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## Introduction and Background

On May 14, 2018, the United States Supreme Court—via a 6-3 decision in *Murphy, Governor of New Jersey v. National Collegiate Athletic Association (Murphy v. NCAA)*—overturned the 1992 Professional and Amateur Sports Protection Act (PASPA), a longstanding federal prohibition on professional and amateur single-game sports wagering.<sup>1</sup> The *Murphy v. NCAA* case was closely followed by state governments across the country, as ending the prohibition could open up an additional source of revenue. On September 5, 2017, West Virginia—joined by 20 other states—filed an amici curiae brief in support of New Jersey. Several signatories from SLC member states joined the brief, including the attorneys general of Florida, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas, as well as the governor of Kentucky.<sup>2</sup>

The original PASPA of 1992 prohibited single-game sports wagering in all states that had not already legalized it at the time of passage, leaving only Nevada, Delaware, Oregon and Montana with legalized sports wagering.<sup>3</sup> Of these states, only Nevada had widespread actively licensed and regulated wagering.<sup>4</sup> Oregon, which allowed wagers on NFL games, passed state-level legislation to ban the practice in 2007 after pushback from the NCAA, while Montana only authorizes sports pools.<sup>5,6,7</sup> Delaware waited until PASPA

was overturned by *Murphy v. NCAA* to take action under its existing legislation to activate single-game sports wagering.<sup>8,9</sup>

Overturning PASPA was an arduous seven-year process, spearheaded by the state of New Jersey. On November 9, 2011, New Jersey voters overwhelmingly approved Public Question 1, a non-binding ballot measure to legalize wagers on sporting events at casinos and racetracks in the state.<sup>10</sup> This public approval signaled an opportunity for then-Governor Chris Christie to challenge the federal ban.<sup>11</sup> The Legislature moved quickly to pass Senate Bill 3113 to immediately implement sports wagering at casinos and racetracks, which was signed by Governor Christie on January 17, 2012.<sup>12,13</sup> The major U.S. sports leagues promptly filed suit, arguing the New Jersey Sports Wagering Act of 2012 violated PASPA's prohibitions. In 2013, a federal judge struck down the law and the U.S. Court of Appeals upheld the lower court's ruling.<sup>14</sup> The state subsequently appealed to the U.S. Supreme Court, which declined to hear their appeal.<sup>15</sup> In 2014, New Jersey enacted legislation to legalize sports wagering (Senate Bill 2460) with revisions based on U.S. Department of Justice recommendations and the lone dissenting opinion from their prior unsuccessful appeal.<sup>16,17</sup> The sports leagues immediately challenged the law, and New Jersey again lost in federal court, leading to a second appeal to the Supreme Court.<sup>18</sup> Despite strong

\*Please note that when referring to sports betting, the terms gambling, betting and wagering all are used interchangeably.

† Delaware allowed for multi-game wagers on National Football League games pursuant to a 1976 law, reinstated in 2009.

Table 1		Overview of States with Active Sports Betting			
State	Number of sportsbooks	On-site online / mobile betting	Off-site online / mobile betting <sup>†</sup>	Sportsbook licensing / renewal fees	Tax / revenue share rate
Delaware	3	Yes	Yes	n/a (Existing gaming license)	50 percent
Mississippi	23	Yes	No	n/a (Existing gaming license)	Variable
Nevada	191	Yes	Yes	\$100 annually / \$12.50 quarterly	Variable
New Jersey	9	Yes	Yes	\$100,000 initial \$100,000 renewal (5 years)	Variable
New Mexico <sup>*</sup>	1	No	No	n/a	n/a
Pennsylvania	4	Yes	Yes	\$10 million initial \$250,000 renewal (5 years)	34 percent
Rhode Island	2	No	No	n/a (Existing gaming license)	51 percent
West Virginia	5	Yes	Yes	\$100,000 initial \$100,000 renewal (5 years)	10 percent

Source: State Gaming and Lottery Regulatory Agencies, 2018.

<sup>\*</sup> New Mexico's sole active sportsbook is operating in a tribal casino. <sup>†</sup> Off-site online/mobile bets must be placed within a state's geographic boundaries.

opposition from the acting U.S. solicitor general, the Supreme Court decided to hear their case—combined with a New Jersey horsemen's group's challenge—in June 2017, setting the stage for the final reversal of the federal ban one year later.<sup>19</sup>

This *SLC Regional Resource*, current as of January 31, 2019, examines the status of active sports gambling laws in Mississippi and West Virginia, the two SLC states that currently authorize it.<sup>\*</sup> As additional data is gathered on the revenue gained from taxing sports wagering, it is anticipated many states will act during the 2019 and 2020 legislative sessions to bring this form of gaming to their states—especially those with a lottery or casino gaming infrastructure already in place.

