



SENATE BILL 688: Sports Wagering.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 22, 2022
Introduced by:	Sens. Perry, Lowe	Prepared by:	Nicholas Giddings and Erika Churchill, Staff Attorneys
Analysis of:	Fourth Edition		

OVERVIEW: *Senate Bill 688 would do the following:*

- *Authorize, regulate, and tax sports wagering in North Carolina. The Lottery Commission would be responsible for issuing licenses to involved parties and regulating sports wagering in North Carolina.*
- *Create and provide funding for the North Carolina Major Events, Games, and Attractions Fund, which would be administered by the Department of Commerce to provide grants for local governments or nonprofit entities working with local governments to attract major entertainment, musical, political, sporting, and theatrical events to the State to stimulate economic activity and create jobs.*

[As introduced, this bill was identical to H631, as introduced by Reps. Saine, Hardister, Hawkins, which is currently in House Commerce.]

CURRENT LAW: In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA), which effectively prohibited sports betting nationwide. However, PASPA grandfathered in states that had legal sports gambling regulations in place at the time of the act took effect¹ and provided states that operated licensed casino games for the previous ten-year period prior to the act taking effect a one-year deadline to pass legislation permitting sports wagering.² In 2014, New Jersey repealed its previous legislation prohibiting certain sports gambling in the state in an effort to challenge PASPA and was sued by the NCAA, among others. The case made it to the United States Supreme Court which struck down PASPA as unconstitutional in 2018.³ Since PASPA was overturned, states have been authorized to legalize and regulate sports betting. Currently, according to the American Gaming Association over 30 states, plus the District of Columbia, authorize sports wagering in some capacity.

¹ Only four states had regulations in place: Delaware, Montana, Nevada and Oregon. Only Nevada authorized and regulated sports betting of all types, while Delaware, Montana and Oregon authorized and regulated limited forms of sports betting.

² New Jersey had operated licensed casino games for the previous ten-year period but did not pass legislation to authorize sports wagering within the grace period afforded by Congress.

³ *Murphy v. National Collegiate Athletic Association*, 584 U.S. ____ (2018).

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Sports wagering is not generally authorized in North Carolina; however, certain approved Indian lands are authorized to conduct sports wagering in the State.⁴

BILL ANALYSIS: Senate Bill 688 would create Article 9 of Chapter 18C of the General Statutes to authorize sports wagering generally in North Carolina. The North Carolina State Lottery Commission (Commission) would be charged with regulating sports wagering in the State.

Licenses

The Commission would be responsible for issuing licenses and collecting any license application fee. Licenses would be valid for five years. Except for sports wagering supplier license applicants, all license applicants, as well as any directors or officers required by the Commission, would be subject to extensive background checks by the Commission. The types of licenses are as follows:

- Interactive Sports Wagering License – required to offer and accept sports wagers in North Carolina. The Commission must authorize at least 10, but not more than 12, interactive sports wagering licenses. If there are more than 12 applicants, the Commission, in its discretion, must select the most qualified applicants. Certain tribal gaming enterprises that file an application and pay the application fee will automatically be provided an interactive sports wagering license and not count toward the 12-license limit. The application fees for an interactive sports wagering license are as follows:
 - Initial application fee: \$500,000.
 - Renewal application fee: \$100,000.
- Service Provider License – required for a person to provide covered services to any interactive sports wagering licensee. Covered services are services that involve the operation, management, or control of sports wagers, including development or operation of a sports wagering platform and the provision of odds and line information. Covered services does not include payment processing, customer identity, age verification, geolocation services, streaming or other video and data that does not include odds or line information, telecommunications or internet service that is not designed for sports wagering, or other goods or services not designed for use in connection with sports wagering. The application fees for a service provider license are as follows:
 - Initial application fee: \$25,000.
 - Renewal application fee: \$10,000.
- Sports Wagering Supplier License – required to sell, lease, distribute, offer, or otherwise provide services, goods, software, or other components necessary for the creation of betting markets and determining bet outcomes, directly or indirectly, to any license holder or applicant involved in the acceptance of bets. Upon approval of the Commission, a provisional sports wagering supplier license may be issued prior to issuance of a sports wagering supplier license. A sports wagering supplier license is not required for interactive sports wagering licensees that act as a sports wagering supplier. The application fees for a sports wagering supplier license are as follows:
 - Initial application fee: \$15,000.
 - Renewal application fee: \$5,000.

⁴ G.S. 14-292.2 authorizes certain federally recognized Indian tribes with a valid Tribal-State Gaming Compact to accept wagers on the outcome of professional and collegiate sports contests. Currently, only the Eastern Band of Cherokee Indians and the Catawba Indian Nation have valid Tribal-State Gaming Compacts with the State of North Carolina.

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Interactive Account and Placing a Sports Wager

Only registered players would be permitted to create an interactive account and place wagers with an interactive sports wagering operator. The interactive sports wagering operator would be responsible for ensuring the identity and age of any registered player. A registered player must be at least 21 years of age. Individuals would be allowed to voluntarily exclude themselves from placing sports wagers through a voluntary exclusion program established by the Commission. The interactive account could be funded with any of the following:

- Foreign currency and coin.
- Personal checks and drafts.
- Digital, crypto, and virtual currencies.
- Online and mobile payment systems that support online money transfers.
- Credit cards and debit cards.
- A prepaid access instrument.
- Any other form of cash or cash equivalent approved by the Commission.
- Cash, when at a place of accommodation with a cashier.

