

S. REP. 102-248, S. Rep. No. 248, 102ND Cong., 1ST Sess. 1991, 1991 WL 258663, 1992 U.S.C.C.A.N. 3553 (Leg.Hist.)

**\*\*3553 P.L. 102-559, \*1 PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT**

**PROFESSIONAL AND AMATEUR SPORTS PROTECTION**

**DATES OF CONSIDERATION AND PASSAGE**

House: October 5, 1992  
Senate: June 2, October 7, 1992  
Cong. Record Vol. 138 (138)  
Senate Report (Judiciary Committee) No. 102-248,  
Nov. 26, 1991 (To accompany S. 474)

SENATE REPORT NO. 102-248  
November 26, 1991  
[To accompany S. 474, and amended]

The Committee on the Judiciary, to which was referred the bill, S. 474, to amend title 28, United State Code, to prohibit sports gambling conducted by, or authorized under the law of, any State or other governmental entity, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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**\*\*0** The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Professional and Amateur Sports Protection Act".

**\*2 SEC. 2. PROFESSIONAL AND AMATEUR SPORTS PROTECTION.**

(a) In General.—Part VI of title 28 of the United States Code is amended by adding at the end the following:

**“CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION**

**TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE**

**“S 3701. Definitions**

“For purposes of this chapter—

“(1) the term ‘amateur sports organization’ means—

“(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

“(B) a league or association of persons or governmental entities described in subparagraph (A),

“(2) the term ‘governmental entity’ means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),

“(3) the term ‘professional sports organization’ means—

“(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

“(B) a league or association of persons or governmental entities described in subparagraph (A),

“(4) the term ‘person’ has the meaning given such term in section 1 of title 1, and

“(5) the term ‘State’ means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory to possession of the United States.

**“S 3702. Unlawful sports gambling**

“It shall be unlawful for—

“(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact or

“(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

**“S 3703. Injunctions**

“A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of

the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

“S 3704. Applicability

“(a) Section 3702 shall not apply to–

“(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme actually was conducted by that State or other governmental entity prior to August 31, 1990;

“(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both–

“(A) such scheme is authorized by law; and

“(B) a scheme described in section 3702 (other than parimutuel animal racing or jai-alai) actually was conducted in that State or other governmental entity during the period beginning September 1, 1989, and ending August 31, 1990, pursuant to the law of that State or other governmental entity; or

\*3 “(3) parimutuel animal racing or jai-alai.

“(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).”.

(b) Clerical Amendments.–The table of chapters for part VI of title 28, United States Code, is amended–

(1) by amending the item relating to chapter 176 to read as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE  
and

(2) by adding at the end the following:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

**\*\*3553 I. PURPOSE**

The purpose of S. 474 is to prohibit sports gambling conducted by, or authorized under the law of, any State or other governmental entity.

**\*\*3554 II. LEGISLATIVE HISTORY**

On February 22, 1991, Senators DeConcini, Hatch, Bradley, and Specter introduced the Professional and Amateur Sports Protection Act, S. 474.<sup>1</sup> Senate bill 474 was referred to the Subcommittee on Patents, Copyrights and Trademarks, which held a public hearing on the bill on June 26, 1991, chaired by Senator Dennis DeConcini.

Testifying in favor of the legislation were Senator Bill Bradley; Paul Tagliabue, commissioner of the National Football League; Francis T. Vincent, Jr., commissioner, Major League Baseball; David Stern, commissioner, National Basketball Association; Gil Stein, general counsel and vice president, National Hockey League; Mike Singletary, middle linebacker, Chicago Bears; Dr. Valerie C. Lorenz, director, National Center for Pathological Gambling, Inc.; and James A. Smith, director of government relations, Christian Life Commission of the Southern Baptist Convention.

Testifying against the legislation were State Representative Wanda Fuller for the National Conference of State Legislators; James Hosker, National Association of State Lottery Directors; James J. Davey, director, Oregon State Lottery; David P. Hanlon, chairman, Casino Association of New Jersey; and Ben Davidson,

former defensive end, Oakland Raiders.

On July 17, 1991, the bill was favorably reported by the subcommittee without amendment by a vote of 5 to 0. On November 21, 1991, the bill was favorably reported by the Judiciary Committee, as an amendment in the nature of a substitute, by a voice vote.

Similar legislation has been passed by the House of Representatives. On January 3, 1991, Representative Bryant introduced H.R. 74. On September 12, 1991, a hearing on H.R. 74 was held before the Subcommittee on Economic and Commercial Law of the House Judiciary Committee, chaired by Representative Brooks. On September 26, 1991, by voice vote, the House Judiciary Committee ordered reported the Omnibus Crime Control Act of 1991, H.R. 3371, **\*\*3555 \*4** incorporating a sports gambling title (Title XXI) patterned on H.R. 74. On October 7, 1991, the House Judiciary Committee filed its report on the bill (H. Rep. No. 101-242, Pt. 1). On October 22, 1991, the House of Representatives passed H.R. 3371 by a vote of 305 to 118.

