

Alert | Gaming



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The Odds on Sports Wagering in New York

In 2013, New York State enacted the Upstate New York Gaming Economic Development Act and the voters approved a constitutional amendment legalizing commercial casino gaming in New York. Provisions within the authorizing statute empowered licensed casinos to offer sports wagering, but only “upon a change of federal law authorizing the activity permitted by such section or upon a ruling by a court of competent jurisdiction that such activity is lawful.” In May, the [United States Supreme Court overturned the Professional and Amateur Sports Protection Act \(PASPA\)](#), a 1992 federal law that prohibited states to “...sponsor, operate, advertise, promote, license, or authorize by law or compact... a wagering scheme” based on any competitive sporting events. 28 U.S.C. §3702(1). The court, however, found PASPA unconstitutional in violation of the Constitution’s anti-commandeering principle and held that “Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own.”

As a result, New York’s sports wagering law has taken effect. The law grants broad regulatory authority to the New York State Gaming Commission for implementation and regulation of the emerging industry. The law authorizes commercial casinos to operate a sports pool upon the approval of the Gaming Commission in a “sports wagering lounge located at a casino.” N.Y. Racing Law §1367(3)(b). The current law prohibits sports betting on collegiate athletics, requires participants to be at least twenty-one years old, and maybe most notably, requires the bettor to be physically located in a sports wagering lounge. See N.Y. Racing Law § 1367. Governor Cuomo has publicly stated that the issue of sports wagering, generally, needs to be studied further before implementation. Nonetheless, according to the Gaming Commission, staff is close to completing draft regulations. Despite the existing law and regulatory efforts, legislators have taken steps towards enacting further amendments to the existing law to broaden the application of the sports wagering law.

Legislation to Expand Existing Law

For many stakeholders the current sports wagering law falls short. New York's legacy gaming facilities such as racinos (which operate video lottery terminals at select racing tracks), off-track betting corporations (OTBs), and thoroughbred racing tracks cannot conduct sports wagering under the existing framework. With a dozen casinos operated by Native American tribes operating pursuant to compact agreements with the state and the four licensed commercial casinos upstate, there are plenty of interested operators. Sports wagering's content also invites professional sports leagues, team owners, and players unions to the policy-making discussion. Several mobile wagering platforms, many of which are based in Europe and have years of operating experience, are eager to enter the New York market as well.

New York's legislative session is scheduled to conclude on June 20 and gaming issues have notoriety for finding consensus in the eleventh hour. Senator Bonacic, Chair of the Senate Racing, Gaming and Wagering Committee and Assemblyman Pretlow, Chair of the Assembly Racing and Wagering Committee, both have legislation introduced to amend the current sports wagering law to establish a more comprehensive regulatory framework (S. 7900-A and A. 11144, respectively). As of the second to last week of the legislative session, these proposals are similar, but are not the same. The bills would permit commercial casinos to conduct sports wagering online and for casinos to partner with legacy operators to conduct sports wagering. The legislation would permit sports wagering on collegiate sports and horse racing, and set a tax rate of 8.5 percent on sports wagering revenue along with a .25 percent per wager integrity, or royalty, fee to the sports leagues. The integrity fee will ultimately be paid to the sports leagues; however, the bills take different approaches to distribution. Furthermore, Assemblyman Pretlow's bill would require sports leagues to register with the Gaming Commission and authorize "exchange wagering."

The pending legislation present several open issues. First, the State Constitution explicitly prohibits gambling with exceptions for bingo, lottery, pari-mutuel horse racing, and casinos. Notably, any expansion of sports wagering to legacy operators such as racinos and OTBs to online platforms will present a debate over its constitutionality and whether another constitutional amendment is necessary. Furthermore, an expansion of sports wagering will have to navigate the Native American tribes' exclusivity rights in their compacts with the state. The differences in the bills will also have to be resolved because the same bill needs to pass both the Senate and the Assembly before being delivered to the Governor for action.

With the end of this session rapidly approaching, lobbying on sports betting is at the forefront. Whether a bill broadening New York's sports betting law will be enacted this session is still anyone's bet.

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