

Over-Under on Legalized Sports Betting in California

by Harsh P. Parikh and Heidi McNeil Staudenmaier

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By a vote of 33-2, on May 29, in a rare display of bipartisan unity, the state Senate passed legislation that would legalize sports betting in the state. On June 20, Senate Bill 1390 was unanimously approved by the California Assembly's Committee on Government Organization by a vote of 13-0. All signs indicate that the bill is poised to pass before end of the current legislative session.

The pending legislation would allow licensed gaming establishments, horse tracks and federally recognized Indian tribes to conduct wagering on professional sports or most collegiate athletic events. However, Internet betting is likely not allowed because SB 1390 requires that a person be "physically present" at an authorized establishment.

The eventual passage of this bill, however, does not mean that Californians will be able to place bets on their favorite professional sports teams any time soon. SB 1390 faces some unique and serious federal and state law obstacles.

As the bill's authors openly acknowledge, federal law currently bans sports wagering. The Professional and Amateur Sports Protection Act of 1992 makes it illegal to sponsor, operate, advertise, promote, license or authorize wagering or gambling on competitive sporting event. PASPA provided a one-year window from its effective date for states to pass laws permitting sports wagering – California missed this window. Four states took advantage and were grandfathered in as exceptions to PASPA: Nevada, Oregon, Montana and Delaware. PASPA presents the

biggest challenge to any state efforts at legalized sports betting.

Some believe that SB 1390 would allow California to quickly legalize sports betting were Congress to repeal PASPA. Earlier this year, U.S. Rep. Frank LoBiondo proposed House Bill 3797 to amend PASPA to allow all states a new window to approve and establish sports betting within their borders. With the upcoming presidential elections, however, there is little hope that Congress will strike down PASPA's current ban on sports betting in California.

Another alternative is that SB 1390 would give California standing to challenge PASPA in federal court. Lawmakers, however, don't want to bear the legal costs of this litigation and are hoping that another state fights its battle. Last year, a federal district court dismissed a PASPA challenge led by New Jersey State Sen. Raymond Lesniak on the grounds that New Jersey lacked legal standing to challenge the federal ban without a state law legalizing sports wagering. Following the defeat, voters in that state passed a referendum that led New Jersey's legislatures to legalize sports betting last month. Gov. Chris Christie has indicated that he will move forward to implement the new law despite PASPA or any other federal obstacle. Thus, a suit by the Department of Justice against New Jersey over the constitutionality of PASPA is likely forthcoming.

Even if PASPA can somehow be stricken or reworked, the California Nations Indian Gaming Association, among others, cites the

state constitution as an additional roadblock to legalizing sports betting. Article 4, Section 19(e) of the constitution states that “[t]he Legislature has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.”

This section was added the state constitution in 1984. The authors of the bill argue that the state Supreme Court in [*Hotel Employees & Restaurant Employees Internat. Union v. Davis*], 21 Cal. 4th 585 (1999), interpreted this provision to only abolish gambling activities “particularly associated” with Nevada and New Jersey. Since New Jersey did not offer legalized sports betting in 1984, Senate Bill 1390 may survive this constitutional challenge.

There are still other legal problems the bill may face: including the Travel Act and California’s Tribal-state gaming compacts.

These roadblocks overshadow the public policy concerns of some stakeholders. During the recent

round of amendments, Stanford University and USC proposed amendments to prohibit betting on sporting events involving their schools. The colleges fear that student-athletes would be improperly influenced by wagers. Because of these efforts, the current version of the bill prohibits betting on collegiate athletic events in California or collegiate athletic events that involve academic institutions based in California.

PASPA’s ban on sports betting was heavily supported by almost all sports leagues, including the NFL, NBA, MLB and NCAA. Surprisingly, these professional sports leagues remain idle while SB 1390 inches closer to becoming the law.

SB 1390 is the latest attempt by California’s lawmakers to infuse much-needed revenues to the state’s treasury. Despite the various hurdles, the smart bet now is for the eventual legalization of sports wagering in California.



Harsh P. Parikh
714.427.7408
hparikh@swlaw.com

Harsh P. Parikh is an associate at Snell & Wilmer focusing on commercial litigation, gaming law, and intellectual property.



Heidi McNeil Staudenmaier
602.382.6366
hstaudenmaier@swlaw.com

Heidi McNeil Staudenmaier is partner at Snell & Wilmer focusing on Indian law, gaming law, and business litigation.

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