

## Alert | Gaming



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### **The Wire Act and Interstate Sports Wagering Post-*Murphy***

As previously [reported](#), the U.S. Supreme Court's decision in *Murphy v. NCAA* struck down the Professional and Amateur Sports Protection Act (PASPA). However, it did not legalize sports wagering in the United States. Rather, the *Murphy* decision removed the federal barrier prohibiting states and territories (other than a few grandfathered states, including Nevada) from legalizing or offering sports wagering. Now, any state or territory may choose whether to legalize and regulate sports wagering. In fact, as of the date of this alert, legal and licensed sports wagers have been taken in Delaware, New Jersey, Mississippi, and West Virginia, and several other states are preparing to legalize sports wagering.

Although states may authorize *intrastate* sports wagering, states may not authorize *interstate* sports wagering via wire communication (i.e., phone, internet). Interstate sports wagering via wire communication is prohibited pursuant to the Federal Wire Act, 18 U.S.C. § 1084 (Wire Act). *Murphy* did not affect the applicability of the Wire Act. The Wire Act states, in relevant part:

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

In other words, sports betting businesses may not (1) accept or transmit an interstate sports wager via phone or internet or (2) transmit winnings on a sports wager via wire or electronic payment across state lines. Sports betting businesses may transmit sports wagering information (e.g., line information, odds) between two jurisdictions where sports wagering is legal. Further, the transmission of information across state lines is permissible for news reporting. Such limited exception does not extend to actual sports wagers or payment on winning wagers.

Some commentators have read *Murphy* to state or suggest that the Wire Act does not apply to interstate bets between two jurisdictions where sports wagering is legal. However, in *Murphy*, the Supreme Court referred only to the exception in the Wire Act for the interstate transmission of sports wagering information – the Court did not discuss or reinterpret the Wire Act to permit interstate sports wagering between two jurisdictions where such wagering is permissible. Thus, neither the text of the Wire Act nor the Supreme Court’s decision in *Murphy* authorizes interstate sports wagering by internet or phone.

It remains to be seen whether a state-licensed, regulatorily compliant sports wagering business would be criminally charged under the Wire Act for accepting or transmitting interstate sports wagers between two legal jurisdictions. The Federal Government has not commented on the Wire Act or its enforcement priorities post-*Murphy*. Given that any state now can authorize sports wagering, and sports wagering businesses currently operate in multiple states legally, one could speculate regarding the risk of the Federal Government charging an entity that makes an interstate wagering transmission with a Wire Act violation. Nevertheless, the plain text of the Wire Act is clear – sports wagering via internet or phone between states is prohibited.

Sports wagering businesses should seek guidance from counsel knowledgeable on state and federal wagering laws to ensure that their business model, including acceptance of wagers, payment structure, and information-sharing, is appropriate under and compliant with the Wire Act.

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