Both the Senate and the House passed predecessor versions of the legislation in the 101st Congress, prohibiting State sports lotteries. On October 19, 1989, Senators DeConcini and Hatch introduced legislation (S. 1772) to declare State-sponsored sports lotteries to be unlawful per se under the Lanham Act. On June 26, 1990, a hearing on S. 1772 was held before the Subcommittee on Patents, Copyrights and Trademarks. On October 19, 1990, the Senate adopted a sports lottery ban as a Senate amendment to a House amendment to the Copyright Amendments Act of 1990, S. 198. The lottery ban, along with other provisions, was dropped from the final conference report.

On May 17, 1990, Representative Bryant introduced three bills to prohibit State sports lotteries, H.R. 4842, H.R. 4843, and H.R. 4844. On July 23, 1990, the House Judiciary Committee, without dissent, adopted one of those bills (H.R. 4843), in substance, as an amendment to the Comprehensive Crime Control Act, H.R. 5269. On October 5, 1990, the House passed the crime bill containing the lottery ban. In the last hours of the Congress, however, the crime bill conferees could pass only a very limited version of the crime bill, which did not include the lottery ban.

### III. DISCUSSION

Senate bill 474 bill serves an important public purpose, to stop the spread of State-sponsored sports gambling and to maintain the integrity of our national pastime. States would be prohibited from sponsoring, operating, advertising, promoting, licensing, or authorizing sports lotteries or any other type of sports betting that is based on professional or amateur games or performances therein.

**\*5** Sports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling. It undermines public confidence in the character of professional and amateur sports. Furthermore, State-sanctioned sports gambling will promote gambling among our Nation's young people.

#### A. HARM CAUSED BY SPORTS GAMBLING

As Paul Tagliabue, commissioner of the National Football League, testified:

Sports gambling threatens the character of team sports. Our games embody our very finest traditions and values. They stand for clean, healthy competition. They stand for teamwork. And they stand for success through preparation and honest effort. With legalized sports gambling, our games instead will come to represent the fast buck, the quick fix, the desire to get something for nothing. The spread of legalized sports gambling would change forever—and for the worse—what our games stand for and the way they are perceived.

**\*\*3556** Sports gambling threatens the integrity of, and public confidence in, amateur and professional sports. Widespread legalization of sports gambling would inevitably promote suspicion about controversial plays and lead fans to think “the fix was in” whenever their team failed to beat the point-spread.

The committee is especially concerned about the potential effect of legalized sports gambling on America's youth. Beyond impairing the values sports represent to our young people, new technologies are being considered that, while designed to make gambling more convenient for adults, also would make gambling more convenient for children. Today, lottery tickets are dispensed in several States through machines that resemble vending or automatic teller machines, and betting by telephone is under discussion in some jurisdictions.<sup>2</sup> Minnesota recently considered a proposal to allow people to play the State lottery using the Nintendo systems in their own homes.<sup>3</sup> Video gambling, in fact, is attracting increasing interest as an alternative to casino gambling in many jurisdictions.<sup>4</sup> Youngsters inevitably would find sports gambling schemes that utilize these new technologies to be highly seductive.

Teenage gambling-related problems are increasing. Of the approximately 8 million compulsive gamblers in America, 1 million of them are under 20. Teenagers gamble on sports, lotteries and card games. Governments should not be in the business of encouraging people, especially young people, to gamble.

## B. FEDERAL ACTION IS WARRANTED

This legislation will keep sports gambling from spreading. Thirty-two States and the District of Columbia have State-sponsored lottery games. Many have considered or are reviewing the possibility of a sports theme for their lotteries. In the broader sports gambling area, States are considering a wide variety of State-sponsored gambling schemes. Some would allow sports gambling on river boats, others would take bets on sports at off-track betting parlors, still others propose casino-style sports books. Florida's statute authorizing parimutuel animal racing is expiring and legislators there are considering including some form of sports betting in the reauthorizing bill.

Sports gambling is a national problem. The harms it inflicts are felt beyond the borders of those States that sanction it. The moral erosion it produces cannot be limited geographically. Once a State legalizes sports gambling, it will be extremely difficult for other States to resist the lure. The current pressures in such places as New Jersey and Florida to institute casino-style sports gambling illustrate the point. Without Federal legislation, sports gambling is likely to spread on a piecemeal basis and ultimately develop an irreversible momentum. The committee agrees with David Stern, commissioner of the National Basketball Association, that “[t]he **\*\*3557 \*6** interstate ramifications of sports betting are a compelling reason for federal legislation.”