## States Outside the SLC Region with Active Sports Betting

As of January 2019, eight states had legalized and implemented sports wagering: Delaware, Mississippi, Nevada, New Jersey, New Mexico, Pennsylvania, Rhode Island and West Virginia. Table 1 provides a brief overview of the current sports betting environment in these states.

<sup>\*</sup> Wagers placed on the outcome of horse races are not included in “sports gambling,” as the term is commonly used.

Until the *Murphy v. NCAA* decision, Nevada held a national monopoly on single-game sports wagering under legislation passed in 1949. Any establishment licensed by the state to conduct gaming, including sports wagering, must pay a variable monthly licensing fee to the Nevada Gaming Commission. The fee is based on the licensee's monthly gross profits, with a rate of 3.5 percent for profits up to \$50,000; 4.5 percent for profits exceeding \$50,000 but less than \$134,000; and 6.75 percent for profits exceeding \$134,000.<sup>†,20</sup> Nevada allows sports betting through mobile applications and through sportsbooks located at existing casinos. All gaming licensing fees are allocated to the state's general fund.<sup>21</sup> Despite its robust and established sports wagering industry, licensing fees collected for sports wagering account for less than 1 percent of Nevada's budget.<sup>22</sup> This is a helpful baseline for other states, as they estimate and project their annual revenue from implementing sports betting.

Meanwhile, Delaware only allows single-game sports wagers to be placed with sportsbooks at three physical

<sup>†</sup> Profits, also referred to as gross revenue, net proceeds, net sports wagering receipts, and gross sports wagering receipts, refer to the amount of money collected as bets less the amount paid out as winnings.

## GLOSSARY

**Daily Fantasy Sports (DFS)** – A game of skill where bettors pick athletes and create a “team,” which then competes against other players. DFS does not involve bets placed on individual sporting event outcomes or solely on the performance of individual athletes.

**Gross revenue** – the amount of money collected as wagers less the amount paid out as winnings. Also referred to as profits, net proceeds and/or gross sports wagering receipts.

**Handle** – The total amount of bets taken or wagered by bettors.

**Integrity fees** – A fee, typically 1 percent of the “handle,” paid to the sports leagues upon whose events wagers are placed.

**Parlay** – A single bet that links together two or more wagers; to win the bet, the player must win all the wagers in the parlay. If the player loses one wager, the entire bet is lost. However, if all the wagers in the parlay are won, the player wins a higher payoff than if the bets were placed separately.

**Parimutuel** – Type of betting where all bets of a particular type are grouped together in a pool and then a specified percentage is deducted for taxes and the house take. The payoffs are then determined by the number of winning bets and the remaining pool is shared among the winners. Also known as a “sports pool” or “pool sharing.”

**Purses** – The amount of winnings paid out to winning bettors.

**Single-game betting** – Wagers placed on the outcome(s) of an individual game, athletic or sporting event.

**Sportsbook** – An establishment that accepts bets on the outcome of sporting events. Also referred to as a book. Typically, this is the casino, commercial sportsbook operator or, occasionally, a governmental entity like a state lottery.

**Wager** – An amount of money placed on the outcome of an event, game or athletic performance. Also, commonly referred to as a bet.

casinos in the state and – instead of a set tax – has established a profit sharing agreement with the casinos.<sup>23</sup> The net proceeds from sportsbooks are divided among the state (50 percent), casinos (40.2 percent) and horse racing purses (9.8 percent).<sup>24</sup> The state’s share of sports betting profits is allocated to its general fund.<sup>25,26</sup>

Like Nevada, New Jersey allows online single-game betting by mobile applications.<sup>27</sup> New Jersey also has a variable tax rate dependent on where and how the bet is placed. For land-based establishments, the tax rate is 8.5 percent of gross profits, rising to 13 percent for online casino-affiliates and 14.25 percent for online race track affiliates.<sup>28</sup> The state taxes from both land-based and online casino sports wagers are deposited in the state’s casino revenue fund, which allocates funding to senior and disability assistance programs,<sup>29,30</sup> while taxes collected from sports wagers at online race track affiliates are directed to the state’s general fund.<sup>31</sup>

