

Sports & Betting Legislation To Watch In 2020

By Zachary Zagger

Law360 (January 1, 2020, 12:04 PM EST) -- With more states looking to legalize sports betting and Congress taking a hard look at controversies in Olympic sports, the new year could be a busy one for new legislation impacting the sports industry.

Here, Law360 takes a look at some areas of legislation and regulation likely to come into play in 2020.

More States Looking to Legalize Sports Betting

States across the country have been jumping on the bandwagon to legalize sports betting since the U.S. Supreme Court in May 2018 struck down a federal law that had prohibited the spread of legal sports betting.

"It got really hot there for six or eight months and most states were essentially tucking sports betting regulation in with their existing regulatory system for gaming," Nevada-based gambling attorney A.G. Burnett of McDonald Carano LLP said. "But there are significant states out there with huge populations that just can't get anywhere going with sports betting, and maybe the biggest is California."

As of December, 13 states, including Nevada, have legal sports betting in some form, with six more states and the District of Columbia set to come online soon, according to research from the American Gaming Association. At least 19 more states have considered legislation in 2019 to allow sports betting, according to the AGA.

Other big states yet to legalize such betting include Texas and Florida, as state lawmakers struggle to balance interests between commercial gambling and existing tribal gambling.

Key issues that continue to be at the center of state sports betting legislation include overcoming constitutional limits on gambling expansion in some states, whether or not to allow mobile and online betting, and the persistent issue of league integrity fees, which are a tax pushed by some leagues that would entitle them to a percentage of the total amount wagered on their sports.

"It seems like every week or every month there is another state considering legislation or even passing legislation to authorize it," said Brian Socolow, co-chair of the sports practice at Loeb & Loeb LLP. "I think that process is going to continue into 2020."

Part of that optimism comes from the fact the professional sports leagues have seemed to turn the corner on sports betting, looking to benefit from the growing market after spending years in court seeking to stop it.

"The professional sports leagues are getting involved in the sports betting industry," said Morgan Lewis & Bockius LLP partner David McManus. "They are focused on ... integrity and ... monetizing their product, both with respect to their data and the game on the field or court. There is a growing recognition it is another way to grow and secure [their] fan base."

More and more companies are also continuing to enter the market, showing its potential for growth and the potential for more tax revenue for state coffers.

"We are starting to see the sports gambling industry evolve beyond smaller start-ups and bookmaking companies," McManus said. "We are now starting to see larger and larger corporations beginning to invest in this industry, bringing big data, strength and experience to the industry."

Bills Would Allow NCAA Athletes to Be Paid for Endorsements

California Gov. Gavin Newsom in September signed a bill to allow college athletes in the state to sign endorsements despite NCAA rules against it, spurring a wave of states to consider similar bills and putting pressure on the NCAA to change its system.

Bills have been introduced or planned in at least Florida, Minnesota, Pennsylvania, New Jersey, New York and South Carolina. The planned South Carolina bill goes further than California's bill, opening the door to direct payments to college athletes from their schools. Even some federal lawmakers are getting in on the action.

But while many had expected this development to lead to protracted litigation involving the NCAA, the organization agreed to consider rule changes to "permit" college athletes the "opportunity to benefit" from their names, images and likenesses "in a manner consistent with the collegiate model." The NCAA will continue to "gather feedback" through April before new rules are set by January 2021.

"It was surprising to see what the NCAA did in response to what California did," said Morgan Lewis partner Baird Fogel. "There were other states gearing up to pass similar legislation to California. But the California legislation was not due to become effective until 2023 specifically to allow for what everyone assumed would be years of legal challenges on the NCAA side. For the NCAA to just jump that entire expected phase and come in and say 'yeah, we are going to allow this' has sent everyone back to the drawing table."

But questions remain as to just how far the NCAA will change and whether it will fully satisfy proponents for reform, especially amid an appeal by college athletes in an antitrust case challenging the NCAA's rules capping their compensation, including the name, image and likeness rights restrictions. In the meantime, some of the other bills would take effect sooner than the 2023 start date for the California bill.

Still, experts say it will be interesting to watch what happens in 2020 as the NCAA's movement has somewhat calmed things down, at least for now.

"If I were the NCAA, that would show me how important it is now to lay down a plan that can work,"

said sports and entertainment attorney Tye Gonser of Weinberg Gonser LLP. "That plan can even be in the middle because I don't think people or politicians will care once anything is done even if that step does not go as far as to pay student-athletes as employees, as a lot have called for."

Legislation to Make Doping Conspiracies a Federal Crime

House lawmakers passed a bill in October that would make participation in doping schemes in international sports a federal crime. The bill passed with bipartisan support amid revelations in recent years about a massive state-sponsored Russian doping conspiracy, sending it to the Senate for consideration.

The Rodchenkov Anti-Doping Act of 2019 — named after the former head of the Russian doping lab who has since turned whistleblower — would criminalize schemes in which two or more people enable athletes in international competitions to take illicit performance-enhancing substances. Penalties would include fines up to \$1 million and prison terms of up to 10 years.

The bill comes as the World Anti-Doping Agency in December banned the Russia team from international competitions for manipulating or altering test result data that it sought in its continuing investigation of the Russian scandal.

Proponents say the Rodchenkov Anti-Doping Act would give U.S. authorities a necessary tool to clean up international sports once and for all. Still, it is not clear whether there is enough momentum to push it through the Senate, particularly as the U.S. enters a presidential election year.

Senators Seek Congressional Oversight of Olympic Sports

With an epidemic of sexual assault and abuse scandals across Olympic sports, headlined by the hundreds of allegations against former USA Gymnastics sports doctor Larry Nassar, federal lawmakers are looking to take greater oversight of the Olympics and amateur sports.

Following a series of congressional hearings, U.S. Sens. Jerry Moran, R-Kan., and Richard Blumenthal, D-Conn., introduced sweeping bipartisan legislation in the Senate called the Empowering Olympic and Amateur Athletes Act of 2019.

The bill would give Congress the power to dissolve the board of directors of the U.S. Olympic & Paralympic Committee and revoke the certification of an individual Olympic sport national governing body by passing a "joint resolution," if lawmakers believe they are not upholding their duties to promote Olympic sports and the safety of athletes.

The bill would further require the USOPC to provide \$20 million in annual funding to the U.S. Center for SafeSport, an independent organization tasked with stopping abuse in Olympic sports. Since being officially authorized by Congress in 2017, the organization has complained that it has been overwhelmed with abuse allegations.

The "time is really ripe" for reform of Olympic sports in the U.S., but the current bill may not be the best way to do it, according to Mark Conrad, a law and ethics professor at Fordham University and expert on Olympic sports governance.

"I think that the act is just not practical the way these [national governing bodies] are set up and the

power arrangements they have," he said. "The fact of the matter is that they are forced into getting funding from sponsorship agreements that just really limit their powers. That really has to change. My feeling is that there should be government funding at this point and basically make them more of state actors."

"I think we may really have to rethink the whole so-called amateur sports system in this country," he said.

--Editing by Emily Kokoll and Orlando Lorenzo.