

## COVID-19: A SURVEY OF SPORTS BETTING ACTIVITY DURING THE PANDEMIC AND LEGAL CONSIDERATIONS FOR STAKEHOLDERS

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### U.S. Sports Alert

By: John S. Wilson, Matthew P. Clark, Trevor M. Gates, Caleb E. Ginsberg, Adam N. Tabor

Perhaps it should go without saying: Betting on the outcomes of sports contests depends on sports contests actually taking place. For stakeholders in the sports betting community — such as online sportsbook platforms, brick-and-mortar casinos, and bettors themselves — the effect of the COVID-19 pandemic on sports has directly and negatively affected their interests in making and taking bets on sports. Below, we briefly address the state of play for most live sports leagues and franchises, note how stakeholders in the sports betting community are trying to adapt, and identify key regulatory issues for those stakeholders to consider in the days, weeks, and months ahead.

Unfortunately, the foreseeable future for organized sport remains unclear. As state and local jurisdictions across the country maintain bans on social gatherings and orders for citizens to “shelter in place” or “stay at home,”<sup>1</sup> many professional sports leagues remain in a holding pattern. For example, Major League Baseball has suspended all baseball operations, including the remainder of spring training games, and the start of the 2020 season has been postponed.<sup>2</sup> However, an alternative season solution centralizing in Arizona and Florida, and starting in May 2020, is under consideration.<sup>3</sup> Similarly, the NHL is considering finishing its 2019–2020 season in North Dakota,<sup>4</sup> and MLS has suspended all matches with a target return date of May 10, 2020.<sup>5</sup> Although most major sports leagues and franchises are no longer actively hosting live sporting contests, some are providing esports opportunities instead.<sup>6</sup> The NBA and NASCAR, for example, have created opportunities for sports fans to watch previously recorded and livestreamed virtual contests to offset the hiatus of traditional live sporting events.<sup>7</sup>

Many stakeholders in the sports betting community have tried to match sports leagues' innovative efforts by using esports and other online competitions as opportunities to engage fans and recoup sports betting revenues lost to the void of traditional, live season play.<sup>8</sup> However, these opportunities come with risks if the broadcasting of esports events is not live. In the case of a recent NBA 2K tournament, betting odds have been removed from online gaming sites due to the leak of prerecorded tournament results.<sup>9</sup>

Despite efforts to pivot and adapt, pandemic-related losses in the sports betting industry are steep. The loss of the NCAA men's basketball tournament alone has cost the sports betting industry nearly US\$4 billion,<sup>10</sup> and the American Gaming Association anticipates total losses of up to US\$43.5 billion worth of economic activity if casinos remain closed through mid-May 2020.<sup>11</sup> Online sportsbooks appear to be trying to mitigate the damage by voiding bets on cancelled games but delaying decisions on futures betting.<sup>12</sup>

The lack of most ordinary sports betting opportunities has given rise to other wagering activity on sports betting platforms around the globe, some with questionable legality. For example, Bovada, a sportsbook company based

in Costa Rica, has started taking bets on the maximum temperatures in various cities around the country.<sup>13</sup> Venturing too far outside the realm of “sports” could present problems for the sports betting community. “Betting” on the weather could also be seen as entering into a weather derivative contract, thus running into the regulatory reach of federal agencies like the Commodity Futures Trading Commission and the Securities and Exchange Commission.<sup>14</sup> Given the potential for sportsbooks and sports bettors to run afoul of varied regulatory frameworks during the current “live sports” paralysis, we offer the following few fundamentals of state-by-state sports betting laws and regulations to keep in mind as the sports world continues to navigate the COVID-19 fallout.

As of April 14, 2020, 17 states have legalized sports betting of one form or another.<sup>15</sup> Except for Mississippi,<sup>16</sup> all of these states have issued shelter-in-place or stay-at-home orders or bans on social gatherings that likely require physical sportsbook locations to close to the public. As a result, online sports betting laws and regulations in states where sports betting is permitted should be closely monitored for changes or evolving guidance as online gaming activity increases while bettors remain home. The following table provides reference to each such state's online sports betting regulations and informational websites, where available.