Sports wagers would be authorized via mobile devices, computer terminals, or similar access devices. Bettors could place their sports wagers anywhere in the State, excluding on tribal lands. Bettors could also place their sports wagers at a sports facility or at a place of public accommodation associated with a sports facility. A sports facility is a facility that hosts professional sports with a minimum seating capacity of 17,000 people or is a facility that hosts an annual professional golf tournament with more than 50,000 live spectators anticipated to attend based on similar prior tournaments. The place of accommodation associated with a sports facility is a property owned or controlled by the owner or operator of a sports facility or affiliated with the owner or operator that is within one-half mile of the sports facility.

Sports wagers would be authorized on professional sports, college sports, electronic sports, amateur sports, or any other event approved by the Commission. Electronic sports are competitions where individuals or teams play video games, either in-person or online, for prizes, money, or entertainment. Amateur sports are not professional, college or youth sports and includes domestic, international, or Olympic sporting competitions.

Guidance from Commission

The Commission would be responsible for providing guidance to parties regulated by the newly created Article 9 of Chapter 18C. The guidance must address electronic sports with due consideration to the key role of game publishers as creators of the underlying video game.

The Commission may accept license applications when the act becomes law; however, any license issued would not become effective until January 1, 2022. If more than 12 interactive sports wagering license applications are received, the Commission shall, in its discretion, select and notify the 12 most qualified applicants of their licensure by December 1, 2021. Once notified, selected applicants may establish structure and operations so that sports wagering may begin on January 1, 2022.

Civil and Criminal Penalties

The Commission would be authorized, subject to 15 days' notice and a hearing, to suspend or revoke a license, impose a penalty of not more than \$10,000 per violation of any licensee, or both.

The bill would also create the following criminal offenses:

- Class 2 misdemeanor for knowingly offering or engaging in sports wagering in violation of the Article.

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- Class 2 misdemeanor for engaging in sports wagering when under the age of 21.
- Class G felony for knowingly attempting to collude or conspire to influence the outcome of a competition subject to sports wagering in this State.
- Class I felony for any interactive sports wagering licensee or service provider licensee who willfully gives false information on their license application.

Tax and Revenues

A tax of 8% would be levied on the adjusted gross revenue of each interactive sports wagering operator, in addition to any corporate income taxes paid by the licensee. Adjusted gross revenue includes all gross wagering revenue received by an interactive sports wagering operator minus winnings paid, costs of personal property distributed as a result of a sports wager, cash value of bonuses or promotional credits provided to registered players which are returned in the form of a deposit or wager, uncollectible receivables (up to 4%, unless a greater amount is authorized by the Commission), and excise tax payments on sports wagers remitted to the federal government. The tax would be due monthly to the Commission.

The Commission would be required to do the following with revenues, which includes the tax levied and the license application fees collected:

- Remit 50% of the tax collected (does not include license application fee revenue) to the newly created North Carolina Major Events, Games, and Attractions Fund.
- Reimburse itself for expenses in administering sports wagering in the State.
- Remit the revenues that remain to the Department of Revenue, which would credit the revenue to the General Fund.

North Carolina Major Events, Games, and Attractions Fund

The bill would also create the North Carolina Major Events, Games, and Attractions Fund (Fund). The Fund would be administered by the Department of Commerce (Department). The Department would use revenues in the Fund to enter into multiparty agreements with site selection organizations and local entities to provide grants to promote the attraction of major events to the State which stimulate economic activity and create jobs. A major event is an entertainment, musical, political, sporting, or theatrical event that satisfies certain criteria. Site selection organizations are organizations responsible for determining the location of major events. A local entity, which is a city, county, or local organizing committee, would be responsible for applying for a grant from the Fund. A local organizing committee is a nonprofit authorized by a local government to work with site selection organizations with the goal of hosting a major event in the State.

The Department, in conjunction with the Governor's Office, would be required to develop guidelines on the administration of the Fund, the selection of projects to receive grants from the Fund, and the disbursement of any grants awarded.

EFFECTIVE DATE: Section 5 of the act which requires the Commission to issue guidance would be effective when the act becomes law. The remainder of the act would become effective January 1, 2022.

BACKGROUND: In its current edition, Senate Bill 688 raises two constitutional concerns. First, Section 16 of Article 1 of the North Carolina Constitution prohibits ex post facto laws, or retrospective laws, punishing acts committed before the existence of such laws. As the effective date is a date in the past, and

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the current edition establishes new criminal acts, the bill raises a constitutional concern. Among other substantive changes, the second edition of Senate Bill 38, 2021 Regular Session, would amend the effective date of Senate Bill 688 to be January 1, 2023.

Second, Section 2(6) of Article 5 of the North Carolina Constitution prohibits the rate of tax on incomes exceeding seven percent (7%). As the current edition establishes an eight percent (8%) tax on adjusted gross wagering revenue, which is gross wagering revenue minus deductions for winnings paid, costs of personal property distributed as a result of a wager, promotional credits, uncollectible receivables and federal excise tax payments, the bill raises a constitutional concern. Among other substantive changes, the second edition of Senate Bill 38, 2021 Regular Session, would amend these provisions of Senate Bill 688 to be a privilege tax on licensure, with the license revoked for failure to pay. The second edition of Senate Bill 38 would create a 14% privilege tax on interactive sports wagering operators to be paid monthly and calculated against gross wagering revenue minus deductions for winnings paid to registered players, costs paid for any personal property distributed to a registered player as a result of a sports wager, promotional credits or bonuses given to registered players, at cash value, when returned to the operator in the form of a wager or deposit, uncollectible receivables from registered players, not to exceed 4% of gross wagering revenue, and federal excise tax payments. The deduction for promotional credits would be phased out over 5 years.