcomes. They operate under federal commodities law and are open to Nebraska residents 18 and older.
- Nebraska authorizes sports wagering only in person at licensed racetrack casinos, for patrons 21 and older, and bars wagers on Nebraska college teams. Contracts on those same games trade statewide from any phone.
- The federal appellate courts are now split. The Third Circuit ruled for the platforms in April, the Ninth Circuit ruled for the states on August 28, and the Tenth Circuit cleared Utah to enforce in September. New Jersey asked the U.S. Supreme Court to take the question on September 2.
- Six states enacted prediction market legislation in 2026, from Minnesota's prohibition to North Carolina's 6% tax paired with recognition of federal authority. Nebraska has not enacted legislation and has taken no state enforcement action.

How Prediction Markets Work

Prediction markets are online exchanges where users trade binary event contracts. Each contract usually settles at \$1 if the specified event occurs and at \$0 if it does not, so the trading price between those values reflects the market's expectation of the outcome.¹ The platforms describe themselves as commodity markets or derivatives exchanges rather than sportsbooks: they do not set odds, do not take positions against customers, and earn revenue from transaction fees rather than from losing wagers.^{1,2} Kalshi, the largest platform, lists roughly 70,000 events at a time and is one of 13 firms offering event contracts.³ Because these exchanges register with the Commodity Futures Trading Commission (CFTC) as [designated contract markets](#), they may list most new contracts by self-certifying them.¹

Volume has grown steeply, though it decreased in August. Combined monthly volume across Kalshi, Polymarket, and Polymarket US hit a record \$50.59 billion in July 2026, then fell 14.5% to \$45.33 billion in August, the first monthly decline in a year.⁴ Legal United States sportsbooks handled roughly \$14 billion a month in 2025 by comparison, though the two are not measured the same way: exchange volume counts every trade, while handle counts amounts staked. Sports contracts accounted for 80% of total trading volume on Kalshi and 39% on Polymarket since July 2024.⁵ The number of listed contracts grew from about 220 in 2021 to more than 8,000 in May 2026.⁶ Contracts also serve hedging: an insurance company placed August trades on Kalshi that would pay about \$3 million if Louisiana State University won the national title, matching a coach's bonus.⁷ State-level data is not readily available, so Nebraska figures come from third-party analyses.²

Why the Question Reaches Nebraska

Nebraska voters authorized games of chance at licensed racetrack enclosures in 2020, and the Legislature established the regulatory framework in 2021 through [LB 561](#). The Nebraska Racing and Gaming Commission licenses operators, approves each event category and wager type through an authorized sports wagering menu, and limits wagering to patrons who are at least 21 and physically present in a designated sports wagering area.^{8,9} Commission rules also bar wagers on collegiate events held in Nebraska that involve a Nebraska team, along with in-game and individual-performance wagers on Nebraska college teams. Online and mobile sports wagering are not authorized, and Nebraska is one of 19 states that still prohibit online gambling.¹⁰ Event contracts differ on each of those points: they reach anyone 18 or older on any internet-connected device, they include Nebraska college games, and player-performance contracts trade continuously until settlement, though a Kalshi representative told an NCSL panel that the platform does not offer wagers on individual plays.^{8,10,11}

A March 2026 analysis by the Flatwater Free Press found that traders exchanged more than \$97 million on Nebraska men's basketball games during the 2025-26 season and an average of about \$5.5 million on each Nebraska football game the previous season. Nebraska elections have also drawn activity, including more than \$175,000 on the state's current U.S. Senate race.¹⁰

Where the Legal Dispute Stands

The platforms and the CFTC argue that event contracts are swaps under the Commodity Exchange Act, a category of derivative subject to the agency's exclusive



jurisdiction, which displaces state gambling law. Industry representatives say a single federal standard is preferable to a “state-by-state regulatory patchwork.”² The [CFTC has reaffirmed](#) that exclusive jurisdiction in federal court, and Chairman Michael [Selig has said](#) it will write customer protection rules rather than prohibit the markets.

