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# Sports Legislation And Regulation To Watch In 2019

By **Zachary Zagger**

Law360 (January 1, 2019, 12:03 PM EST) -- Even before the U.S. Supreme Court's 2018 ruling opening the door for states to legalize sports betting, lawmakers in states across the country had started to look into the possibility of allowing the activity in their states, a trend experts say is going to grow in 2019 along with the potential for other legislation that could bring about major changes for the sports industry.

Here, Law360 looks at areas of sports regulation and legislation likely to come into play in the new year.

## State Legalization of Sports Betting

The U.S. Supreme Court **in May struck down** the Professional and Amateur Sports Protection Act of 1992, a federal law that had prohibited most states aside from Nevada from legalizing or authorizing wagering on sports contests, thereby opening the door for states to do so.

Since the ruling in *Murphy v. National Collegiate Athletic Association*, at least seven states have joined Nevada in opening their doors to sports betting in some form. Experts say lawmakers in **many more states** are going to consider legalization bills or other measures to allow sports betting in the coming legislative cycles.

"The cat is out of the bag with sports gambling legalization, and it is only going to continue," said sports and entertainment attorney Aaron Swerdlow of Glaser Weil Fink Howard Avchen & Shapiro LLP.

"Generally speaking, we now have politicians at the national and state level who are more amenable to easing gambling restrictions," Swerdlow said. "That is a big trend and it is going to have a tremendous impact on [the sports] industry and start to become a huge revenue generator."

Big issues for states will include whether and how to allow mobile and online operators and whether or not state lotteries can offer sports betting with or without other legislation and possibly to the exclusion of private operators.

Further, at least some of the sports leagues continue to push for measures to provide them with a direct cut of gambling revenue, characterized as integrity fees or data fees, though such measures have failed to gain traction so far.

Overall, how the states tax and regulate sports betting is going to evolve as states try to capture much-needed revenue while seeking to attract operators to their states when faced with

competition for consumers from neighboring states and potentially distant states with the mobile betting depending on how the federal Wire Act is enforced.

"As more and more states come online and legalize, there is going to be a bit of a race to the bottom to provide tax breaks or tax credits, things like that, to incentivize these gambling entities in one state or the other," Swerdlow said.

### **Congressional Sports Betting Legislation**

While the Supreme Court sports betting decision struck down the primary federal restriction, the court said there is still room for Congress to act to regulate the activity. Federal lawmakers may attempt to do just that after a **bipartisan bill was introduced by** Sens. Orrin Hatch, R-Utah, and Chuck Schumer, D-N.Y., late last year near the end of the congressional term.

The Sports Wagering Market Integrity Act of 2018 does not seek to shut down the burgeoning legal sports gambling market but does assert a federal interest in overseeing this new industry, setting minimum standards states must meet to legalize sports betting.

Though the bill is not likely to pass by the end of this congressional term, which ends on Jan. 3, it has set the stage for further debate in the new Congress. The bill has support on **both sides** of the political aisle, even if Hatch is in his last days in office, as well as from the National Football League.

The proposed bill calls for **some much-needed changes** for the legal sports betting industry to flourish, experts say, particularly changes to the Wire Act to allow bets to be placed across state lines between states where it is legal and added tools for federal enforcement against the illegal and offshore betting markets.

But experts are still skeptical that Congress will actually pass a measure with such federal oversight as contemplated in the proposed bill.

"I don't think federal legislation is particularly likely unless some additional stakeholders come forward," said Dennis Gutwald, a Las Vegas-based gambling industry attorney with McDonald Carano LLP.

While the NFL, the most lucrative of the major North American professional sports leagues, has **been pushing** for Congress to act, the other professional sports leagues are **reaching partnerships** with sports betting operators, seemingly willing to deal with regulation on a state-by-state basis. Further, the American Gaming Association, a gambling industry trade group, is urging federal lawmakers to keep out of sports betting.

"There is much work to be done," Hatch said the day the bill was introduced. "But I hope this bill will serve as a placeholder for the next Congress, should they decide to continue working to address these issues."