Pennsylvania began allowing legal bets in November 2018.<sup>32</sup> Sports wagering is allowed at physical establishments and their affiliated online or mobile applications. However, as of January 31, 2019, no mobile application is yet active. An outlier among the other states, Pennsylvania set a high initial licensing fee of \$10 million per licensee and set the state tax rate at 34 percent of daily gross sports wagering profits.<sup>33,34</sup> Licensing fees and taxes are to be earmarked for the state’s general fund.<sup>35</sup>

Another newcomer among the active sports wagering states, Rhode Island allowed its first bets on November 26, 2018.<sup>36</sup> Comparatively limited in scale, bets only are accepted at the state’s two casinos.<sup>37</sup> Like Delaware, Rhode Island participates in a profit sharing agreement with its casinos and operators. The state receives 51 percent of sports wagering profits, with the remaining balance divided between the casinos (17 percent) and the sportsbook operators (32 percent). The state’s share of sports betting profits are distributed to the general fund.<sup>38</sup>

The District of Columbia also legalized sports wagering, pending congressional approval, through the Sports Wagering Lottery Amendment Act of 2018.

Uniquely, as there are no casinos in its jurisdiction, D.C. Act 22-594 allows sports betting at various venues in the district, private establishments and through a mobile application, initially operated exclusively by the D.C. Lottery.<sup>39</sup> The act also taxes gross sports wagering profits at 10 percent, with licensing fees for Class A (sporting venues) and Class B (private establishments) operators at \$500,000 and \$100,000, respectively.<sup>40</sup>

## Sports Wagering in the SLC Region

The following sections focus on two SLC states – Mississippi and West Virginia – that have moved quickly to establish and regulate sports wagering in their states. Pending and proposed actions across the South also are reviewed, with an eye toward any expected expansion of legalized sports wagering, while the final section discusses potential issues that may arise from integrity fees or federal oversight.

### Mississippi

With an established casino and gaming industry, Mississippi was one of the first non-exempt states to study sports betting and its function as a source of state revenue. Formed in March 2014 at the request of the chair of the House Gaming Committee, Representative Richard Bennett, the State Taskforce on Internet Gaming and Sports Betting set out to review and report on revenue and financial considerations of internet gaming and sports betting; legal issues; technology considerations; and responsible gaming. Notably, legislative and regulatory recommendations were not included under their charge.<sup>41</sup>

In December 2014, the taskforce released its *Report on Internet Gaming and Sports Betting*, prepared for the Mississippi House Gaming Committee.<sup>42</sup> In the report, the taskforce concluded that – pending the outcome of New Jersey’s legal challenge – Mississippi may be able to legalize sports wagering by simply removing its prohibition from the current statute. The report also cautioned that Mississippi may encounter technology issues in implementing any internet-based gaming due to the state’s large rural areas and lack of reliable internet service.<sup>43</sup>

During the 2016 legislative session, Senate Bill 2541 created the Fantasy Contest Task Force and the Fantasy

Contest Act.<sup>44</sup> The legislation legalized daily fantasy sports (DFS) gambling within existing licensed gaming establishments. Unlike single-game sports betting, DFS games depend on the collective performance of a bettor-picked “team” of individual athletes, and not solely on the outcome or performance of individual sporting events or athletes.<sup>45</sup>

In 2017, House Bill 967 further refined the existing DFS laws and eliminated the language prohibiting sports betting from the Mississippi Gaming Control Act in anticipation of the Supreme Court’s decision in *Murphy v. NCAA*.<sup>46</sup> These revisions to the existing code paved the way for legalized sports betting in the state. The removal of one clause from the Gaming Control Act, “(a) No wagering shall be allowed on the outcome of any athletic event, nor on any matter to be determined during an athletic event, nor on the outcome of any event which does not take place on the premises,” effectively legalized sports gambling at the state level, pending the outcome of *Murphy v. NCAA*.<sup>47</sup> In preparation for the final U.S. Supreme Court decision, the Mississippi Gaming Commission drafted regulations in May 2017, with final regulations approved on June 21, 2018.<sup>48</sup>

Sports wagering in Mississippi officially launched on August 1, 2018.<sup>49</sup> Pursuant to Gaming Commission Rules, sports wagering must take place in existing established gaming locations only, either on land- or water-based casinos, with no online options currently in place. However, one Mississippi casino is in the process of implementing on-site mobile wagering.<sup>50</sup>

