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New Jersey Authorizes Gambling on Sports

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On May 14, 2018, the U.S. Supreme Court issued its long-awaited decision in *Murphy v. NCAA*, which struck down as unconstitutional a federal statute that banned states from authorizing sports gambling. Just 28 days later, on June 11, New Jersey Governor Phil Murphy signed a bill that had been approved unanimously by the New Jersey State Senate and General Assembly. The new law allows casinos and racetracks throughout New Jersey to offer wagering on the results of sporting events. Other states are expected to follow New Jersey's lead in the coming weeks and months.

Who Can Offer Sports Wagering?

Under the New Jersey statute, as of today, wagers can only be made by "persons physically present" at licensed Atlantic City casinos and New Jersey racetracks, such as Monmouth Park, the Meadowlands Racetrack and Freehold Raceway. Sports bets cannot be made at New Jersey's off-track betting (OTB) locations. Monmouth Park and the Borgata Hotel Casino began accepting wagers on June 14.

Starting on July 11, licensed casinos and racetracks who receive permits from New Jersey's Division of Gaming Enforcement (the "Division") will be authorized to operate "online sports pools" where wagers can be placed on computers and mobile devices and processed through an online gaming system. The casinos and racetracks may also authorize licensed enterprises to operate online sports pools on their behalf. All wagers must be initiated, received and otherwise made within the State of New Jersey, unless the Division determines that interstate wagering is consistent with applicable federal and state laws.

Who Can Bet on Sports?

Individuals must be at least 21 years of age to place a bet. The statute imposes a number of restrictions on athletes, coaches, referees and other persons who have authority or influence over the participants in a sporting event (including managers, handlers and athletic trainers), as well as any other person who has "access to certain types of exclusive information on any sports event overseen by that person's sports governing body." These individuals may not wager on sports events overseen by their sports governing bodies, and may not own, control or be employed by a casino or racetrack that accepts sports wagers. The professional sports leagues and other sports governing bodies may provide the Division with lists of additional individuals who may not wager on their events and may not own, control or be employed by sports wagering operators.

In addition, employees of sports governing bodies and their member teams who are not prohibited from wagering on a sporting event must nonetheless provide notice to the Division prior to placing a wager.

As the result of a last minute change to the bill, owners of 10% or more of a sports governing body or any of its member teams are allowed to own and control sports wagering licensees, including Atlantic City casinos. However, such owners may not "place or accept any wager on a sports event in which any member team of that sport's governing body participates." In other words, a person who owns 10% or more of an NBA team may own an interest in a casino that offers sports gambling, so long as that casino does not accept bets on any NBA games.

Individuals who violate these provisions can be found guilty of a disorderly persons offense and fined between $500 and $1,000.

What Can They Bet On?

As a general matter, bettors can wager on any professional, Olympic, international or collegiate sport or athletic event, or any portion thereof. This includes the individual performance statistics of athletes in sporting events or a combination of such events.

However, operators are prohibited from accepting wagers on any collegiate event that takes place in New Jersey, or any event in which any New Jersey college team participates regardless of where the event occur. Betting is permitted on other games of a tournament in which a New Jersey college team participates (e.g., NCAA Tournament games not played in New Jersey and not involving New Jersey schools). In addition, wagers may not be placed on any high school sporting events, eSports events, competitive video game competitions or any Olympic or other international sporting event in which a majority of the participants are under 18 years of age.

What Responsibilities Do Operators Have?

Casinos and racetracks that conduct sports wagering operations are required to demonstrate that they have the requisite financial responsibility and good character. The statute requires them to adopt procedures to prevent them from accepting bets from individuals who are legally prohibited from wagering. They must also obtain personally identifiable information from any individual who places a single wager of $10,000 or more on a sporting event while physically present at their facilities.

Operators are also required to report to the Division any "abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event," as well as any conduct that has "the potential to corrupt a betting outcome of a sports event for purposes of financial gain" (such as "match fixing") and any other "suspicious or illegal wagering activities." Neither the operators nor the Division are obligated to report such information to the sports governing bodies.

What Role Do the Leagues Play?

Although the Division is authorized to share information with any sports governing body or team as it deems appropriate, the statute does not provide any formal role or authority for the professional sports leagues and other sports governing bodies. Notably, the law does not require operators to share any portion of their revenues from sports gambling with the leagues or their teams, mandate the use of official league data to determine results, or obligate them to share information about suspicious activity with the leagues.

In a joint statement, Major League Baseball, the National Basketball Association and the PGA Tour criticized the New Jersey bill for failing to include "basic protections to mitigate risks to the integrity of sports and to ensure fairness for New Jersey consumers." They had urged the Governor not to sign the bill, arguing that the legislation "allows for the creation of non-transparent betting markets that deny sports leagues critical tools to monitor betting activity and conduct integrity investigations. Additionally, the bill does not require casinos or the regulator to notify sports leagues of potential match fixing or other improper conduct."

How Much Tax Revenue Will it Generate?

Casinos and racetracks that generate "revenue" from sports wagering – i.e., the aggregate amount of the wagers placed, less the total amount paid out as winnings to patrons – are taxed at a rate of 9.75% on revenue earned from in-person wagering. Revenues generated from online wagering are subject to a 13% tax. The Governor of New Jersey has estimated that sports wagering will generate $13 million for the State in the first full year of operation.

What Happens Next?

New Jersey's swift action to launch sports wagering should put pressure its neighbors, including Pennsylvania and New York, to implement their own regulatory frameworks. Pennsylvania adopted authorizing legislation in 2017, in anticipation of the Supreme Court's decision, and is in the process of drafting regulations and accepting license applications from its casinos. The Pennsylvania statute subjects sports gambling revenue to a 34% state tax, which some believe is prohibitive as compared to New Jersey’s 9.75% tax, and thus may require further amendment.

New York appears less likely to enact legislation in 2018. Although key legislators had initially agreed to support a bill that would have included a "royalty fee" for the sports leagues, on June 14, Assembly Speaker Carl Heastie announced that the bill was unlikely to pass due to concerns from Democratic members that he believed could not be resolved by June 20, the last day of New York’s annual legislative session.

We are continuing to monitor proposed legislation in Pennsylvania, New York and throughout the country and will keep our clients abreast of any significant developments.

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