The states respond that sports event contracts are wagers in substance, that gambling is a traditional state police power, and that Congress did not clearly transfer that authority in 2010. An April 2026 comment letter signed by 40 state attorneys general, including Nebraska Attorney General Mike Hilgers, argues the contracts serve no hedging or price-discovery purpose and that the major questions and federalism canons require a clear statement from Congress.¹² Hilgers has taken that side twice more: in January he signed an [amicus brief](#) supporting three California tribes suing Kalshi, and in July he [joined 43 other states](#) urging the agency to withdraw its proposed rule. Other tribes have pressed the same argument, and the [Senate Committee on Indian Affairs](#) asked the CFTC in July to consult them before it finalizes a rule. That reaches Nebraska directly: WarHorse Casino, a licensed operator here, is a venture of [Ho-Chunk Inc.](#), the Winnebago Tribe of Nebraska’s economic development corporation. Its chief executive, Lance Morgan, calls the contracts “a sports bet” and hopes the Attorney General will issue cease-and-desist orders.¹⁰

The federal appellate courts are now split. On April 6, 2026, a divided Third Circuit panel held that the Commodity Exchange Act preempts state gambling law as applied to sports event contracts traded on registered exchanges. That ruling bars New Jersey from enforcing its gambling laws against Kalshi.¹³ On August 28, a unanimous Ninth Circuit panel reached the opposite conclusion in Nevada’s case. It held that Kalshi’s sports event contracts are not swaps because they are sports bets, and that the Act likely does not preempt Nevada’s gaming regulations.¹⁴ New Jersey filed a [petition for certiorari](#) on September 2, and the Supreme Court may consider later this fall whether to take up the case. [Maryland’s case](#) remains active, and in [Ohio’s](#) the Sixth Circuit declined to halt state enforcement while the appeal proceeds.

State enforcement is spreading, and courts have granted relief in several states. Michigan, Nevada, and Washington have obtained orders halting Kalshi’s sports contracts, with a Michigan judge signing a [second such order](#) on September 1. [Utah](#) won summary judgment, and the Tenth Circuit declined to shield Kalshi while it appeals. [Washington’s](#) came on August 12, when the state court found Kalshi was operating unlawfully, barred trading across most of its categories, prohibited advertising to Washington consumers, and required geofencing.

Kalshi’s motion to reconsider the order was recently [denied](#). Elsewhere the record is mixed. Massachusetts’ highest court has taken up the state’s case and pressed Kalshi at argument.¹⁵ [Arizona](#) charged Kalshi criminally in March, a federal judge blocked the prosecution as unconstitutional, and the Ninth Circuit ruling may now revive it.¹⁶ In the CFTC lawsuit against [Rhode Island](#), the state argued that an 8% drop in its sports betting handle from 2024 to 2025 was attributable to prediction markets. [New York](#) sued on July 31, [Baltimore](#) became the first city to sue in August, [Connecticut](#) sued in late August, and Kalshi has asked a federal court to block enforcement in neighboring [Iowa](#). Twenty states are now in litigation with the platforms (see Figure 1), and [nearly every attorney general](#) has taken a position.¹⁷

Federal Rulemaking and Enforcement

The federal posture shifted quickly. In February 2026 the CFTC withdrew a 2024 proposal that would have counted sporting events as gaming, then [filed a brief](#) in the Ninth Circuit, in Nevada’s case, arguing that federal law preempts state gambling law. Its proposed rule, Prediction Markets; Public Interest Determinations, would define gaming for the first time and narrow when a contract involves terrorism, assassination, war, unlawful activity, or gaming to cases where settlement turns on an occurrence inside that activity. It remains a proposal: comments closed July 27, 2026, and no final rule has issued.⁶ On August 11 the agency [invoked emergency authority](#) directing Kalshi to keep operating under federal core principles after New York sued. Enforcement capacity is a recurring concern. The CFTC runs with its smallest staff in at least 20 years, and its [enforcement division](#) of roughly 100 people also covers the far larger commodities markets.

Revenue and Consumer Protection

Nebraska imposes a 20% tax on gross gaming revenue at licensed racetrack enclosures. Of that amount, 70% goes to the Property Tax Credit Cash Fund, 12.5% each to the host city and county, 2.5% to the General Fund, and 2.5% to the Compulsive Gamblers Assistance Fund.⁹ Sports wagering is a small part of that base: through July 2026 the licensed casinos reported about \$5.2 million in sports wagering revenue out of \$187.6 million in gross gaming revenue, under 3%, yielding roughly \$1.0 million in tax and about \$730,000 for property tax credits.¹⁸ Event contracts are not subject to this tax, and federal treatment is unsettled. The Internal Revenue Service has issued no guidance, and specialists say gains could be taxed as gambling income, as capital gains, or as Section 1256 contracts. The distinction matters, because a 2025 federal law caps gambling loss deductions at 90%.¹⁹