Sports betting is offered at 23 of the 28 state regulated casinos as of December 2018, with the remaining casinos anticipated to move forward with applications to add sports wagering to their offerings.<sup>51</sup> Sports wagering profits fall under the same fee structure as other gaming profits in the state. The fee structure is similar to Nevada’s, based on a licensee’s monthly gross profits, with a rate of 4 percent for profits up to \$50,000; 6 percent for profits exceeding \$50,000 but less than \$134,000; and 8 percent for profits exceeding \$134,000.<sup>52</sup> As Mississippi’s sportsbooks are operated in their casino licensees, the effective fee rate is 8 percent, with an additional local fee of up to

<b>Table 2</b>		<b>Mississippi Sports Gambling – 2018 Totals</b>		
<b>Month</b>	<b>Total wagers placed</b>	<b>Taxable gaming revenue</b>	<b>State highway fund</b>	<b>Local government share</b>
<b>August</b>	\$7,696,051.43	\$645,057.15	-	\$21,514
<b>September</b>	\$31,770,269.83	\$5,503,792.87	-	\$169,729
<b>October</b>	\$32,837,333.82	\$1,178,343.41	\$560,417	\$37,983
<b>November</b>	\$44,499,883.33	\$1,674,250.42	\$134,805	\$45,291
<b>December</b>	\$41,762,048.08	\$6,174,223.81	\$302,244	\$196,579
<b>Year-to-date</b>	\$158,565,586.49	\$15,175,667.66	\$997,466	\$471,096

Source: Mississippi Gaming Commission and Department of Revenue, 2018.

4 percent dedicated to the municipalities where the casinos operate.<sup>53,54</sup>

During the August 2018 special legislative session, House Bill 1 earmarked the revenue received on sports wagers, after local government and monthly gaming license fee disbursements, for the State Highway Fund for infrastructure improvements and repairs to road and bridge projects.<sup>55</sup> However, after 10 years—on and after July 1, 2028—all sports wagering revenue will be directed to the state’s general fund.<sup>56</sup> Table 2 shows the taxable revenue and amounts disbursed through December 2018.<sup>57,58,59,60,61</sup>

Prior to the implementation of the law and opening of sports wagering locations, state revenue estimates varied among government officials and gaming industry experts. Governor Bryant estimated the state would take in \$30 million annually in taxes on casino profits, while other officials and experts estimated a ceiling of \$10 million annually.<sup>62,63</sup> Based on collections from the first five months of sports wagering, the annual state tax revenues will come in at significantly less than the \$30 million initially estimated. However, sports wagering has contributed to an overall increase in gaming tax profits in general, driven by higher attendance at casinos with on-site sports betting.<sup>64</sup>

### West Virginia

On November 14, 2016, West Virginia—on behalf of itself and Arizona, Louisiana, Mississippi and Wisconsin—filed an amici curiae brief in support of New Jersey’s appeal to the Supreme Court regarding

its PASPA challenge.<sup>65</sup> Additionally, House Bill 2751 was filed during the 2017 session as a direct challenge to PASPA.<sup>66</sup> The bill stalled in committee; however, West Virginia continued to support New Jersey’s legal challenge, which the Supreme Court had finally agreed to hear in June 2017, by filing another amici brief on behalf of itself and 20 other states in September 2017.<sup>67</sup> That same month, the West Virginia Lottery Commission also contracted a gaming research firm to conduct a study on the economic impact and opportunities for implementing sports and internet gambling in the state.<sup>68</sup>

Subsequently, during the 2018 legislative session, the passage and signing of Senate Bill 415 created the West Virginia Lottery Sports Wagering Act. The legislation challenged the federal prohibition, legalizing sports betting in casinos and on mobile applications throughout the state, but included language allowing the law to take effect only upon the removal of federal restrictions on sports wagering.<sup>69,70</sup> Under the new law, now in effect, establishments pay an initial licensing fee of \$100,000 and must renew their license every five years for an additional \$100,000. The act also sets a tax of 10 percent on adjusted gross sports wagering receipts, establishes the minimum age for bettors at 21 and grants the West Virginia Lottery Commission oversight of all sports betting.<sup>71</sup> As of January 2019, there are five on-site sportsbooks in existing gaming establishments, as well as affiliated online and mobile applications for two casinos. The online and mobile platforms are authorized under the existing casino operator’s license for its two establishments.<sup>72</sup>

Table 3		West Virginia Sports Gambling — 2018 Totals		
Month	Total wagers placed	Taxable gaming revenue	Collected tax (state share)	
September	\$7,322,254.92	\$2,129,235.29	\$180,985.01	
October	\$9,735,874.36	\$1,010,246.06	\$85,870.93	
November	\$12,610,479.74	\$641,582.70	\$54,534.53	
December	\$16,757,252.74	\$2,766,943.70	\$235,190.24	
Year-to-date	\$46,425,861.76	\$6,548,007.75	\$556,580.71	

Source: West Virginia Lottery Commission, 2018.

