

Sports Litigation Alert

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Betting on Sports Wagering? Double Down on Licensing Prep

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Sports betting has flourished in the year since a Supreme Court decision gave states the right to legalize it, with eight states now offering some form of sports betting and almost 30 in various stages of weighing legislation that would do so. Some of the new players are borrowing from existing legal frameworks in states like Nevada and New Jersey that have mature betting industries, while others are establishing their own regulatory compliance schemes. In just the last month, governors in Indiana and Iowa have signed legislation allowing sports betting in those states and authorizing their gaming commissions to regulate sports betting activity. Navigating these varying requirements to take advantage of the emerging opportunities related to sports betting operations will require thoughtful consideration and nimble action.

Licensing challenges should be front of mind when developing a business plan to participate in this expanding industry. Existing businesses and new market entrants alike should be prepared to act quickly to secure the authority to operate within licensing regimes that continue to evolve as states' experience with applicants increases.

A threshold question is whether the business is even eligible for a license in a particular state. Perhaps unsurprisingly, as legislatures ponder how to incorporate new sports betting activities into existing regulatory regimes, bills introduced in Maine and Massachusetts, among others, have focused on expanding sports wagering activity to entities and operators that are already licensed. States with existing casinos, horse tracks, riverboats, and tribal gambling enterprises, such as Ohio, Montana, and Michigan, have introduced regimes that would allow licensed sports wagering business to be conducted onsite at existing venues. Even where online and mobile bet-

ting is being considered, some legislation would restrict activities to individual bettors who are either onsite or who establish accounts in person at one of those venues. Other jurisdictions, including Kentucky and Tennessee, have considered broader approaches that would allow new entrants, such as sports arenas and even betting kiosks within third-party establishments, into the gambling market.

Those interested in entering the sports wagering market must identify the scenarios under which they would be required to obtain licensure. This is especially true where states consider creating entirely new regulators, such as state commissions, or narrow, targeted licenses for the varied roles required to bring sports wagering to the public, such as sports betting program operators, management services providers, and individual employees who accept sports wagers. Incorporating in these regimes raises an abundance of licensing issues. For example, in states where sports wagers will be placed over the internet or on mobile devices, a money transmitter license may be required to send and receive payments. Even in states where sports wagering can only occur in traditional venues, licensing opportunities may exist for new market entrants that supply the technology and systems that enable sports wagering operations. Every type of sports wagering business operation must assess each regulatory regime in order to determine the extent to which

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a license is required and then determine whether obtaining such a license is in the business' interest.

State legislatures are typically eager to regulate wagering activity in order to increase revenues. States such as Kentucky have considered application fees as high as \$1 million for specific licenses and Indiana authorized an existing riverboat casino to transfer its operations and take sports and traditional bets on land for a \$20 million fee. While high fees could be considered an excessive barrier to entry, businesses that make the investment — and properly prepare for the licensing hurdles — may also be able to take advantage of the benefits of being among the first movers, who could then find some insulation in the burden and expense facing subsequent entrants. For example, legislation introduced in Missouri would establish an interactive sports wagering platform license that allows the licensed entity to offer sports wagering over the internet, including on websites and mobile devices, on behalf of traditional gaming facilities. While such a “platform” license would be tied to existing venues, such as riverboats, the law would allow li-

censees to provide services to multiple facilities, creating an opportunity for early licensees to establish themselves as a go-to vendor in that market. Similarly, states such as Georgia, Alabama, and Arkansas have proposed legislation that would set a maximum number of operator licenses. Readiness to pursue licensure — particularly given potentially lengthy state reviews even for prepared applicants — could be the difference between becoming a viable business and not making the cut.

The Supreme Court's decision combined with the attractive economics of sports betting has triggered a dramatic expansion of an age-old industry. For those businesses seeking to take a hand, preparing for the varied complexities of licensing regimes is a smart bet.

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