



GAMING & HOSPITALITY LEGAL NEWS

SPORTS WAGERING IN YOUR STATE

by Greg Gemignani, Kate Lowenhar-Fisher, Jennifer Gaynor, and Jeff Silver

*"Sports gambling is going to be legal. We might as well embrace it and become part of the solution, rather than fight it. It's in everyone's best interests for it to be above-board."*¹

Two significant impediments exist to the expansion of sports wagering. The first is the Professional and Amateur Sports Protection Act (PASPA). PASPA prohibits tribes or states from authorizing sports wagering, and it prohibits anyone from relying on state law from offering any form of wagering on the outcome of games or the performance of athletes. PASPA contains a grandfathering exemption for states that conducted or regulated sports wagering before its enactment, which applies to four states (note only Nevada had broad-based, regulated sports wagering prior to enactment). PASPA, while not a criminal gambling statute, permits the U.S. Department of Justice or any impacted sports league to seek an injunction against states and those operating pursuant to state law. In order for sports wagering to expand beyond the four exempted states without the risk of being forced to stop by courts, PASPA would need to be amended or repealed.

The second hurdle is the Federal Wire Act (FWA). The federal wire act prohibits the interstate or foreign transmission of sports bets and any information that is or can be used to help, assist, or aid in sports betting. The FWA became law in 1961 when Nevada was the only state with any form of wagering other than horse race wagering. In 1961, phone lines and the national communication infrastructure were vastly different than today. While the FWA today is interpreted only to apply to sports wagering activities that actually occur across state lines, that interpretation was first expressed in 2011. However, in his confirmation hearing, Attorney General Sessions committed to revisiting the Obama administration's narrow interpretation of the FWA. If, as many commentators believe, a revised interpretation of the FWA is adopted, such an interpretation is likely to apply to all forms of wagering and apply when any communications technology that could cross state lines is employed. Such an interpretation would present a significant risk to any state effort to legalize the operation of sports wagering because all modern communication technologies can cross state lines, even when communications (such as phone calls) are between people in the same city and state.

States seeking to offer a legal and regulated alternative to illegal sports wagering should seek to address PASPA and the FWA as they march toward a legal and regulated sports wagering market.

¹Breer, Albert. "The Raiders' Road to Vegas Relocation Appears All Clear." *Sports Illustrated* (Mar. 23, 2017), mmqb.si.com/mmqb/2017/03/23/oakland-raiders-las-vegas-relocation-nfl-owner-meetings (accessed May 1, 2017).

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