The tax revenue from sports betting — up to the first \$15 million — is allocated to the State Lottery Fund. Any surplus is directed to the Public Employee Insurance Agency’s stabilization fund.<sup>73,74</sup> Prior to implementation, a legislative fiscal note estimated \$4.75 million in net profits to the state Lottery Fund during the first full year of sports wagering.<sup>75</sup> The West Virginia Lottery Commission projected a higher figure of \$9 million to \$17 million, while the American Gaming Association forecasted \$16 million.<sup>76,77</sup> As Table 3 illustrates, however, initial projections may have been overly optimistic, but could improve as online and mobile sports betting expands across the state.<sup>78</sup>

While the state tax revenue from sports wagering never was anticipated to be a major revenue stream, many proponents expect tax collections on casino profits for hospitality and other games to see an increase due to the popularity of sports gambling.<sup>79</sup> With the implementation and expansion of sports wagering across the border in Pennsylvania and Washington, D.C. it is unclear what impact this competition will have on future profit projections in West Virginia.<sup>80</sup>

### Other SLC State Actions

As Mississippi and West Virginia continue to adopt and expand the sports wagering apparatuses in their states, neighboring SLC states are poised to follow. Some SLC states already have taken steps to establish committees to study the issue or pre-file legislation for the 2019 session. Others have taken the route of establishing or researching casino gaming or a lottery system, both of which are viewed as precursors to sports betting legalization.<sup>81</sup>

### Kentucky

A bipartisan study panel of House and Senate members was formed in June 2018 to draft legislation to legalize sports gambling in the state.<sup>82</sup> Study group members anticipated their proposed bill would generate between \$6.5 million and \$26 million annually in both taxes and licensing fees.<sup>83</sup> A pre-filed bill for the 2019 session, House Bill 12, does not address licensing fees or tax rates. However, it does name the Kentucky Lottery Corporation (KLC) as the main regulatory body for sports wagering and establishes a new fund for net sports wagering receipts.<sup>84</sup> After payment of administrative costs — and the disbursement of 2 percent of deposits to a problem gambling awareness fund — the remaining receipts would be allocated to the Kentucky Employees Retirement System (KERS) and Kentucky Teachers’ Retirement System (KTRS) funds for a period of 10 years, after which time the revenues revert to the state’s general fund.<sup>85</sup>

Meanwhile, another pre-filed bill for the 2019 session, Senate Bill 23, would create a new independent regulatory body — the Kentucky Gaming Commission — to regulate and monitor the industry.<sup>86,87</sup> The bill would tax net sports wagering receipts at 25 percent and require all non-KLC sportsbooks pay a \$250,000 initial, and \$25,000 annual, licensing fee. A sports wagering disbursement trust fund would be created to allocate 60 percent of tax and licensing fee collections to the KERS and KTRS pension funds (proportional to the number of fund participants), 30 percent to the Kentucky educational excellence scholarship trust fund and the remaining 10 percent to the Kentucky Thoroughbred development fund.<sup>88</sup>

## Louisiana

During the November 2018 general elections, voters in 47 of Louisiana's 64 parishes approved a ballot measure legalizing daily fantasy sports contests in their respective parishes. Lawmakers will set a tax rate and rules during the 2019 session, after which the Louisiana Gaming Control Board will regulate the industry.<sup>89</sup> As DFS and casino gaming operators have been a driving force in other states that have legalized sports wagering, the implementation and expansion of DFS contests across the state's parishes will be instructive.