Congress has previously recognized on several occasions that gambling has no place in sports, professional or amateur. As the late Senator Kenneth B. Keating of New York said nearly 30 years ago in introducing the legislation codified in title 18 that makes it a Federal crime to fix or attempt to fix sporting contests:

Thousands of Americans earn a legitimate livelihood in professional sports. Tens of thousands of others participate in college sports as part of the physical fitness and character building programs of their schools. Tens of millions of Americans find sports a favorite form of recreation. We must do everything we can to keep sports clean so that the fans, and especially young people, can continue to have complete confidence in the honesty of the players and the contests. Scandals in the sporting world are big news and can have a devastating effect on the outlook of our youth to whom sports figures are heroes and idols.<sup>5</sup>

Gambling and lotteries are already subject to Federal regulation and this legislation is meant to be consistent with and to clarify existing Federal law and policy. Title 18 of the United States Code contains a specific Federal policy against State sports gambling. When Congress acted in 1974 to exempt State

lotteries from the prohibitions of the Federal lottery and gambling laws generally, it specified that those prohibitions would continue to apply to State sports lotteries—i.e., lotteries that involve “the placing or accepting of bets or wagers on sporting events or contests.” 18 U.S.C. 1307(d). As the House Judiciary Committee explained, the exemptions of section 1307 were not intended to apply indiscriminately to all “gambling activities conducted by [a] State.”<sup>6</sup>

Senate bill 474 is, among other things, an effort to more effectively enforce the Federal policy embodied in title 18. Without this legislation, the Justice Department cannot enforce the law without utilizing criminal prosecutions of State officials.

Beyond the Federal lottery and gambling laws, Congress has legislated to protect the integrity of professional sports contests. In 1964, Congress made it a Federal crime under title 18 to influence or attempt to influence by bribery any sporting contest. 18 U.S.C. 224. The offense is punishable by a fine of up to \$10,000 or imprisonment of up to 5 years, or both. This is not merely an “assimilative offense”—conduct that is criminal under Federal law because it is criminal under State law. Sports are national institutions, and Congress has recognized a distinct Federal interest in protecting sports from corruption. The House Judiciary Committee called such corruption “a challenge to an important aspect of American life—honestly competitive sports.”<sup>7</sup>

Senate bill 474 represents a judgment that sports gambling—whether sponsored or authorized by a State or other governmental **\*\*3558 \*7** entity—is a problem of legitimate Federal concern for which a Federal solution is warranted. That judgment is implicit in existing Federal law—both in sections 1307 and 224 of title 18. Senate bill 474 is complementary to and consistent with current Federal law.

The National Conference of State Legislators opposes the legislation on federalism grounds, but many State and local officials also have gone on record in support of the legislation. Support for the legislation has been expressed, for example, by Governor Ashcroft of Missouri, Governor Romer of Colorado, Governor Schaefer of Maryland, Governor Sullivan of Wyoming, and Governor Voinovich of Ohio. Moreover, a resolution offered at the annual meeting of the National Governors' Association in August 1991 that would have placed the NGA squarely in opposition to the legislation on federalism grounds was withdrawn for lack of support.<sup>8</sup> Support for the legislation has also been expressed by the Attorneys General for Ohio and Rhode Island and State legislative leaders, as well as by county and local officials, educators, athletic directors and others around the country.

Opponents of this legislation argue that legalizing sports gambling is a question of raising State revenues and should be left to the States. The committee recognizes that sports gambling offers a potential source of revenue for the States, but so do other destructive activities that could be regulated or taxed. As former Bengals linebacker and Cincinnati City Council member Reggie Williams noted, one of our primary responsibilities is to draw a line between legal and illegal, right and wrong. That line cannot be maintained, he observed, “if any profitable activity, however, socially destructive, is seized upon to generate revenue for the States.”

The answer to State budgetary problems should not be to increase the number of lottery players or sports bettors, regardless of the worthiness of the cause. The committee believes the risk to the reputation of one of our Nation's most popular pastimes, professional and amateur sporting events, is not worth it.

Legalization of sports gambling would not reduce illegal sports gambling in a State. According to the director of New Jersey's Division of Gaming Enforcement, “most law enforcement professionals agree that legalization has a negligible impact on, and in some ways enhances, illegal markets.”<sup>9</sup> William L. Holmes, a former Supervisory Agent of the Federal Bureau of Investigation, explained in a statement submitted to the subcommittee that illegal entrepreneurs can always “outmarket” their legitimate counterparts, offering credit, better odds, higher payout, and, most important, tax-free winnings. For this reason, legalized sports gambling would likely draw new recruits to illegal gambling. As Francis T. Vincent, Jr., the commissioner of baseball, testified, “once the moral status of sports betting has been redefined by legalization, \*\*\* many

new gamblers will be created, some of whom inevitably will seek to move beyond lotteries to wagers with higher stakes and more serious consequences.”

