



Why Doesn't Every Casino Have a Sports Book? ? ?

An overview of the Professional and Amateur Sports Protection Act

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On February 3, 2008, the New York Giants and the New England Patriots met in Glendale, Arizona to play Super Bowl XLII.

In what was the most-watched Super Bowl ever, with Nielsen Media Research reporting that 97.5 million viewers tuned in to the game, the Giants defeated the Patriots 17-14. Meanwhile, the sports books of Nevada casinos took \$92.06 million in wagers on Super Bowl XLII, according to the 2008 *State of the States: The AGA Survey of Casino Entertainment*, an annual report issued by the American Gaming Association.

The amount legally wagered pales in comparison to the total amount bet on the Super Bowl. This year, *USA Today* estimated this figure to be approximately \$8 billion.

Suffice it to say, Americans love the Super Bowl, and Americans love wagering on the Super Bowl. Yet this country's obsession with sports wagering goes beyond betting on just football. According to the AGA's *State of the States* report, \$2.596 billion was wagered on sporting events in Nevada casinos in 2007, with football wagering accounting for \$1.176 billion (45 percent) of the gross wagers, bets on basketball totaling \$687.19 million (26 percent), baseball wagers totaling \$529.25 million (20 percent) and \$202.91 million (8 percent) wagered on "other" sporting events.

The figures reported above are solely limited to those wagers placed in Nevada casinos, as Nevada is the only commercial casino jurisdiction that operates sports books which are legal, regulated, policed and taxed. Furthermore, Nevada sports book wagers account for the vast majority of legal sports wagers placed in the U.S.

As will be further discussed below, limited forms of sports wagering are legal in a small handful of other states, but these limited forms of sports wagering pale in comparison to wagers placed in Nevada sports books. This begs the questions as to why sports wagering is limited to only a few states in the country, and also why Nevada is the only commercial casino jurisdiction to operate legal sports books.

This article will provide an historical overview of land-based sports wagering in

the United States, identify the current attempts by other states to expand sports wagering into their jurisdictions, and review the likely challenges that such expansion attempts will face.

In drafting this article, the authors acknowledge that sports wagering in the United States includes other activities such as online wagering and wagers placed through bookies, and that such wagers probably comprise the majority of the bets actually placed on sporting events in the U.S.

The National Gambling Impact Study Commission estimated that illegal wagers total over \$380 billion annually. A full discussion of these complicated topics is well beyond the scope of this article. This article will focus solely on land-based, legalized sports wagering in the United States.

The Professional and Amateur Sports Protection Act

In October 1992, Congress enacted the Professional and Amateur Sports Protection Act (28 U.S.C. §3702), which set forth the general prohibition on sports wagering in the U.S. The law provides that "it shall be unlawful for a government entity to sponsor, operate, advertise, promote, license or authorize by law or compact, or a person to sponsor, operate, advertise, or promote... a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly... on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games."

From a tribal gaming perspective, it is important to note that Section 3701 of PASPA defines the term "government entity" to include "an entity or organi-



Fiesta Casino, Las Vegas

zation described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act.” Thus, PASPA’s prohibitions extend to Indian Country as well.

Though PASPA set forth a general prohibition on sports wagering, it also carved out a number of exceptions for certain state-run lotteries, certain casino sports books then in operation, parimutuel animal racing, and jai-alai.

These statutory exceptions effectively served as a grandfather clause for the licensed sports books in Nevada, the sports lottery being conducted in Oregon, a sports lottery authorized under Delaware law, and certain sports pool betting previously authorized under Montana law.

Importantly, Section 3704 of PASPA also provided a one-year window of opportunity for states that operated casino gaming for the previous 10-year period to pass a law allowing sports wagering within that state. Though this provision of PASPA was clearly designed with the Atlantic City, New Jersey casinos in mind, the New Jersey Legislature failed to statutorily authorize sports wagering before this window closed on January 1, 1994.

The PASPA exceptions can best be explained by a Senate report to the proposed legislation, which stated that Congress had no “desire to threaten the economy of Nevada, which over many decades has come to depend on legalized private gambling, including sports gambling, as an essential industry, or to prohibit lawful sports gambling schemes in other states that were in operation when the legislation was introduced. Therefore, it provides an exemption for those sports gambling operations which already are permitted under state law.”

Sports Wagering in Exempted States

NEVADA

The clearest and most well-recognized exemption to PASPA’s prohibition is that of Nevada, which allows sports wagering in licensed sports books pursuant to the oversight and regulation of the Nevada Gaming Commission and the state Gaming Control Board. Sports wagering has been legal in Nevada since 1949, and PASPA did nothing to disturb this industry segment, which, according to the AGA, handled nearly \$2.6 billion worth of bets in 2007, resulting in gross revenues of \$168.4 million to Nevada sports books.

OREGON

In 1989, the Oregon Lottery introduced a sports lottery game called “Sports Action,” which involved the player trying to beat the point spreads of professional football games. Operating under a “grandfather” exemption from PASPA, Sports Action, and a later sports lottery game called “Monday Night Scorecard,” operated through the end of the 2006-2007 football season. On July 1, 2007, House Bill 3466 repealed ORS §461.213, the state law that had allowed for the Oregon sports lottery games to be offered. Accordingly, as of July 1, 2007, sports lottery wagering is no longer authorized in Oregon.

The repeal of Oregon’s sports lottery games was done in an effort to attract the National Collegiate Athletic Association men’s and women’s basketball tournaments to the state. According to the Oregon Lottery, the NCAA had taken the position that it would not hold basketball tournament games in Oregon so long as sports wagering was offered in the state. After the repeal of ORS §461.213, the NCAA announced that first- and second-round games of the NCAA men’s basketball tournament will be held in Portland, Oregon in March, 2009.