A bill tabled in 2018, Senate Bill 266, may be revisited during the 2019 session.<sup>90,91</sup> The legislation would create a statewide referendum on sports wagering, on a parish-by-parish basis, similar to the DFS ballot measure. Any parish whose voters approved the measure would be able to license establishments to provide sports wagering under rules and regulations established by the Louisiana Gaming Control Board.<sup>92</sup>

## Missouri

Several pieces of legislation to allow sports wagering were filed in 2018, with three different proposed measures gaining the most traction, but none reaching the governor's desk.<sup>93</sup> The first, House Bill 2320, would have allowed the Missouri Gaming Commission to establish standards and procedures for legal sports wagering.<sup>94,95</sup> Wagers would be allowed at riverboat casinos and through authorized DFS operators, while the Missouri Lottery Commission would be enabled to allow sports contests in lottery games.<sup>96</sup> The second, House Bill 2406, prescribed the standards and procedures for sports wagering with greater detail, giving oversight to the Missouri Gaming Commission and limiting betting to riverboat casinos only. Additionally, a 6.25 percent tax would be levied on gross profits, along with a \$10,000 initial application fee and \$5,000 annual fee for each establishment.<sup>97</sup> The third bill, House Bill 2535, would have taxed gross profits at a rate of 12 percent along with an integrity fee\* of 1 percent of all sports wagers.<sup>98</sup>

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\* Due to resistance from lawmakers and gaming establishments, some leagues have started to refer to these fees as "royalties" or league fees to frame their claim of intellectual property rights.

A pre-filed bill for the 2019 legislative session (Senate Bill 44) would charge gaming facilities that administer internet-based sports gambling an initial \$10,000 licensing fee and \$5,000 for annual renewal, tax adjusted gross receipts from wagers on all sporting events at 12 percent and reserve 0.5 percent of gross wagers for the construction and maintenance of a wide range of both public and private entertainment and sports facilities.<sup>99</sup> Another 2019 bill, Senate Bill 187, would only allow sports wagers to be placed on gambling boats. Wagers also would be accepted via a limited mobile application or internet platform at these licensed facilities. An initial licensing fee of \$10,000 would be required as well as an annual administrative fee of \$5,000 and a five-year renewal fee of \$10,000. The bill would tax gross receipts at 6.25 percent.<sup>100</sup> House Bill 119, introduced in January, also would tax gross receipts at a rate of 6.25 percent. Additionally, it would establish a royalty fee of 0.75 percent for all wagers on professional sporting events, distributed proportionally to U.S. sports leagues registered with the Missouri Gaming Commission, and a 0.25 percent royalty fee for amounts wagered on certain collegiate football and men's basketball contests, remitted to the athletic departments of Missouri public universities that compete in major division football and men's basketball contests.<sup>101</sup> A similar bill introduced in the Senate (Senate Bill 327) also would include a tax rate of 6.25 percent of gross wagers. However, it would collect a 0.75 percent royalty fee for wagers placed on both professional and certain collegiate sporting events.<sup>102</sup>

## South Carolina

Due to a clause in the state's constitution that outlaws several forms of gambling, legalizing sports wagering is somewhat more complex than in other Southern states.<sup>103</sup> To remove the prohibition, the General Assembly would need to pass a constitutional amendment by a two-thirds majority and then have it approved by a public referendum by the majority of voters.<sup>104</sup> During the 2017 legislative session, House Resolution 3102 to amend the constitution and allow the General Assembly to provide for casino and sports gambling died in committee.<sup>105</sup> Due to this additional constitutional hurdle, it is unclear if lawmakers will revisit the issue during the 2019 session.

As more SLC and neighboring states join the sports wagering queue, pressure may increase on those states that have not yet studied or filed legislation on this issue to do so during their 2019 session. In the November 2018 general elections, voters in Arkansas approved a ballot measure which affects the potential implementation of sports wagering. While in both Virginia and Tennessee, bills have been filed in 2019 that would move toward legalizing and implementing sports wagering.

### Arkansas

Issue 4 created a constitutional amendment allowing casinos in four counties across the state.<sup>106</sup> It also included language to allow the acceptance of bets on sporting events, although no action is expected to be taken until spring of 2019, as the Arkansas Racing Commission has 120 days to develop regulations and until June 2019 to issue gaming licenses.<sup>107, 108</sup>

### Tennessee

House Bill 1 would set a tax of 10 percent on gross gaming profits, along with a \$7,500 licensing fee. Similar to Louisiana's DFS measure, the Tennessee Sports Gaming Act would allow sports betting on a county-by-county basis subject to local voter approval.<sup>109</sup> The bill's fiscal note projects \$5.9 million in state revenue for the first year.<sup>110</sup>