Consumer protections also differ. Nebraska’s framework sets a minimum age of 21, requires responsible-gaming



disclosures and a voluntary exclusion program, and restricts wager types to protect competitive integrity.⁸ Kalshi offers trading breaks, deposit limits, and account-level self-exclusion; Polymarket provides no built-in responsible trading tools.¹⁷ Self-exclusion at one platform does not reach other platforms or state programs, and Massachusetts argued in court that the platforms are not bound by the age limits applying to its licensed operators.^{2,17} Research cited by the states links earlier gambling onset to higher lifetime risk, and a prevalence study prepared for New Jersey's gaming regulator identified younger adults among the groups at highest risk for gambling problems.^{12,20}

What Other States Have Done

Sixteen states considered prediction market legislation during 2026 sessions, and six of them enacted measures. Among the bills they passed, no two states took the same approach. They run from Minnesota's prohibition, enacted in [SF 4760](#) and narrowed by [SF 3432](#), to North Carolina's 6% tax on trading fee revenue in [S 257](#), with [Kentucky](#) and [Illinois](#) taxing transactions, [Tennessee](#) creating an integrity offense, and [Connecticut](#) ordering a study and adding geolocation requirements. Table 1 sets out each measure and the federal response it drew.²¹

Paths Available to Nebraska

Nebraska has not enacted legislation or taken enforcement action, so each route other states used remains open, and the record indicates what each involves. Prohibition, the Minnesota approach, [drew a federal suit](#) the day after signing and was blocked before it took effect. Taxation drew federal suits in Kentucky and Illinois, where the CFTC argued the levies were designed to make the business impossible, while North Carolina's lower rate, paired with express recognition of federal authority, drew no federal challenge.

An integrity offense, as in Tennessee, reaches conduct rather than the platform. Enforcement under existing law, the route Michigan, Nevada, Utah, and Washington took through regulators and attorneys general, has produced the only orders now limiting access.^{11,21}

Two considerations cut across the choices. The first is forum: states that legislated have generally been sued in federal court, while states that enforced existing law have litigated in their own courts, where they have fared better.¹¹ The second is timing. The Ninth Circuit ruling and the New Jersey petition make Supreme Court review more likely, and waiting preserves whatever position that decision and the final CFTC rule establish, at the cost of leaving the age, tax, and integrity differences in place. This Snapshot describes these paths and takes no position among them.

What to Watch

Supreme Court review. New Jersey's petition asks the Court to resolve the split between the Third and Ninth Circuits. The Court may also deny review or wait for other circuits to weigh in. If it grants review, a decision would ordinarily follow by the end of the term.

Final CFTC rule. Comments closed July 27, 2026, and no final rule has issued. The agency's response will shape whether sports contracts remain available in states that do not authorize online wagering.⁶

Nebraska's November ballot. Both measures [qualified](#) for the November 3, 2026 ballot: a constitutional amendment authorizing online sports wagering and a statutory measure directing 70% of proceeds to property tax credits, the same share casinos pay. Approval would place licensed online sportsbooks under Commission oversight but would not change the treatment of event contracts.