**\*\*3559 \*8** The committee would like to make it clear that this bill does not benefit professional sports organizations financially. It does not reserve the right to the leagues to hold their own sports gambling operations. They are clearly prohibited under this bill from instituting their own sports betting scheme.

Although the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively to Oregon or Delaware, which instituted sports lotteries prior to the introduction of our legislation. Neither has the committee any desire to threaten the economy of Nevada, which over many decades has come to depend on legalized private gambling, including sports gambling, as an essential industry, or to prohibit lawful sports gambling schemes in other States that were in operation when the legislation was introduced. Therefore, it provides an exemption for those sports gambling operations which already are permitted under State law. Furthermore, it specifically excludes dog and horse racing and jai-alai from the bill's prohibitions.

### C. SUPPORT FOR LEGISLATION

The bill has broad national support. In addition to the National Football League, the National Basketball Association, Major League Baseball, and the National Collegiate Athletics Association, S. 474 is supported by the International Association of Chiefs of Police, the National Association of Collegiate Directors of Athletics, the National Association of Professional Baseball Leagues, Pop Warner Football, the National American Association of School Administrators, the National Federation of State High School Associations, the U.S. Baseball Federation, and the National Association of Secondary School Principals.

### IV. VOTE OF THE COMMITTEE

On November 21, 1991, with a quorum present the Committee on the Judiciary ordered the bill, S. 474, favorably reported by voice vote. It should be noted that Senator Kohl, although supportive of the bill, recused himself from participation in the vote because of a possible conflict of interest resulting from his ownership of a National Basketball Association professional basketball team franchise.

### V. SECTION-BY-SECTION ANALYSIS

Section 1 contains the short title.

Section 2(a) of the bill adds a new chapter 178 to title 28 of the United States Code, entitled “Professional and Amateur Sports Protection,” to consist of new sections 3701 through 3704.

Section 3701 contains definitions. “Amateur sports organization” means a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game or games in which one or more amateur athletes participate, or a league or association of such persons or governmental entities. “Professional sports organization” is defined in a parallel fashion concerning professional athletes.

“Governmental entity” means a State, a political subdivision of a State, or any other entity or organization (including one described **\*\*3560 \*9** in sEction 2703(5) of title 25 of the united states code) that has governmental authority within the territorial boundaries of the United States, including Indian lands. “State” is similarly defined broadly to include all U.S. territories, possessions, commonwealths, and other entities under the authority of the United States. “Person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

Section 3702 prohibits any State or other governmental entity from sponsoring, operating, advertising, promoting, licensing, or authorizing by law or compact—and prohibits any person from sponsoring, operating, advertising, or promoting, pursuant to the law or compact of a governmental entity—a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or on one or more performances of such athletes in such games.

The prohibition of section 3702 applies regardless of whether the scheme is based on chance or skill, or on a combination thereof. Moreover, the prohibition is intended to be broad enough to include all schemes involving an actual game or games, or an actual performance or performances therein, including schemes utilizing geographical references rather than formal team names (e.g., Washington vs. Philadelphia), or nicknames rather than formal names of players.

The prohibition does not render unlawful scratch games or lotteries that use a sports theme but do not involve, or depend on, an actual game or games in which amateur or professional athletes participate, or are intended to participate, or any performance or performances of such athletes in any such game. For example, the committee understands the U.S. Olympic Committee has entered into a licensing agreement permitting the use of their logo and five Olympic rings in an instant lottery game to raise revenues to support the training of U.S. athletes. Clearly, this would not be prohibited by S. 474.

Section 3703 authorizes the U.S. Attorney General, or an amateur or professional sports organization whose games are alleged to be the basis of a violation of section 3702, to seek an injunction against such violation in the appropriate Federal district court.

Section 3704(a) specifies the exceptions to the prohibition in section 3702. Paragraph (1) provides that the prohibition does not apply to any lottery, sweepstakes, or other betting, gambling, or wagering scheme in a governmental entity to the extent that such scheme actually was conducted by that governmental entity prior to August 31, 1990. Paragraph (2) provides that the prohibition does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both (A) such scheme is authorized by law, and (B) a scheme described in section 3702 (other than parimutuel animal racing or jai-alai) actually was conducted in that governmental entity during the period beginning September 1, 1989, and ending August 31, 1990, pursuant to the law of that State or other governmental entity. Paragraph (3) provides that section 3702 does not ~~3561~~ **\*10** apply to parimutuel wagering on animal racing (e.g., horse racing and dog racing) or jai-alai. Section 3704(b) provides that, except as provided in subsection (a), section 3702 applies to sports gambling on Indian lands as defined in section 2703(4) of title 25.