### Virginia

House Bill 1638 would set a tax rate of 15 percent on gross profits, along with a \$250,000 initial application fee and \$200,000 renewal fee. Additionally, only five licensees could operate in the state at any one time, determined by which applicants are best equipped to operate and provide the maximum amount of tax revenue to the state. Uniquely, this bill would allow for bets to be placed only by means of mobile or online platforms with on-premise wagers strictly prohibited.<sup>111</sup>

## Tribal Gaming Compacts and Sports Betting

The expansion of sports gambling in the wake of the *Murphy v. NCAA* ruling almost exclusively has involved state regulated gaming establishments. As a result, tribal casinos are major actors in the gaming industry that have yet to fully join the sports betting market. In states where existing tribal compacts are up for renewal in the near future, tribal sportsbooks appear to be a likely avenue of sports betting expansion under the auspices of Class III gaming.\* However, a tribal-state gaming compact must be in place or negotiated in order to allow any kind of sports betting or parimutuel wagering.<sup>112</sup> As of January 2019, only two tribal groups—located in New Mexico and Mississippi—have opened sportsbooks to accept wagers on sporting events pursuant to their existing gaming compacts.

New Mexico's first—and only—sportsbook was opened by the Pueblo of Santa Ana tribe in October 2018

\* Per §502.4(c) of the Code of Federal Regulations, Class III gaming is defined as “any sports betting and parimutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai.”

under its existing Indian Gaming Compact with the state. The state attorney general is monitoring the tribal sportsbook pursuant to the existing compact.<sup>113</sup> The other active tribal sportsbook is operated by the Mississippi Band of Choctaw Indians.<sup>114</sup> Following the *Murphy v. NCAA* decision, the Choctaw tribe was quickly able to implement procedures for sports betting within their casinos, as the tribal establishments are not subject to state regulation.<sup>115</sup>

With more than 100 tribal gaming establishments in the state, Oklahoma is the most likely state in which lawmakers and tribal leaders will renegotiate existing gaming compacts to implement sports wagering.<sup>116</sup> During the 2018 legislative session, House Bill 3375, aimed at permitting the expansion of the state-tribal gaming compact to include sports wagering, was halted after a floor amendment struck the sports wagering language from the bill.<sup>117</sup> As the state's tribal compacts are not due for renewal until 2020, any negotiations to develop a framework for implementing sports wagering may be deferred until after the 2019 legislative session.<sup>118</sup>

Table 4		SLC States with Tribal Gaming		
State	Gaming tribes	Tribal gaming establishments	Tribal-state gaming compact?	
Alabama	1	3	No	
Florida	2	7	Yes	
Louisiana	4	5	Yes	
Mississippi	1	3	Yes	
North Carolina	1	3	Yes	
Oklahoma	31	140	Yes	
Texas	2	2	No	

Sources: National Indian Gaming Commission, <https://www.nigc.gov/images/uploads/state.pdf>, 2018; and U.S. Department of the Interior, Indian Affairs, Office of Indian Gaming, <https://www.indianaffairs.gov/as-ia/oig/gaming-compacts>, 2019.

### Integrity Fees

Although *Murphy v. NCAA* overturned PASPA, it is unclear if future legal challenges await states that implement sports wagering as sports leagues often press for the inclusion of “integrity fees” in state and federal legislation regulating sports gambling.<sup>119</sup>

Integrity fees are a share — usually 1 percent — of the total amount wagered on sports designed to compensate the professional and collegiate sports leagues for the extra costs stemming from sports wagering. The fees are payable to each league on which sports wagers were placed and can represent a sizeable portion of the wagers not allocated to states and gaming establishments.<sup>120,121</sup> According to a sports wagering study commissioned by the state of Indiana, after winnings are paid out, sports betting operators typically only keep around 5 percent of total bets as gross profits. An integrity fee of 1 percent on every bet would equal approximately 20 percent of an operator’s gross profits. As state and local governments tax gross profits, integrity fees lower the amount of state tax revenue as well.<sup>122</sup> A March 2018 study from U.K.-based Oxford Economics, commissioned by the American Gaming Association, concluded that a 1 percent integrity fee on the amount wagered would lead to a significant decrease in state sports wagering tax revenue, estimated at 50 percent or more, depending on the state tax rate.<sup>123,124</sup>

