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Federal and State Affairs

E-6 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 New Jersey later repealed the state law expressly authorizing sports wagering, but did not replace it with language expressly prohibiting sports betting.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. Nineteen states have legalized sports wagering and several other states have considered legislation related to legalizing the practice since the Supreme Court's decision was released in May 2018.

According to ESPN, as of August 2019, sports gambling is legal in 19 states and the District of Columbia, with sports wagers being accepted with 13 states having operational sports wagering platforms.

Of the states that have laws authorizing sports betting, Arkansas, Delaware, Indiana, Iowa, Mississippi, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and West Virginia have passed both laws and regulations and are currently accepting such wagers. Colorado, Illinois, Montana, New Hampshire, North Carolina, Tennessee, and the District of Columbia have statutes authorizing sports gambling, but have not yet fully implemented those statutes. Of the states without legal sports wagering, seven have not considered sports wagering legislation since the *Murphy* decision: Alaska, Florida, Idaho, Nebraska, Wisconsin, and Wyoming.

Notable State Policies

In nearly every state with legal sports wagering, gamblers must be age 21 or older to place a wager. However, in Montana, New Hampshire, and Rhode Island, persons age 18 or older may place sports wagers.

Out of the 19 states with legal sports wagering, 10 states restrict wagering on either local collegiate teams or on amateur sports: Delaware, Illinois, Iowa, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Tennessee.

Two states, Illinois and Tennessee, will require the use of official league data by operators who offer proposition and in-play wagers.

Kansas Legislation

The Kansas Legislature considered a number of measures related to the legalization of sports wagering during the 2019 Legislative Session: SB 23, SB 222, HB 2032, HB 2068, and HB 2390.

SB 222 and HB 2390 would create the Kansas Sports Wagering Act (Act). Among other things, the Act would authorize the Kansas Lottery to contract to offer sports wagering at lottery and racetrack gaming facilities and through online sports wagering platforms. Each facility manager

would be allowed to contract with one platform per facility.

Lottery and racetrack facility managers would be required to remit 6.75 percent of the sports wagering revenues (total revenue from sports wagering less fees, federal taxes, and prize payments). Remittances would be placed in the Expanded Lottery Act Revenues Fund.

Sports wagering operators would be required to:

- Cooperate with investigations by the KRGC, sports governing bodies, or law enforcement agencies, including:
 - Immediately report to the Kansas Racing and Gaming Commission any criminal or disciplinary proceedings; and
 - Abnormal wagering activity;
- Potential breaches of the sports governing body's rules and codes of conduct; and
- Any other conduct that corrupts a betting outcome of a sporting event and suspicious or illegal wagering activities.

This bill does not include a sports betting right and integrity fee, which is an amount paid to sports leagues out of gross wagers. Leagues have requested fees ranging from 0.25 percent to 1.0 percent of gross wagers.

SB 23 and HB 2068 contain many of the same provisions as SB 222 and HB 2390 but would also include a sports betting right and integrity fee of 0.25 percent to be paid to sports governing bodies quarterly.

HB 2032 would require any sports betting in Kansas to be conducted solely on the premises of a racetrack gaming facility.

For more information, please contact:

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