Under paragraph (1) of subsection (a), Oregon and Delaware may conduct sports lotteries on any sport, because sports lotteries were conducted by those States prior to August 31, 1990. Paragraph (1) is not intended to prevent Oregon or Delaware from expanding their sports betting schemes into other sports as long as it was authorized by State law prior to enactment of this Act. At the same time, paragraph (1) does not intend to allow the expansion of sports lotteries into head-to-head betting. An Indian tribe may conduct, and may allow to be conducted, on lands of the tribe in a State, only those particular sports gambling schemes that were in operation on such lands prior to August 31, 1990.

Under paragraph (2), casino gambling on sports events may continue in Nevada, to the extent authorized by State law, because sports gambling actually was conducted in Nevada between September 1, 1989, and August 31, 1990, pursuant to State law. Paragraph (2) is not intended to prevent Nevada from expanding its sports betting schemes into other sports as long as it was authorized by State law prior to enactment of this Act. Furthermore, sports gambling covered by paragraph (2) can be conducted in any part of the State in any facility in that State, whether such facility currently is in existence. At the same time, paragraph (2) does not allow a State sports lottery to be established in any State in which such a lottery was not in operation prior to August 31, 1990.

The narrowness of subsection (a) reflects the committee's policy judgment that sports gambling should be strictly contained.

Section 3(b) of the bill amends the table of chapters for part VI of title 28.

## VI. COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the committee offers the report of the Congressional Budget Office:

U.S. Congress,  
Congressional Budget Office,  
Washington, DC, November 22, 1991.

Hon. Joseph R. Biden, Jr.,  
Chairman, Committee on the Judiciary,  
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 474, the Professional and Amateur Sports Protection Act, as ordered reported by the Senate Committee on the Judiciary on November 21, 1991. We estimate that no cost to the federal government would result from enactment of this bill. Enactment of S. 474 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

S. 474 would ban government-sponsored or authorized sports-related gambling. This ban would not apply to parimutuel animal racing, to jai-alai or to states that already have or have had sports-related gambling. It appears that Nevada, Oregon, Delaware, and possibly a few other states would be exempt from the ban. The prohibition could result in reduced revenues for states and localities. However, CBO cannot predict the number of state and local governments that would have initiated sports-related gambling or the amount of revenues they would have earned.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226-2860.

Sincerely,

Robert D. Reischauer,  
Director.

## VII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that this act will not have direct regulatory impact.

## \*12 VIII. MINORITY VIEWS OF MR. GRASSLEY

Senate bill 474 represents a substantial intrusion into States' rights and would restrict the fundamental right of States to raise revenue to fund critical State programs. Moreover, the legislation blatantly discriminates between the States. Finally, particularly with respect to State-sponsored sports pool lotteries, the legislation cannot be justified on the merits and would create a virtual monopoly for organized crime over a multi-billion dollar industry. Senate bill 474 should be defeated.

## I. SENATE BILL 474 WOULD BE A SUBSTANTIAL INTRUSION INTO STATES' RIGHTS

The issues of lotteries and wagering have traditionally been issues for the States to resolve. In 1990, State-run lotteries generated over \$20.7 billion in gross revenue, and some \$7.8 billion in net revenue for important State programs such as education, economic development and senior citizens' programs. Particularly at this time when a majority of States are facing severe budget deficits and Congress is shifting more and more of the burden for costly federally mandated programs to State and local governments, Congress should not be telling the States how they can or cannot raise revenue.

The majority attempts to argue that this legislation is warranted because "sports gambling is a national problem" and because the "moral erosion it produces cannot be limited geographically." But these arguments can be made with respect to any form of wagering and many other State revenue raising programs. Thus, this legislation would set the dangerous precedent that the Federal Government can prohibit any State revenue raising program, under the guise of "interstate commerce," at the behest of any special interest. Moreover, the legitimate concerns regarding sports wagering \*\*3563 can be addressed to States which are fully capable of and even better equipped to consider such matters.

The majority also attempts to establish that this legislation is consistent with existing Federal law. Nothing could be further from the truth. The Federal Government has never sought to regulate purely intrastate wagering activities. Indeed, this is how the State of Nevada, which would be exempted from this legislation, has created a lawful \$1.8 billion State-licensed sports wagering industry. This legislation would prohibit purely intrastate activities. The Federal Government also has never authorized private parties to enforce such restrictions against the States. This legislation would do so.

The substantial intrusion this legislation would make into States' rights is just one of the reasons the U.S. Department of Justice opposes\*13 S. 474. In its letter to Chairman Biden dated September 24, 1991, the Department stated:

Finally, we noted that determinations of how to raise revenue have typically been left to the States. The Department is concerned that, to the extent the bill can be read as anything more than a clarification of current law, it raises federalism issues. It is particularly troubling that S. 474 would permit enforcement of its provisions by sports leagues.

This is also why the North American Association of State and Provincial Lotteries, the National Conference of State Legislators, the National Association of State Budget Officers, and the Council of State Governments, all vigorously oppose this legislation.