### **Congress Examining Structure of USOC and NGBs**

The U.S. Olympic Committee and several national governing bodies, or NGBs, for Olympic sports came under scrutiny in 2018 amid a wave of sexual abuse scandals, most notably involving former Olympic gymnastics team doctor Larry Nassar, who has been accused of sexual abuse by more than 300 women. Some experts say that with the breadth of the scandal and more cropping up across U.S. Olympic sports, it may be time for Congress to take a look at amending or restructuring the Olympic sports movement in the U.S., which is overseen by the private nonprofit

organization USOC under the Ted Stevens Olympic and Amateur Sports Act.

Congress **passed** the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act in early 2018, empowering a new independent nonprofit body, U.S. Center for SafeSport, to investigate sexual harassment and abuse allegations. But during a congressional hearing in October, Sen. Richard Blumenthal, D-Conn., said more fundamental changes to the USOC and NGB structure **"have to be on the table."**

With **more allegations** that the USOC and USA Gymnastics failed to properly investigate abuse allegations and in some cases even covered up such allegations, some experts suggest that could be more likely. Federal lawmakers could consider a change either through new legislation or amendments to the Amateur Sports Act, which has not been updated in over 20 years.

"I think it is a sleeper issue," said Mark Conrad, a sports law and ethics professor at Fordham University. "What is really the future of these national governing bodies?"

In particular, NGBs could be required to have active athletes or direct representatives of active athletes serve on the boards of these organizations, such as USA Gymnastics, to ensure they have a say in how they are run, Conrad said.

"What is going to be the future of the role that [the athletes] have or at least their representatives have moving forward?" Conrad said. "It is something that is worth watching, given what has happened and given that we could see more cases involving harassments and sexual abuse."

### **Federal Criminalization Of Doping In International Sports**

U.S. Reps. Sheila Jackson Lee, D-Texas, and Michael Burgess, R-Texas, introduced a bipartisan bill in the U.S. House of Representatives in June that would criminalize sports doping amid lingering concerns over widespread doping across international sports and as U.S. law enforcement authorities are taking on a greater role in regulating the world of sports. A version of the bill was introduced in the Senate last month by Sens. Hatch and Sheldon Whitehouse, D-R.I., in a late push for it to be passed by the end of the congressional term.

The Rodchenkov Anti-Doping Act, named after the Russian sports doctor Grigory Rodchenkov who **blew the whistle** on a Russian state-sponsored doping scandal, would make participating in a doping scheme or even knowingly taking performance-enhancing substances a federal crime, punishable to up to 10 years in prison. The act would further enable clean athletes who competed against those who were part of a doping scheme or whistleblowers retaliated against for disclosing knowledge of such a scheme to seek damages.

Rodchenkov led the Russian Anti-Doping Agency until 2015, but he fled to the U.S. and is reportedly in witness protection. He later brought evidence **that he claims shows** Russia pulled off a sprawling conspiracy to help many of its athletes avoid being caught for using illegal drugs during the 2014 Sochi Winter Olympics and other international competitions.

Amid those allegations and broader independent investigations, several Russian athletes have been suspended or banned from their sports and had prior competition results wiped, the International Olympic Committee **banned the Russian team** from the 2018 Winter Olympics, and the country's track and field team was barred from the 2016 Summer Olympics by the International Association of Athletics Federations.

But in September, the World Anti-Doping Agency **reinstated** the Russian Anti-Doping Agency over objections from around the world, including from U.S. Olympics and anti-doping officials.

The Rodchenkov Act would provide further tools for U.S. authorities, which have already shown a desire to root out corruption in international sports with the U.S. Attorney's Office for the Eastern District of New York's wide-ranging FIFA corruption probe, to go after doping in "major international competitions," at least those involving U.S. athletes or U.S. corporate sponsors.

"We believe this is a game-changing bill that will transform anti-doping for the better and forever at a time when the clean sport movement needs it most," said U.S. Anti-Doping Agency CEO Travis T. Tygart in a statement last month. "Given the recent unprecedented athlete outcry against the anti-doping status quo, this bill is arriving just in the nick of time."

But questions remain over the bill's attempt to broadly assert U.S. jurisdiction, how it would interact with existing anti-doping structures and enforcement bodies such as WADA, and whether there is enough support to renew it in the new Congress that convenes this month.

--Additional reporting by Jack Newsham. Editing by Rebecca Flanagan and Bruce Goldman.

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