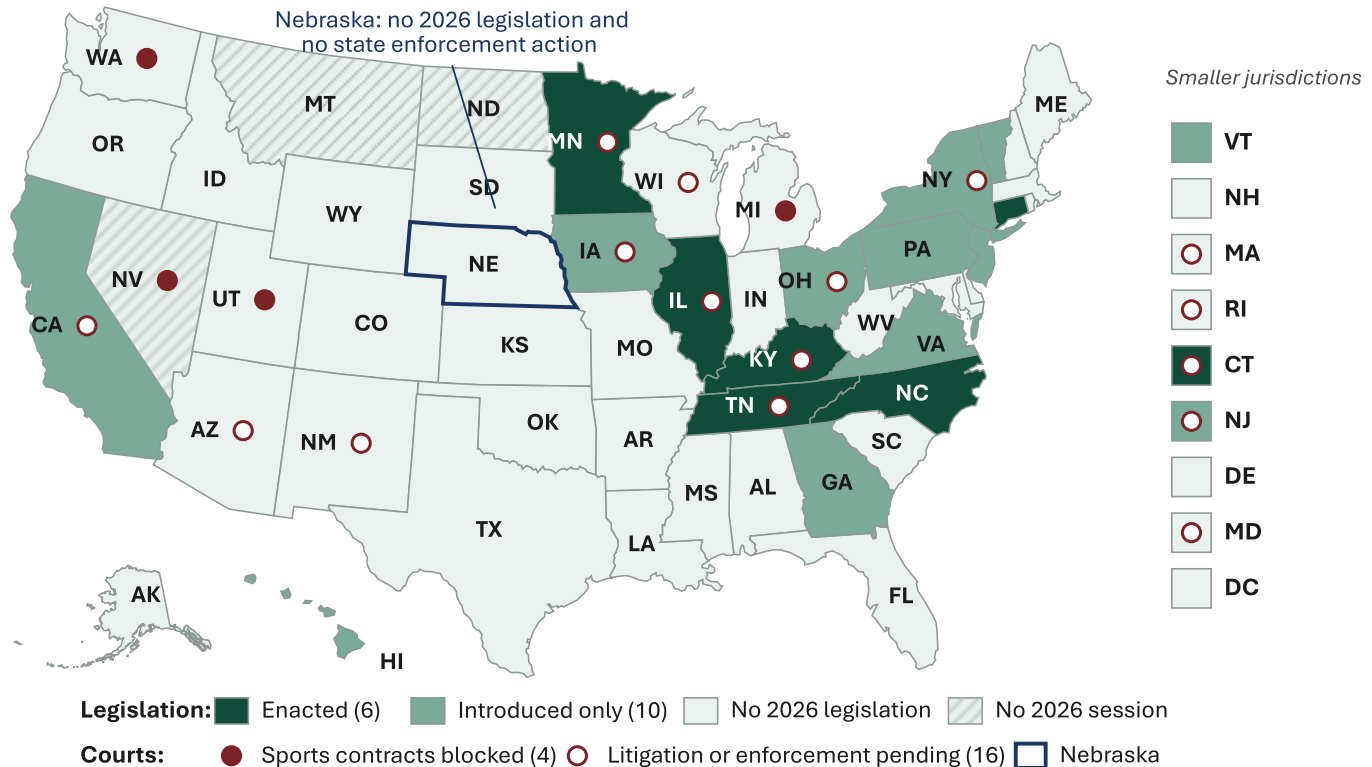
Table 1. Six States Enacted Prediction Market Measures in 2026

State	Bill	What the law does	Federal response
Minnesota	SF 4760	Prohibition. Criminalizes prediction market activity in a public safety act signed May 18, 2026; SF 3432 later removed the weather-contract ban, and H 4240 bars candidates from wagering on their own election.	CFTC sued the day after signing; a federal judge blocked the ban before its August 1, 2026 effective date.
Kentucky	HB 757	Taxation. Imposes a 14.25% excise tax on operators' transaction fees, effective January 1, 2027, and bars racetracks from contracting with the platforms.	CFTC sued, arguing the rate is designed to make operation impossible.
Illinois	SB 3019	Taxation. Applies a transaction tax to each exchange wager at 1.75%, rising to 3.5% after a licensee's first 5 million wagers in a fiscal year.	CFTC sued; the state agreed not to enforce while an injunction motion is pending.
North Carolina	S 257	Federal recognition. Taxes operators' net trading fee revenue apportionable to the state at 6%, against the 23% its sportsbooks pay, while leaving regulation to federal authorities.	None reported.
Tennessee	SB 1992	Integrity offense. Creates a Class E felony for conduct intended to influence an event's outcome while a party to a prediction market contract that benefits from it.	CFTC secured an injunction against separate state enforcement; Tennessee appealed.
Connecticut	HB 5229	Study and guardrails. Orders a study of the platforms and adds geolocation requirements and advertising limits, including on college campuses.	CFTC sued over the state's cease-and-desist orders; the state sued Kalshi in late August.

Sources: See notes 21 and 22, current through September 29, 2026. Status changes frequently; verify before use.



Figure 1. Two Maps in One: What Legislatures Passed and Where Courts Have Curbed Access



Sources: Legislative categories, note 21; court and enforcement categories compiled by the Legislative Research Office from case reporting and note 17, through September 29, 2026. Status changes weekly.

Endnotes

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