## II. SENATE BILL 474 WOULD BLATANTLY DISCRIMINATE BETWEEN THE STATES

Perhaps even more troubling, this legislation would blatantly discriminate between the States. Under S. 474, Nevada, Oregon, and Delaware would be grandfathered. Thus, these three States would be granted a Federal monopoly on lawful sports wagering to the exclusion of the other 47 States.

The majority attempts to justify these "grandfather" provisions on grounds that "it has no wish to apply this new prohibition retroactively." However, the State of Delaware is not now conducting any form of sports wagering and has not done so for the last fifteen (15) years. There is simply no rational basis, as a matter of Federal policy, for allowing sports wagering in three States, while prohibiting it in the other 47, nor any rational basis, or support in the language of S. 474, for the purported discrimination between Nevada, Oregon, and Delaware.

## III. PARTICULARLY WITH REGARD TO STATE-SPONSORED SPORTS POOL LOTTERIES, S. 474 CANNOT BE JUSTIFIED ON THE MERITS

State-sponsored sports pool lotteries are predominantly games of chance. Players are required to select multiple games against a **\*\*3564** point spread which is designed to equalize the probability that a wager on either team will be a winning wager. Generally, wagers are limited to no more than \$20 and prizes are parimutuel, that is, all winners share the prize pool in proportion to their respective wagers. Thus, unlike large wagers, head-to-head betting in Las Vegas, which this legislation would expressly “grandfather,” State-sponsored sports pool lotteries pose no risk of a “fix.” They are similar to the “office pool,” only on a slightly larger scale, with the revenues going to the State treasury to fund important State programs.

Currently, Oregon is the only State conducting a sports pool lottery. However, numerous other States have expressed interest. In its first 2 years of operation the Oregon Sports Action game generated over \$14.5 million in gross revenue and more than \$4.5 million in net revenue for the State of Oregon, a small State without a sports wagering tradition. This football season revenues have continued **\*14** at similar levels. All without even the hint of scandal or “fixed” games.

It has been suggested by the professional sports leagues that this is an insignificant and unreliable source of new revenue. \$4.5 million may be insignificant to the professional sports leagues with their multi-million dollar player contracts and billion dollar T.V. deals, but no source of revenue is insignificant to States facing severe fiscal crises. It is projected that if all 32 States plus the District of Columbia that currently operate lotteries introduced sports pool lotteries, those games could generate some \$600 to \$712 million per year in new net revenue for the States.

The hypocrisy of the professional sports leagues in seeking this legislation is also troubling. The leagues claim they are concerned about the integrity of their games. Their actions belie their words. As a New York Times article suggested, the NFL's complaint about State sponsored sports pool lotteries “smacks of the protestations of the Claude Rains character in ‘Casablanca,’ who professes to be shocked at the gambling in Rick's Cafe, even as he collects his winnings.” New York Times, July 23, 1989, p. E5.

The professional sports leagues have long been aware of extensive wagering on their games, have taken virtually no action to prevent it, have recently acquiesced in it, and, in fact, have benefitted from it.

For over 50 years sports wagering on all professional sports has been conducted in Nevada. Las Vegas casinos routinely use team nicknames and logos. Indeed, bettors at Caesar's Palace sit in chairs shaped like football helmets emblazoned with NFL colors and logos as they place their wagers looking up at the boards identifying the professional sports teams by trademarked name. If the professional sports leagues were truly concerned about the risk of “fixed” games, the integrity of professional sports, and the protections of their alleged trademarks, they would be seeking to prohibit this \$1.8 billion head-to-head sports wagering industry in Nevada. Instead, under the proposed legislation sponsored by the leagues, Nevada would be expressly grandfathered.

Moreover, the leagues have not even prevented wagering on their games that they could have prevented. For the last 4 years, **\*\*3565** NBA exhibition games have been played in Las Vegas. Nevada regulations allowed the NBA to prohibit wagering on these games. The NBA chose not to do so, and several casinos accepted wagers on the games. This accepted course of conduct undercuts claims by professional sports leagues that they would prevent wagering in Nevada if they could.

For decades the professional sports leagues have reaped the benefits of the interest in sports created by wagering. For years, Jimmy “The Greek” Snyder and Peter Axhelm offered wagering advice on NFL pregame shows on CBS, NBC and ESPN. While in response to criticism of its hypocrisy on this issue the NFL recently prohibited this in NFL pregame shows, ESPN has continued to provide point spreads and other wagering information on its Sports Center program. USA Network, the licensed broadcaster of the World League of American Football which is closely tied to the NFL, continues to offer a weekly program devoted solely to wagering advice on NFL games. Similarly, virtually every major newspaper, many of which **\*15** receive significant advertising revenue from professional sports teams, continue to carry point spreads, injury reports and other wagering advice.