New Jersey	Office of the Attorney General's Division of Gaming Enforcement
Pennsylvania	Pennsylvania Gaming Control Board
Indiana	Indiana Gaming Commission
Nevada	Nevada Gaming Control Board, “Regulation 22”
Iowa	Iowa Racing and Gaming Commission
West Virginia	West Virginia Lottery Commission
New Hampshire	New Hampshire Lottery (with monopoly by DraftKings Sportsbook)
Rhode Island	Rhode Island Lottery
Oregon	Oregon Lottery (with monopoly Scoreboard app)
Michigan	Michigan Gaming Control Board (anticipates online sports betting available in early 2021)
Illinois	Illinois Gaming Board
Tennessee	Tennessee Lottery (draft rules are available here, and a summary and compilation of public comments on those rules are available here)
Colorado	Limited Gaming Control Commission

## FOOTNOTES

<sup>1</sup> Many news outlets have compiled multistate lists of such orders. These lists are refreshed with varying levels of frequency. Please check your local jurisdictions for the latest updates on “shelter in place” or “stay at home” restrictions. See, e.g., Alicia Lee, These states have implemented stay-at-home orders. Here's what that means for you, CNN (Apr. 7, 2020, 5:23 PM).

<sup>2</sup> Major League Baseball, Coronavirus Information, (last accessed Apr. 9, 2020).

<sup>3</sup> See Jeff Passan, Could MLB start in Arizona ... in May? Answering the big questions, ESPN (Apr. 7, 2020); see also Jeff Passan, Sources: MLB, union focused on plan that could allow season to start as early as May in Arizona, ESPN (Apr. 7, 2020).

<sup>4</sup> Chris Bengel, NHL reportedly may play games in North Dakota if season resumes, CBS SPORTS (Apr. 6, 2020, 2:17 PM).

<sup>5</sup> MLS Soccer Staff, Essential COVID-19 information for MLS fans, MLS (Mar. 19, 2020, 9:10 PM).

<sup>6</sup> John Wilson, et al., COVID-19: Esports May Be the Best Play During the Covid-19 Pandemic, K&L GATES HUB (Apr. 7, 2020).

<sup>7</sup> See Sean O'Kane, Pro Drivers are Competing with Gamers after F1 and NASCAR Canceled Races, THE VERGE (March 22, 2020, 7:00 AM).

<sup>8</sup> See *generally* Bill Enright, Gamblers Cash-In as NBA 2K Results Leaked Online, SPORTS ILLUSTRATED (Apr. 8, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> See Patrick Everson, March Madness canceled, dealing \$4 billion blow to sports betting industry, NBC SPORTS (Mar. 13, 2020, 10:22 AM).

<sup>11</sup> See Justin Birnbaum, In the coronavirus sports void, these are the desperate bets gamblers are making, CNBC (Mar. 21, 2020, 1:29 PM).

<sup>12</sup> See, e.g., Katie Kohler, Refunds, Voids, On Hold: How PA Sportsbooks are responding to COVID-19, PLAY PA. (Mar. 13, 2020).

<sup>13</sup> See Birnbaum, *supra*, note 11.

<sup>14</sup> John Holden, So You Want To Bet On Weather Instead Of Sports? Consider The Forecast Cloudy At Best, LEGAL SPORTS REP. (Apr. 1, 2020, 8:00 PM).

<sup>15</sup> *US Sports Betting News*, LEGAL SPORTS REP. (Apr. 11, 2020, 12:06 PM); see also Interactive Map: Sports Betting in the U.S., AM. GAMING ASS'N (Apr. 13, 2020).

<sup>16</sup> As of December 2019, Mississippi allowed sports betting on 23 water- and land-based properties. As of March 5, 2020, the Mississippi Gaming Commission had published a list of permitted sports book event types.

## KEY CONTACTS



**JOHN S. WILSON**  
PARTNER  
SEATTLE  
+1.206.370.6658  
JOHN.WILSON@KLGATES.COM



**MATTHEW P. CLARK**  
ASSOCIATE  
SEATTLE  
+1.206.370.7857  
MATT.CLARK@KLGATES.COM



**TREVOR M. GATES**  
ASSOCIATE  
SEATTLE  
+1.206.370.8090  
TREVOR.GATES@KLGATES.COM



**CALEB E. GINSBERG**  
ASSOCIATE  
PORTLAND, NEW YORK  
+1.503.226.5782  
CALEB.GINSBERG@KLGATES.COM



**ADAM N. TABOR**  
ASSOCIATE  
SEATTLE  
+1.206.370.7652  
ADAM.TABOR@KLGATES.COM

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