

If PASPA Falls, Wire Act Awaits As Challenge To Online Sports Betting

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Even if a 1992 federal ban on sports betting is overturned by the U.S. Supreme Court this year, a separate 1961 federal law will create compliance complications for participants in a state-by-state online sports wagering industry that has already begun to take shape, according to legal experts.

At least five states are considering bills that would permit online sports betting if the Professional and Amateur Sports Protection Act of 1992 (PASPA) is overturned by the Supreme Court, according to [U.S. Sports Betting Tracker](#), GamblingCompliance's legislative and regulatory monitoring service.

Meanwhile, Pennsylvania has already enacted such a bill, and neighboring New Jersey has [signaled its intent](#) to launch web sports wagering if PASPA falls.

However, the demise of PASPA would not necessarily mean game-on for a multi-state, cross-border U.S. online sports-betting market, legal experts told GamblingCompliance.

Enacted in 1961, the federal Wire Act prohibits the transmission of electronic sports wagers across state lines.

Although there is an exemption for transmissions between two or more states where sports betting is lawful, that carve-out applies only to "information assisting in the placing of bets of wagers," and not to the actual bets themselves.

"Without a change in the federal Wire Act, you will need servers in each state from which wagers will be taken," said Greg Gemignani, a gaming attorney with the Dickinson Wright law firm in Nevada, where intrastate mobile sports betting is [regulated](#).

"So, if Company X offered sports wagering in California, Nevada, New York, Illinois, Texas and Florida, each state would have a self-contained business to serve residents of those states," he explained using a fictitious example.

The Wire Act's exemption for wagering information means operators might not need to replicate the odds-making or line-setting sides of their betting operations in every state, Gemignani said.

"Company X could have servers talking to one another to manage risk," he said. "But bets must stay limited to intrastate communications."

Still, even if all bets are logged on servers within the same state, compliance with the Wire Act is not assured. That is because the betting transmissions could travel outside that state's borders while en route to the server, legal experts said.

"Internet service providers bounce data all over the world en route to a destination," said Jeremy Kleiman, a gaming attorney with the Saiber law firm in New Jersey.

"So, while each legal state will likely require servers in its own jurisdiction, internet data will likely touch a server in a prohibited state at some point during the process," he said.

But would federal authorities actually enforce the Wire Act for instances of so-called "intermediate routing" of online bets across state lines?

"In Nevada, where intrastate mobile sports betting exists today, the relevant enforcement bodies and regulators apparently do not take the position that the intermediate routing of sports bets across state lines constitutes a Wire Act violation," said Mark Hichar, a gaming attorney with the Hinckley Allen law firm in Rhode Island.

Whether that would be the case in other states, however, is unclear.

Hichar said the U.S. Department of Justice, in the mid-2000s, repeatedly took the position that online gambling transactions which begin and end in the same state, but which are routed outside that state, fall afoul of the Wire Act.

Hichar said it is possible the Justice Department could still take that position, but that doing so would appear to run contrary to how federal courts, including in the 1962 case [United States v Yaquinta](#), have interpreted the purpose of the Wire Act.

“There has been no reported case of enforcement of the Wire Act against gaming operators transmitting wagers or information assisting in the placing of wagers, between points in the same state, where the underlying wagering was expressly authorized by the laws of the state. This is not surprising, because to do so would be contrary to the intended purpose of the Wire Act As stated by the court in *Yaquinta*, the purpose of the Wire Act ... ‘is not to assist in enforcing the laws of the States through which the electrical impulses traversing the telephone wires pass, but the laws of the State where the communication is received,’” Hichar wrote in a 2009 article in *Gaming Law Review And Economics*.

Kleiman took a similar view.

“I do not believe federal authorities will be aggressive in prosecuting incidental violations of the Wire Act for a few reasons,” he said.

“There is case law to suggest that the purpose of the Wire Act is ... to assist the states in enforcing their own gambling laws. If sports betting is legal at the state level, the purpose of the Wire Act is diminished,” Kleiman continued.

He added: “The cases also suggest knowledge of the prohibited use of interstate facilities is an essential element of an offense under the Wire Act. Incidental unintentional routing likely will not satisfy the knowledge or intent element of the offense, and therefore prosecution is not likely for ‘accidental’ routing violations.”

In a special GamblingCompliance webinar last week, Behnam Dayanim, a gaming attorney with the Paul Hastings law firm in Washington, D.C, pointed to several possible ways to reduce risk of intermediate routing violations under the Wire Act.

One way could be to use closed-loop systems in which online sports wagers would stay within a state’s borders, without touching the open internet.

Another way, he said, would be for sports-betting operators to structure their systems in such a way that online betting transmissions between bettor and server, for purposes of Wire Act compliance, are not bets but rather a form of wagering information that is exempted under the law.

With that strategy, Dayanim said, “there is a lot of uncertainty, especially when you’re dealing with a Justice Department — with which I think we are today — that is [hostile to internet gaming](#).”

He added: “I think it’s an interesting problem that needs to be navigated very carefully in the event that the Supreme Court overturns PASPA but the Wire Act remains in place.”

Despite the compliance challenges posed by the Wire Act, states are laying the legal groundwork not only for intrastate online sports betting, but also for a future in which the Wire Act is no longer a barrier to cross-border wagering.

In Pennsylvania, for example, a recently enacted gambling expansion law would allow regulators to negotiate interstate sports betting agreements with other jurisdictions, while pending sports betting bills in [Indiana](#) and [West Virginia](#) contain similar provisions.

But with Congress deadlocked over issues including immigration, the odds of federal lawmakers acting swiftly to amend the Wire Act after a Supreme Court decision overturning PASPA are slim, legal experts said.

“If PASPA falls, I don’t see Congress doing anything,” Gemignani said.

“Congress is currently barely functional, and heading into an election cycle, I don’t see anyone risking political capital on the topic as it isn’t one that will get you elected, but it can be one that gets you unelected,” he said.

Hichar agreed, saying: “I would be surprised if Congress acted swiftly to change the Wire Act if PASPA is repealed. I don’t see sports betting as high on Congress’ list of priorities, or as a matter on which there would easily be agreement among members.”

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