

## Online Gambling: Federal Law

### *Federal law may limit state authority over online gambling*

Internet gambling has been historically regulated at the federal level. Federal law prohibits and regulates certain types of betting, as well as policing some aspects of interstate gambling. In general, aside from sports betting, states may authorize any form of online gambling.

### *Wire Act applies to telecommunication use for gambling*

The Wire Act was originally passed in 1961 to police illegal bookmaking operations associated with organized crime syndicates, and was focused on the use of interstate communications for the purpose of placing wagers. [18 U.S.C. § 1084](#). As time went on however, questions arose regarding the applicability of the law to all online gambling operations or just those that conduct sports betting.

In 2002, the U.S. Court of Appeals for the Fifth Circuit affirmed a lower court holding that the Wire Act only applied to sports betting. *In re Mastercard International*, 313 F.3d 257 (2002). Yet in 2007, in the tenth circuit, the U.S. District Court for the District of Utah rejected the fifth circuit's ruling and held that the Wire Act was not solely limited to sports betting. *U.S. v Lombardo*, 639 F. Supp. 2d 1271 (2007). Until 2011, the U.S. Department of Justice (DOJ) maintained that the law prohibited all forms of internet gambling.

In December 2011, the DOJ reversed course and issued a memorandum opinion on the Wire Act, stating that interstate transmissions “of wire communications that do not relate to a ‘sporting event or contest’ fall outside the reach of the Wire Act.” This was a significant change in the DOJ's position, which had previously held that the law prohibited all forms of internet gambling. In response, Delaware, Nevada, and New Jersey passed laws authorizing some form of internet gambling, including online blackjack and poker, and various casino games.

The 2011 DOJ opinion does not have the force of law, but it is unclear whether others (besides the DOJ) would have standing to file legal challenges to enforce the Wire Act in a broader and more prohibitive manner.

### *Professional and Amateur Sports Protection Act governs sports betting*

The Professional and Amateur Sports Protection Act (PASPA) is a complementary federal law aimed at ensuring the integrity of professional and collegiate sporting events by prohibiting states from authorizing wagering on those events. [28 U.S.C. § 3701-04](#). When the bill was under consideration by Congress, a handful of states, such as Nevada, already had sports wagering systems set up. The law grandfathered in these states, allowing them to continue their activity.

New Jersey, one of the states that was allowed to grandfather in its sports betting system, chose not to at the time, but later passed a series of laws seeking to establish sports wagering in some form. These laws have been subject to legal

challenge. Most recently, the U.S. Supreme Court has agreed to hear the state’s appeal from an adverse 2016 ruling by the third circuit court of appeals. *NCAA v. Christie*, 832 F.3d 389 (2016).

***Interstate Horse Racing Act permits some interstate wagers on horse racing***

The Interstate Horse Racing Act regulates wagers on horse racing. [15 U.S.C. § 3001-07](#). It was amended in 2000 to expressly allow pari-mutuel wagers transmitted between states by the use of phone or other electronic media. This law requires both the bettor and the betting operator to be in states that authorize betting on horse races. The World Trade Organization found this law to discriminate against off-shore betting operators, and the DOJ has asserted that the Wire Act prohibits all cross-border horse racing, but has never taken enforcement action associated with this. In 2016, the Minnesota Legislature authorized advanced deposit wagering, which allows people to remotely place bets on horse races in other states.

***Unlawful Internet Gaming Enforcement Act regulates gambling-related payments***

In 2006 Congress passed the Unlawful Internet Gaming Enforcement Act (UIGEA). [31 U.S.C. § 5361](#). This law was aimed at regulating the payment processes associated with gambling, rather than gambling itself. The law prohibits a gambling business from accepting payment from a person engaged in “unlawful internet gambling,” which is defined as placing, receiving, or transmitting a bet in violation of state, tribal, or federal law. Notably, the UIGEA excludes fantasy sports from its definition of “bet or wager,” thus allowing fantasy sports operators to bypass the law’s prohibitions.

***The legality of daily fantasy sports contests under PASPA***

In recent years, the legality of daily fantasy sports (DFS) contests under various state and federal laws has come into question. While DFS contests most likely do not violate the UIGEA, as explained above, questions remain about whether PASPA prohibits them.

In a typical DFS contest, contestants select a group of real world athletes to compete on virtual teams, which are then pitted against an opposing contestant’s teams. The DFS operator awards points based on the statistical output of the selected athletes in real world games.

PASPA prohibits a person from operating—and a state from authorizing—betting, gambling, or wagering schemes that are based on the performance of amateur or professional athletes in competitive games. Because the performance of these athletes determine the points awarded by a DFS operator in a typical DFS contest, DFS contests may violate PASPA, although no federal court has yet weighed in on the issue.

In the absence of clear federal and state prohibitions on DFS contests, some states have expressly authorized them. While no bill authorizing DFS contests has so far been enacted in Minnesota, DFS operators continue to offer the contests in the state.

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