



The Safe Sport Authorization Act and Protecting Young Victims - Episode #142

Posted: Thur., June 21, 2018



Hosted by: John Czuba, Managing Editor

Guest Attorney: Al Goldberger of [Law Offices of Alan S. Goldberger](#)

Qualified Member in *Best's Recommended Insurance Attorneys* since: 2006

John Czuba: Welcome to the *Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Recommended Insurance Attorneys*.

We're pleased to have with us today attorney, Al Goldberger, from [The Law Offices of Alan S. Goldberger](#), with offices in Florham Park, New Jersey.

Al is a nationally-recognized authority on sports law and sports officiating. He is frequently retained by insurance carriers and claims administrators to defend sports officials, coaches, camps, officials associations, and other sports industry insureds.

Al is the author of *Sports Officiating -- A Legal Guide*, the recognized legal authority for game officials, and co-author of *Sport, Physical Activity, and the Law*, a college textbook now in its third edition.

Al, has also written numerous articles that have appeared in legal and athletic publications nationwide, and is a featured speaker at conferences including the National Association of Sports Officials, the American Bar Association, the International Association of Approved Basketball Officials Incorporated, and US Lacrosse.

Al is also admitted to practice in New Jersey, New York, and Maryland. Al, it's our pleasure to have you with us as a guest again today.

Al Goldberger: Good morning, John. Always great to be with you.

John: Today's discussion is on the Protecting Young Victims from Sexual Abuse and Safe Sports Authorization Act.

Al, for our first question, can you tell us about this act?

Al: Sure, John. The Protecting Young Victims from Sexual Abuse and Safe Sports Authorization Act of 2017, quite the mouthful that it is, was signed into law a little more than three months ago.

I think that any fair reading of the law would yield the conclusion that both the tone and the substance clearly reflect congressional intent to deliver a message to persons involved in the delivery of sports programs.

That message is that the failure to proactively address sexual and other forms of abuse of amateur athletes, and particularly children, can result in severe consequences. The statute contains a boatload of requirements that will profoundly impact day-to-day activities of a wide range of sports organizations across the country.

To benefit the young athletes served by those organizations, a virtual buffet of remedies is on the table to redress any form of child or sexual abuse of athletes and participants in amateur sports.

At the core of the new requirements, we find the legal obligation of adults who interact with young athletes to report suspected child abuse, including sexual abuse, within 24 hours of learning the facts giving reason to support such a claim.

Under the new law, "covered individuals" encompasses an entire spectrum of adults who interact with athletes. This is going to include organization members, staff, independent contractors, and volunteers -- virtually anyone who is authorized to deal with underage or other athletes in sports, with few exceptions.

John: Al, does the new law apply to all youth sports?

Al: Almost. The reporting requirements are only a part of the new law. Other provisions also serve to change the law regarding abuse of athletes in several respects, in terms of civil remedies, criminal remedies, and administrative remedies.

As a result of one act of Congress, the federal Child Victims Act, the federal criminal statutes, the scope of civil remedies for personal injuries, and the provisions provided for violations, have all changed in favor of, like the law says, young victims.

The second section of the law empowers an organization known as the United States Center for SafeSport to impose sanctions for abuse of athletes affiliated with national governing body sports.

Also, criminal penalties may be in store for those involved in sports programs who look the other way when it appears that abuse is committed. The law also requires amateur sports organizations to put additional procedures and safeguards in place to protect athletes from sexual abuse.

In terms of the application of the law, all amateur sports organizations that affiliate with a national governing body, or participate in interstate or international competition are going to be included. So, to get your event national governing body sanction to go forward, you will need to comply.

With travel teams being what they are and so popular, it's not unusual at all for organizations to cross state lines to compete for a tournament, a game, or a meet, the applicability of the law seems to be pretty wide. And that is probably where the second part of the law comes into effect. That second part is what they call the SafeSport organization part.

SafeSport has a mission. It is a non-profit organization. Its mission is to guide local sports organizations and national governing bodies to comply with the law in a number of ways.

Firstly, establish procedures to limit one-on-one contact between the adults and the athletes. Secondly, to provide outreach to educate and train the members and the athletes as to what they call the level of conduct required by the law; and lastly, by mandating governing bodies to make sure that there are reasonable means for reporting violations.

Also, SafeSport can bar abusers permanently from access to athletes in a covered program. Also, there's a requirement to offer training regarding prevention of athlete abuse to adults involved and -- if parents' consent -- to the athletes as well. The required training also includes reporting protocols for those who disregard the prevention part.