Numerous NBA and Major League Baseball Teams accept advertising from, and do promotions with, State lotteries. The Massachusetts Lottery has spent as much as \$1 million per year advertising on professional sporting events including Boston Celtics and Boston Red Sox games. Moreover, the Massachusetts Lottery also ran an instant scratch lottery game called Green Stuff that awarded a T-shirt, licensed by NBA Properties, as a prize, and employed Robert Parish, an all-state center for the Boston Celtics, as a lottery spokesman. Numerous other State lotteries have had similar relationships with professional sports teams and have accepted lottery revenue. For instance, the Baltimore Orioles new baseball stadium is being substantially financed with lottery revenue.

The professional sports leagues attempt to distinguish these activities by claiming these lottery games are not based on the results of sporting events. But numerous other activities based on the results of sporting events are conducted without objection by the professional sports leagues.

For instance, the Washington Post and Pizza Hut are currently running a game called "Pick the Pros" in which players win prizes, including \$400 NFL Team jackets and a possible \$5,000 trip to the Super Bowl, for correctly predicting the winners of weekly NFL contests. The New York Post is also conducting a game called "Pick the Pros." It includes a point spread and awards a weekly prize of \$2,000, which rolls over from week to week if there is no winner. This game is virtually identical to the Oregon Sports Action game except, of course, the New York Post goes even further and uses team nicknames while Oregon does not. The NFL has failed to take action to stop these activities.

A number of NBA teams award prizes to all ticket-holding fans in attendance when the home team scores over a certain number of points. In fact, in Chicago, the World Champion Chicago Bulls gave away Illinois lottery tickets to all fans attending any game in **\*\*3566** which the Bulls won and scored more than 115 points. If that is not a lottery game based on the outcome of a professional sporting event, what is?

To the extent the criticism of sports pool lotteries is that they will change the fans' relationship to the game because fans might boo even though the home team won the game, these contests and sweepstakes create the same risk. The simple fact is the leagues allow them, even run them, because the fans like them and they increase fan interest. The same is true for sports pool lotteries.

The professional sports leagues permit selective gambling on their events. Barron Hilton, the President and CEO of Hilton Hotels Corporation, is also one of the owners of the NFL San Diego Chargers. In a brochure explaining sports wagering at one of his Las Vegas hotels, Mr. Hilton uses a game between the Los Angeles Rams and his own San Diego Chargers to describe how to wager on professional football games. The NFL has taken no action to stop this conduct. Jerry Buss, owner of the NBA Los Angeles Lakers, was recently featured in Sports Illustrated for his third place finish in the World Series of Poker at the Horseshoe Casino in Las Vegas. **\*16** The NBA has taken no action against Dr. Buss. As outlined in detail in the book, *Interference*, by Dan Moldea, numerous present and former NFL owners have had extensive interests in wagering enterprises, such as race tracks and casinos, and have wagered heavily. As these facts demonstrate, the position of the professional sports leagues with respect to wagering is indeed hypocritical.

It also appears likely that State-sponsored sports pool lotteries may actually reduce the amount of illegal sports wagering which poses a far greater threat to the integrity of sports. State-sponsored lotteries have been extremely successful in eliminating illegal numbers games. State-sponsored sports pool lotteries could well do the same for illegal sports pools.

The majority contends that State-sponsored sports pool lotteries would not reduce illegal wagering. Regardless of who is correct on this issue, however, one fact is clear. If S. 474 is enacted, the principal beneficiary will be organized crime and the local bookie. S. 474 will give organized crime an absolute monopoly on sports wagering in 47 of the 50 states. As Andrew Beyer, a columnist for the Washington Post recently stated:

Not since Prohibition have Americans so readily engaged in an illegal activity as they do with sports

betting today. The most upright citizens don't hesitate to telephone a bookmaker—even though they may suspect or know that the bookie has ties to organized crime. Experts estimate that illegal sports betting is a \$40-billion-a-year industry—and one that is growing steadily.

Under the circumstances, it would seem inescapably logical for cash-strapped State governments to legalize sports betting and let the revenue from it flow to legitimate purposes instead of criminals. (This is essentially what the States did when they created lotteries and virtually eliminated the illegal numbers game.)

Taking the opposite course is inexplicable. Even in a climate in which most citizens don't give their legislators **\*\*3567** credit for having any sense, it is amazing to see Congress eager to pass a law that would give organized crime a virtual monopoly in a multibillion dollar business.

Washington Post, November 16, 1991, p. G9.

Finally, the professional sports leagues' purported concerns about youth in regard to this legislation should be addressed. Contrary to the majority's contention, lottery tickets are not sold to anyone under the age of 18, nor are they marketed to young people. Moreover, we should be far more concerned about the message being sent to American youth through the drug use and drinking by professional athletes and the incessant barrage of ads for alcoholic beverages on every sports telecast, than the sale of the few lottery tickets. What kind of message does this send to young Americans?