DELAWARE

The Delaware Lottery introduced its football lottery “Scoreboard” games in September 1976. These games involved picking the winners of selected National Football League games, and picking against the point spreads of selected NFL games. However, the NFL immediately filed suit in the U.S. District Court for the District of Delaware against the governor and the Delaware Lottery, arguing that the NFL’s “forced association with gambling” constituted an unlawful interference with the NFL’s property rights.

Despite the fact that the court eventually ruled that certain aspects of the Delaware sports lottery were permissible so long as it was made clear that its games were in no way affiliated with the NFL, Delaware’s football lottery was discontinued after just one year of operation. Accordingly, Delaware does not currently offer a sports lottery, though there is momentum to once again raise the issue, as more fully detailed below.

MONTANA

Montana allows for certain non-banking sports pools, sports tab games, fantasy sports leagues and Calcutta pools to be operated under the oversight of the Montana Department of Justice, Gambling Control Division.



Current Attempts to Renew and/or Expand Sports Wagering in the U.S.

Delaware House Bill 190

On May 15, the Delaware House of Representatives passed House Bill 190, which would direct the state lottery director to reestablish a sports lottery and, according to the House synopsis of the bill, allow the state to "take advantage of an exemption granted to the state of Delaware under federal law, namely PASPA, which allows the states of Delaware, Nevada, Oregon and Montana to engage in sports betting. The bill expands the offerings of the Delaware Lottery and is intended to provide a significant additional source of revenue to the state."

HB 190 has moved on to the Senate, where it has been assigned to the Senate Finance Committee. Notably, the bill would prohibit wagering on collegiate sporting events that involve a Delaware college or university.

On January 10, a sports betting report issued to Delaware Governor Ruth Ann Minner by the controller general, the Department of Finance and the Office of Management and Budget estimated that the implementation of a sports lottery limited to the state's three racinos would generate "a first full year (Fiscal Year 2010) General Fund return of between \$22.5 million and \$30.6 million."

Though it has been reported that Minner has said she would veto any sports wagering bill, the legislation's supporters have inserted a provision into the bill which provides that it will not be enacted until February 1, 2009, after Minner leaves office. Though it remains to be seen if the current bill will pass the Senate, or if Minner will ultimately veto the measure (even with its delayed enactment provision), the NCAA and the NFL have already begun voicing their opposition to this proposed sports wagering expansion.

Such opposition from the professional sports leagues was successful in 2002, when the Delaware General Assembly created a committee to consider the renewal of a sports lottery. In reviewing the issue, the committee took testimony and legal briefs from a number of interested parties, including a number of NFL representatives opposing the sports lottery; and a prepared statement opposing sports wagering in Delaware signed by Major league Baseball, the National Basketball Association, the NFL and the National Hockey League.

In the end, this opposition proved to be too much, as this 2002 effort to renew a sports lottery in Delaware never really got off the ground. It remains to be seen whether the result will be the same in 2008.

New Jersey Sports Wagering Expansion Efforts

As mentioned above, Congress provided New Jersey a one-year window of opportunity to pass a law which would allow for sports wagering in accordance with PASPA. The New Jersey Legislature did not act in time, and New Jersey's opportunity to obtain an exemption from the prohibitions of PASPA closed on January 1, 1994. Nonetheless, there is currently momentum in the New Jersey Legislature to permit professional sports wagering at the state's licensed casinos, subject to

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voter approval.

On February 7, the New Jersey General Assembly passed A1909, a bill that would allow for in-person wagering at casinos on the results of professional sporting events, subject to voter approval in the next general election. This bill has been sent to the state Senate, where it has been referred to the Senate Wagering, Tourism & Historic Preservation Committee.

Though there has been no additional action on A1909, there have been four additional bills introduced in the General Assembly and Senate during the 2008-2009 session seeking to permit sports wagering within the state, though none of these other measures has yet been put to a vote. Both houses of the New Jersey Legislature have also introduced resolutions calling on the U.S.

Congress to lift the federal ban on sports wagering, though neither of these measures has progressed past the introduction stage.

If the New Jersey Legislature is indeed able to pass a law allowing for the introduction of professional sports wagering, and New Jersey voters approve such a proposal, the measure would still likely face federal pre-emption issues due to the prohibitions of PASPA.

In recognizing this likely problem, state Senator Raymond Lesniak is already calling on New Jersey Governor Jon Corzine to file a federal lawsuit challenging PASPA's prohibitions on the constitutional grounds that the law's provisions unfairly favor some states at the expense of others. A spokesman for the governor has said that it is premature to consider a federal lawsuit at this time.

In addition to the federal law issues cited above, New Jersey can also expect stiff opposition from the professional sports leagues and the NCAA. Spokesmen for the NFL have already weighed in on the issue in New Jersey, making clear their opposition to any expansion in sports wagering. It is likely that the other sports leagues will follow suit, just as they did in 1993 in their effort to block prior legislative attempts to expand sports wagering into New Jersey.

Betting Options

The Professional and Amateur Sports Protection Act is the seminal piece of federal legislation that has all but stopped the expansion of legal, land-based sports wagering in the United States. As state governments continue to feel the pinch of a slowing economy and continue to look toward gaming as a means of increased tax revenue, numerous other state legislatures will be watching to see the results that Delaware and New Jersey are able to obtain from their current, albeit different, paths toward sports wagering expansion.

No matter the legislative or political compromises reached with regard to sports wagering expansion, at the state and/or federal level, Delaware, New Jersey, or any other state that seeks to expand sports wagering into its jurisdiction should expect a well-funded and determined battle from the NCAA and the professional sports leagues, which are vehemently opposed to expansion.

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