As far as barring offenders on the part of SafeSport, there are some who would argue that the due process element leaves something to be desired, but the authority of SafeSport is in the statute and it's documented in the SafeSport governing documents and rules.

John: Al, how is someone coaching a league supposed to be aware of these new requirements?

Al: Basically, through the educational requirements, John, of the law and the requirements imposed on organizations to offer training and to educate all of their workers -- including coaches, volunteers, independent contractors, and so forth -- as to what's proper and what isn't in terms of contact; and as to the requirement for reporting.

A covered individual is really going to be anyone who is authorized to interact with young athletes, or amateur athletes by either a national governing body, or an affiliated group, or a group that competes in interstate play. This applies to a lot of different people -- most of the amateur sports community more so than on the scholastic level -- and even then, there are some issues.

John: Who else is affected by this new law?

Al: Some municipal recreation teams if they have a travel component. Particularly, in our suburban and more populated areas, it's not at all unusual for the recreational travel teams in a number of sports to cross state lines to compete. So right away, whether there's a governing body affiliation or not, you have a situation where you have the law applying -- just by its broad definitions.

John: Can you comment on typical types of insurance coverages?

Al: I think, John, the coverages can be found in a number of places. In addition to the general liability contracts, there are endorsements covering third-party claims saddled up to ride on the employment practices liability policies. Directors and officers coverage and even possibly a homeowners or an umbrella contract could be called into play.

With this type of claim, issues can arise as to vicarious liability, as well as the garden variety claims of direct negligence. As to child abuse as distinct from sexual abuse, coverages can vary on that issue. In terms of the new law, it certainly has a reach that extends to child abuse even of a non-sexual nature.

John: How do you see this act potentially impacting claims? Is there anything insurance carriers need to be made aware of?

Al: There are a number of things, John. As far as damages, although the sky is the limit under the law, there's also a liquidated damages alternative, which is \$150,000 -- just in case. This obviously is quite significant. Also, as is typical in federal statute litigation, fee-shifting in favor of the prevailing party is applicable. Costs and expenses and in some cases, punitive damages are available, too.

Finally, believe it or not, courts are empowered under this statute to grant injunctive relief, as well as preliminary relief, which will increase the defense tab, obviously, if those claims are wheeled out for any reason. The choice between an occurrence policy, or claims-made policy may raise other issues under the act as to the statute of limitation.



And, plaintiffs have a long time to bring civil claims, up to 10 years after the later of either reasonable discovery of the violation, or the injury itself, or 10 years after the victim's 18th birthday. Retroactive dates may become significant in terms of coverage issues and a claims-made policy situation.

There's also the question of dealing with exclusions for intentional acts. Some contracts will have a robust provision on that, some not. The cost of defense: will it reduce coverage? Or be outside of the limits for these claims? Obviously, there's defense counsel. There are experts, and, investigation expenses.

As to other items impacting claims, I think it's the usual suspects. How is the contract defined? Who is an insured? Employed staff? Volunteers? Members of a board of directors or trustees of a sports organization? Governing body officers? or subsidiaries, or other affiliated groups?

Lastly, or almost lastly, do we have one occurrence, or are there many occurrences? How does this affect the aggregate? And, are there client-on-client exclusions?

And, trigger issues. What did the insured know? When did they know it? What if anything happened afterwards? If there's more than one policy -- which oftentimes, as you know, there may be -- how is coverage going to be divvied up? I think those are some of the major issues in terms of carriers' concerns.

John: Al, thank you very much for joining us today.

Al: My pleasure, John. Always good to be with you.

John: Same here, Al. That was Al Goldberger from [The Law Offices of Alan S. Goldberger](#) with offices in Florham Park, New Jersey. Special thanks to today's producer, Frank Vowinkel. Thank you all for joining us for the *Insurance Law Podcast*. To subscribe to this audio program, go to our web page, www.ambest.com/claimsresource.

If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at LawPodcast@AMBEST.com. I'm John Czuba, and now this message.

Transcription by CastingWords

To find out more about becoming a qualified member in *Best's Insurance Professionals & Claims Resource*, contact claimsresource@ambest.com or visit our [Learn More](#) page to start the application process.

BEST'S RECOMMENDED INSURANCE ATTORNEYS AND ADJUSTERS

Copyright © 2019 A.M. Best Company, Inc. and/or its affiliates ALL RIGHTS RESERVED.



No portion of this content may be reproduced, distributed, or stored in a database or retrieval system, or transmitted in any form or by any means without the prior written permission of AM Best. While the content was obtained from sources believed to be reliable, its accuracy is not guaranteed. For additional details, refer to our Terms of Use available at AM Best website: www.ambest.com/terms.