The answer is clear. As Surgeon General Antonia Novello recently reported, an estimated 8 million junior and senior high school students are weekly users of alcohol. And former Surgeon General C. Everett Koop has reported that 9 out of every 10 car accidents involving teenagers involve alcohol, and more than 8,000 youths **\*17** per year die in alcohol related accidents making it the leading cause of death for youths 15 to 24.

If the professional sports leagues are truly concerned with American youth, as they claim, they should concentrate their efforts on policing their own drug policies, and eliminate alcoholic beverage advertising from their broadcasts and stadiums, rather than worrying about a few sports pool lottery tickets which pose no threat to the integrity of the leagues or the youth of America, but rather merely increase the entertainment value of professional sports while raising much needed revenue for the States.

## CONCLUSION

Sports pool lotteries pose no threat to the integrity of professional sports. Rather, they are a potential new source of substantial nontax revenue for the many important programs funded by State lotteries. As the court stated in *National Football League v. Governor of Delaware*, 35 F.Supp. 1372, 1378 (D. Del. 1977) “[t]he record shows that extensive gambling on NFL games has existed for many years and that this fact of common public knowledge has not injured plaintiffs or their reputations.” Moreover, as the Commission on the Review of the National Policy Toward Gambling concluded, sports pool lotteries “should be an easy game for a State to operate, control and regulate.” “*Gambling in America*” at 408 (Oct. 15, 1978). Particularly at this time of severe State budget deficits, Congress should not be intruding on the sovereignty of the States by restricting any legitimate source of State revenue.

Chuck Grassley.

## **\*\*0 \*18 IX. CHANGES IN EXISTING LAW**

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 474, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic, existing law in which no change is proposed is shown in

roman):

UNITED STATES CODE, TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART VI--PARTICULAR PROCEEDINGS

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

CHAPTER 178--PROFESSIONAL AND AMATEUR SPORTS PROTECTION

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

S 3701. Definitions

For purposes of this chapter--

(1) the term "amateur sports organization" means--

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term "governmental entity" means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),

(3) the term "professional sports organization" means--

\*19 (A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term "person" has the meaning given such term in section 1 of title 1, and

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

S 3702. Unlawful sports gambling

It shall be unlawful for--

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

S 3703. Injunctions

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

#### S 3704. Applicability

(a) Section 3702 shall not apply to—

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme actually was conducted by that State or other governmental entity prior to August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—

(A) such scheme is authorized by law; and

(B) a scheme described in section 3702 (other than parimutuel animal racing or jai-alai) actually was conducted in that State or other governmental entity during the period beginning September 1, 1989, and ending August 31, 1990, pursuant to the law of that State or other governmental entity; or

(3) parimutuel animal racing or jai-alai.

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

1 As of Nov. 21, 1991, there were 58 cosponsors of the legislation, including Senators Adams, Akaka, Bingaman, Bond, Boren, Bradley, Brown, Bumpers, Burns, Chafee, Coats, Craig, Danforth, Daschle, Dole, Domenici, Durenberger, Fowler, Garn, Glenn, Gore, Gorton, Graham, Gramm, Harkin, Hatch, Heflin, Helms, Inouye, Jeffords, Kassebaum, Kasten, Kerry, Lieberman, Levin, Lott, Lugar, Mack, McConnell, Mikulski, Murkowski, Nickles, Pell, Pryor, Roth, Rudman, Sanford, Seymour, Shelby, Simon, Simpson, Robert C. Smith, Specter, Stevens, Symms, Thurmond, Warner, and Wirth.

2 “Lotteries Can't Win If Public Won't Play,” Washington Post, Sept. 30, 1991, at D1 (“Virginia is unveiling machines that dispense lottery tickets like cigarettes. And Maryland is looking at 900 telephone numbers and video equipment to bring government-sponsored games of chance into homes.”).

3 “Nintendo and Minnesota Set A Living-Room Lottery Test,” New York Times, Sept. 27, 1991, at A1, col. 5.

4 See “International Gaming and Wagering Business,” July 15, 1991.

5 109 Cong. Rec. 2016 (1963).

6 H.R. Rep. No. 1517, 93rd Cong., 2d sess. 6–7 (1974).

7 H.R. Rep. No. 1053, 88th Cong., 1st sess. 2 (1963) (also noting Federal interest in ensuring the integrity of sporting contests even where States decline to act); S. Rep. No. 593, 88th Cong., 1st sess. 3–4 (1963) (same).

8 See Letter of Governor Mike Sullivan to Hon. Jack Brooks, Sept. 9, 1991.

9 Anthony J. Parillo, "Proposal To Consolidate All Legalized Gaming Enforcement Functions within a Single Agency of the Department of Law & Safety," June 20, 1988, p. 188.

S. REP. 102-248, S. Rep. No. 248, 102ND Cong., 1ST Sess. 1991, 1991 WL 258663, 1992 U.S.C.C.A.N. 3553 (Leg.Hist.)

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