While no state with active sports betting — including the long-established industry in Nevada — has yet to implement integrity fees, the leagues continue to lobby at both the state and federal levels for their inclusion.<sup>125</sup> As noted, proposed legislation in Missouri would be among the first to include an integrity fee on all amounts wagered.<sup>126,127,128</sup> Meanwhile, West Virginia legislators have strongly opposed any legislation or lottery rules that include integrity fees, despite the governor previously expressing support of such fees.<sup>129</sup>

### Conclusion

As more states implement and expand sports betting, the potential benefits of an interstate compact between the states currently engaged in sports wagering is gaining traction.<sup>†</sup> Many experts look to the 2014 Multi-State Internet

Gaming Agreement between Nevada and Delaware — later joined by New Jersey — which governs online poker as a possible example.<sup>130</sup> Such an agreement may allow sports betting states to share a larger pool of players, lower overhead costs and mitigate their share of risk.<sup>131</sup> However, it is important to note that any such action would be dependent either on federal legislation carving out exemptions for sports betting to the Wire Act or a state legal challenge.<sup>132</sup> Legal action may be the most likely course, as the U.S. Department of Justice recently made public a November 2018 memorandum reversing an earlier opinion applying the Wire Act prohibitions only to sports betting.<sup>‡,133</sup> As such, the legal status of online gaming and the prior interstate compact are now in question. Due to this development, any exemption for sports wagering appears unlikely until the new online gaming prohibition is revised, or its legal challenges concluded.<sup>134</sup>

In addition to the federal Wire Act and any legal challenges, potential legislative action by Congress

<sup>†</sup> The Council of State Governments’ National Center for Interstate Compacts has been a resource and guide for states seeking to engage in interstate compacts for several decades.

<sup>‡</sup> The Interstate Wire Act of 1961, referred to as the Wire Act, prohibits the transmission of certain wagers, specifically, wagers on sporting events, across state or international lines.

to regulate sports wagering across the country could occur. Although Congress adjourned prior to any action on the bill, in December 2018, U.S. Senators Chuck Schumer and Orrin Hatch introduced the bipartisan Sports Wagering Market Integrity Act (SWMIA) of 2018, which could be the framework for any legislation taken up in 2019.<sup>135</sup> To comply with SWMIA and establish sports gambling, states would have to meet federal standards and have their regulations approved by the U.S. attorney general.<sup>136</sup> Before legalizing sports gambling, states would be required to demonstrate their regulations establish an entity to regulate sports betting, restrict online wagers to in-state bettors, allow sports leagues to request the prohibition of certain bets, and require the use of official data from sports leagues.<sup>137</sup> If approved, the federal law would apply retroactively to all states that currently allow sports betting and create an independent organization that all states would share their data with to monitor unusual or suspicious wagers.<sup>138</sup> While major U.S. sports leagues have expressed support of SWMIA, it is likely to face strong opposition in states that already have established sports betting in the aftermath of *Murphy v. NCAA*.<sup>139</sup>

Early indications demonstrate that revenue projections for sports betting taxes in Mississippi and West Virginia fell short of initial estimates. It is important for states to recognize that the expansion of sports wagering likely will not generate a massive windfall, but instead will supplement existing gaming tax revenues.<sup>140</sup> States should take heed of Nevada—the most mature sports betting market—where more than \$4.87 billion in sports wagers were placed in 2017, of which only \$249 million was taxable gross gaming profits, leading to \$17 million collected in state tax revenue.<sup>141</sup> Accordingly, sports betting revenue represents only 2.5 percent of Nevada’s total gaming revenue.<sup>142</sup> States also can look at the unpredictable revenue streams of state lotteries or casino gaming as an example of the risk of relying heavily on sports wagering to supplant existing revenue.<sup>143</sup> Additionally, what impact increased competition among neighboring states will have on the nascent sports betting market is yet to be determined. States should be conservative in estimating revenue from taxing sports wagers and would be well advised to allocate any revenue received to specific projects or funds as opposed to their state’s general revenue fund. Lawmakers should consider these factors as they further study the issue and consider implementing sports betting in their states.

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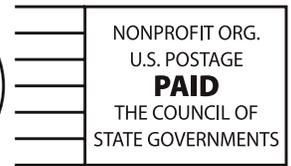
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This report was prepared by **Cody Allen**, policy analyst and committee liaison of the Fiscal Affairs & Government Operations Committee of the Southern Legislative Conference, chaired by **Representative Penny Houston** of Georgia. This report reflects the policy research made available to appointed and elected state officials by the **Southern Office of The Council of State Governments (CSG)**.

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