

Sports Betting in Minnesota

The U.S. Supreme Court recently held that a federal law prohibiting sports betting was unconstitutional

A federal law, the Professional and Amateur Sports Protection Act (PASPA), prohibited states other than Nevada from authorizing sports betting. However, in May 2018, the U.S. Supreme Court ruled that the law was unconstitutional in [*Murphy v. National Collegiate Athletic Association*](#).

The Court found that PASPA violated the anticommandeering doctrine under the Tenth Amendment to the Constitution. The amendment limits the authority of the federal government and reserves certain power for the states, and the anticommandeering doctrine prevents the federal government from issuing direct orders to state governments. The Court found that PASPA ordered state governments to either pass laws making sports betting illegal, or prevented those governments from passing or repealing laws that had the effect of legalizing sports betting.

The federal government could still make sports betting illegal

The Court's decision explicitly said: "Congress can regulate sports gambling directly." The federal government could prohibit sports betting or could pass a law creating uniform national regulation of sports betting. But it cannot pass a law directing individual states to pass their own laws prohibiting sports betting or prohibiting those state from repealing sports betting prohibitions.

Sports betting is still illegal in Minnesota

The Court's decision means that individual state laws control whether sports betting is legal. Under current Minnesota law, [Minnesota Statutes, sections 609.75](#) and [609.76](#), sports betting is illegal.

The Court decision will have little effect on Indian gambling in Minnesota unless the state authorizes some form of sports betting. Under the federal Indian Gaming Regulatory Act, the state must then negotiate a compact with any requesting tribe to allow for the conduct of sports-betting on Indian land.

Eight states have authorized sports betting

As of the date of this writing, the states of Delaware, Mississippi, Nevada, New Jersey, New York, Pennsylvania, Rhode Island, and West Virginia authorize sports betting in some form, although sports betting operations are not yet up and running in some of those states.

Sports tipboards may now be offered in Minnesota

A tipboard is an authorized form of lawful gambling that allows a person to purchase a ticket on a placard containing an initially covered number or symbol. Winners are selected by unsealing designated winning numbers or symbols.

Minnesota authorized sports tipboards in 2012. In a sports tipboard game, the winning number is determined with reference to the outcome of a professional sporting event. Due to concerns that sports tipboards may have violated PASPA's prohibition on sports betting, the state's Gambling Control Board never approved

sports tipboards for use in the state by licensed lawful gambling organizations. In June 2018, the board began the process of approving sports tipboards following the *Murphy* decision.

No form of sports betting, other than sports tipboards, has been authorized in Minnesota. Since authorized, sports tipboards have been exempt from the state's tax on lawful gambling; the conduct of sports tipboards will not generate any tax revenue for the state.

Regulation of sports betting

Because sports betting is not legal in this state under current law, no specific regulatory structure is in place to oversee sports betting. Currently, separate agencies established under separate chapters of law regulate each of the three legal forms of gambling (lawful gambling, the state lottery, and horse racing). In addition, the Alcohol and Gambling Enforcement Division has certain authority to enforce the state's gambling laws.

If the legislature chose to legalize sports betting, it would need to decide if it wanted to regulate it like other forms of legalized gambling. If so, legislation authorizing sports betting would likely need to either create a new agency to regulate the activity, or provide an existing agency the specific authority to do so.

Options for the state taxation of sports betting

Sports betting is already subject to a federal excise tax in the amount of 0.25 percent of the handle (i.e., the amount wagered), so one option the legislature could pursue for taxing sports betting would be to simply use the pre-existing federal tax base but apply a state rate. Alternatively, the state could impose a tax on a sports betting business's net receipts (wagers minus payouts), as it does for lawful gambling. Yet another option would be to require sports betting businesses to file a corporate franchise tax return.

The legislature would also likely need to determine whether the state sales tax that applies to amusement devices should apply to sports betting transactions.

If the legislature decided not to impose a new or special tax on sports betting, the state's corporate franchise or individual income taxes would apply (depending on whether the business is a C corporation or is formed as some other type of business entity). With respect to the individual income tax, one question that may arise with regard to sports betting is whether the income of an out-of-state LLC member, for instance, would be taxable as income earned in Minnesota.

For more information: Contact legislative analyst Ben Johnson at 651-296-8957. Also see the House Research publication *Indian Gambling in Minnesota*, September 2016.

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