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Joanna Dolan
Principal Research Analyst
785-296-3181
Joanna.Dolan@klrd.ks.gov

Federal and State Affairs

D-9 Sports Wagering

Background and Overview: Recent U.S. Supreme Court Decision

In *Murphy v. NCAA* 584 US ____ (2018), the U.S. Supreme Court struck down a 1992 law prohibiting states from allowing betting on sporting events. The Professional and Amateur Sports Protection Act (PASPA) (28 USC §§ 3701-3704) had prohibited all sports lotteries except those allowed under state law at the time PASPA was passed. Delaware, Montana, Nevada, and Oregon all had state laws providing for sports wagering in 1992; however, Nevada was the only one of those states conducting sports wagering in a meaningful way between 1992 and 2018.

In 2011, New Jersey passed a law authorizing sports betting. This law was struck down by the courts as a violation of PASPA as part of a challenge brought by five professional sports leagues. New Jersey later repealed the state law expressly authorizing sports wagering, but did not replace it with language expressly prohibiting sports betting. Again, the sports leagues sued New Jersey, claiming that by not expressly prohibiting sports wagering, the state law effectively authorized sports gambling by implication. In 2018, the U.S. Supreme Court issued a ruling striking down PASPA on the grounds that the federal law prohibited the modification or repeal of state law prohibitions and unlawfully regulated the actions of state legislatures.

State Action Since *Murphy v. NCAA*

As a result of the U.S. Supreme Court's declaring PASPA to be unconstitutional, states can legally regulate gambling on sporting events. Several states have legalized sports wagering or considered legislation related to legalizing the practice since the Supreme Court's decision was released in May 2018.

According to the Pew Research Center, as of September 2018, sports gambling is legal in nine states, currently being studied by three states, and an additional nine states considered legislation related to the legalization of sports wagering during the 2018 session.

Of the states that have laws authorizing sports betting, Delaware, Mississippi, Nevada, New Jersey, and West Virginia have passed

both laws and regulations and are currently accepting such wagers. Montana, New York, Pennsylvania, and Rhode Island have statutes authorizing sports gambling but have not yet fully implemented those statutes.

Illinois, Michigan, and Ohio are conducting informational hearings, participating in negotiations, or otherwise studying the topic of sports wagering ahead of the 2019 Session.

Legislation failed during the 2018 Legislative Sessions of California, Indiana, Kansas, Kentucky, Louisiana, Maryland, Missouri, Oklahoma, and South Carolina.

Kansas Legislation

The Kansas Legislature considered a number of measures related to the legalization of sports wagering during the 2018 Legislative Session: SB 455, HB 2533, HB 2792, and HB 2793.

SB 455 and HB 2792 would have created the Kansas Sports Wagering Act (Act). Among other things, the Act would have authorized the Kansas Lottery to offer sports wagering:

- In-person at a facility operated by the Kansas Lottery;
- Through lottery retailers contracting with the Lottery;
- Over the Internet, including websites and mobile device applications; and
- Through a licensed interactive sports wagering platform.

All sports wagering would have been under the ultimate control of the Kansas Lottery. Counties would not have been allowed to be exempt from or effect changes in the Act.

The bill would have created two new crimes (severity level 5 nonperson felonies): misuse of nonpublic sports information and sports bribery.

The Act would have prohibited sports wagering for:

- Persons under 21 years old;

- Operators, as well as their directors, officers, owners, employees, or relatives of those individuals living in the same household;
- Athletes, coaches, referees, team owners, employees of a sports governing body or its member teams, and player and referee union personnel, who could not place wagers on any sporting event overseen by that governing body; and
- Any person with access to nonpublic confidential information held by the operator from placing wagers with the operator.

A sports governing body would have been allowed to:

- Notify the Kansas Racing and Gaming Commission (KRGC) that it desires to restrict, limit, or exclude wagering on its sporting event; and
- Bring a civil case to recover damages or other equitable relief against any person who knowingly engages in, facilitates, or conceals conduct related to sports bribery.

Sports wagering operators would have been required to:

- Cooperate with investigations by the KRGC, sports governing bodies, or law enforcement agencies, including:
- Immediately report to the KRGC any criminal or disciplinary proceedings;
 - Abnormal wagering activity;
 - Potential breaches of the sports governing body's rules and codes of conduct; or
 - Any other conduct that corrupts a betting outcome of a sporting event and suspicious or illegal wagering activities; and
- Remit a sports betting right and integrity fee to each sports governing body overseeing events wagers that were placed during the preceding quarter.

Under the Act, no less than 6.75 percent of the sports wagering revenues would have been distributed to the Expanded Lottery Act Revenues Fund (ELARF).

HB 2793 contained many of the same provisions as SB 455 and HB 2792, but amended the existing Kansas Expanded Lottery Act, rather than creating a separate sports wagering act. This bill did not include a sports betting right and integrity fee.

HB 2533 would have required any sports betting in Kansas to be conducted solely on the premises of a racetrack gaming facility and be managed and operated by one or more racetrack gaming facility managers.

All four of these bills died in Committee at the end of the 2018 Session. Two of the bills (SB 455 and HB 2792) had hearings held on them and one bill (HB 2792) received an informational hearing.

For more information, please contact:

Joanna Dolan, Principal Research Analyst
Joanna.Dolan@klrd.ks.gov

Katelin Neikirk, Research Analyst
Katelin.Neikirk@klrd.ks.gov

Jordan Milholland, Research Analyst
Jordan.Milholland@klrd.ks.gov

Heather O'Hara, Principal Research Analyst
Heather.OHara@klrd.ks.gov

Kansas Legislative Research Department
300 SW 10th Ave., Room 68-West, Statehouse
Topeka, KS 66612
Phone: (785) 296-3181