



HOUSE BILL 347: Sports Wagering/Horse Racing Wagering.

2023-2024 General Assembly

Committee:		Date:	October 26, 2023
Introduced by:		Prepared by:	Erika Churchill and Nick Giddings, Staff Attorneys
Analysis of:	S.L. 2023-42		

OVERVIEW: *S.L. 2023-42, effective January 8, 2024, does the following:*

- *Authorizes, regulates, and taxes sports wagering in North Carolina. The Lottery Commission is responsible for issuing licenses to involved parties and regulating sports wagering in North Carolina. Section 11.18 of S.L. 2023-134 amended these provisions.*
- *Authorizes and regulates pari-mutuel wagering on horse racing in North Carolina. The Lottery Commission is responsible for issuing licenses to involved parties and regulating pari-mutuel wagering in North Carolina.*
- *Authorizes live horse racing in North Carolina. The Lottery Commission is responsible for regulation of horse racing.*
- *Creates and provides funding for the North Carolina Major Events, Games, and Attractions Fund, which is 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. Section 11.18 of S.L. 2023-134 amended these provisions.*

CURRENT LAW/BILL ANALYSIS:

Sports Wagering

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prior to the act taking effect a one-year deadline to pass legislation permitting sports wagering.² In 2014, New Jersey repealed its previous legislation prohibiting certain sports gambling in the state in an effort to challenge PASPA and was sued by the NCAA, among others.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

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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regulate sports betting. Currently, according to the American Gaming Association over 30 states, plus the District of Columbia, authorize sports wagering in some capacity.

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

The act creates Article 9 of Chapter 18C of the General Statutes to authorize sports wagering generally in North Carolina. The North Carolina State Lottery Commission (Commission) is charged with regulating sports wagering in the State.

Sports Wagering Licenses

The Commission is responsible for issuing licenses and collecting any license application fees. Licenses are valid for five years. All license applicants, as well as any directors or officers required by the Commission, are 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 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. If the Commission finds good cause that a licensee has materially not complied with the provisions of Article 9, the Commission may deny a license renewal to an interactive sports wagering operator. Certain tribal gaming enterprises will automatically be provided an interactive sports wagering license and not count toward the 12-license limit. Once issued, an interactive sports wagering operator license functions as a service provider license and supplier license for activities related to sports wagering that are conducted in-house. The application fees for an interactive sports wagering license are as follows:
 - Initial application fee: \$1,000,000.
 - Renewal application fee: \$1,000,000.
 - Transfer of license fee: \$1,000,000.
- Service Provider License – required for a person to provide covered services to any interactive sports wagering licensee. Covered services are services that create sports wagering markets and determination of sports wager outcomes 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 do 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: \$50,000.
 - Renewal application fee: \$50,000.
- Sports Wagering Supplier License – issued to entities that provide services, goods, software or other components necessary for the creation of sports wagering markets and determination of sports wager outcomes for any interactive sports wagering licensee or service provider licensee involved in the acceptance of sports wagers. Upon approval of the Commission, a provisional sports wagering supplier license may be issued prior to issuance of a sports wagering supplier

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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license. A sports wagering supplier license is not required for interactive sports wagering licensees that provide covered services in-house. The application fees for a sports wagering supplier license are as follows:

- Initial application fee: \$30,000.
- Renewal application fee: \$30,000.
- Transfer of license fee: \$30,000.

If the Commission denies an application for licensure, the Commission may retain 5% of the application fee.

Interactive Account and Placing a Sports Wager

There would be two ways to place a sports wager:

1. In-person at a place of public accommodation.
2. As a registered player via an interactive account.

The interactive sports wagering operator would be responsible for ensuring the identity and age of any person trying to place a wager. To place a wager, a person 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. An interactive account could be funded with any of the following:

- Cash, when at a place of public accommodation.
- 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.

Bettors could place sports wagers anywhere in the State via their interactive account, however, interactive sports wagering operators must geolocate their sports bettors at the time the sports wager is initiated to determine that the sports bettor is in North Carolina and not on tribal lands. Bettors could also place their sports wagers at a permanent or temporary place of public accommodation associated with a sports facility.⁵ A permanent place of public accommodation could be located (1) at a sports facility, or (2) on a property owned or controlled by the owner or operator of a sports facility or, in certain circumstances, affiliated with the owner or operator that is either within one-half mile of a sports facility associated with

⁵ A "sports facility" is any of the following:

- A motorsports facility that annually hosts more than one National Association for Stock Car Auto Racing national touring race.
- A facility that hosts a professional golf tournament with more than 50,000 live spectators anticipated to attend based on similar prior tournaments.
- A facility that is the home location of a professional sports team that competes in any of the following professional leagues:
 - Major League Baseball.
 - Major League Soccer.
 - National Basketball Association.
 - National Football League.
 - National Hockey League.
 - National Women's Soccer League.

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a motorsports facility or professional sports team, or within one and a half miles of a sports facility associated with a professional golf tournament. A temporary place of public accommodation may also be established at a sports facility hosting a professional golf tournament, provided that the sports facility does not have a permanent place of public accommodation and the temporary place of public accommodation operates only within the time period that begins five days prior to the tournament and ends five days after the tournament.

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

Guidance from Commission

The Commission would be responsible for providing guidance to parties regulated by the newly created Article 9 of Chapter 18C. The Commission may begin accepting license applications when the act becomes law; however, any license issued would not become effective until the earlier of January 8, 2024 or when the Commission identifies a date, which shall occur as soon as practicable and may be no later than twelve months after the date the bill becomes law. 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.

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, if the Commission determines that a licensee has violated any provision of Article 9 of Chapter 18C.

The bill would also create the following criminal offenses related to sports wagering:

- Class 2 misdemeanor for knowingly offering or engaging in sports wagering in violation of the Article.
- 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, service provider licensee, or sports wagering supplier licensee who willfully gives false information on their license application.

Tax and Revenues

A tax of 18% would be levied on each interactive sports wagering operator for the privilege of being licensed under Article 9 of Chapter 18C. The tax would apply to the gross wagering revenue⁶ received by an interactive sports wagering operator. The Department of Revenue would collect the tax. If an interactive sports wagering operator's monthly gross wagering revenue is a negative number, that amount could be carried forward to offset the next successive tax returns of the operator until the carryforward is used up, however, no amount could be carried forward more than twelve months. Each interactive sports wagering operator must register with the Secretary of Revenue and notify the Secretary of any changes in ownership or if the interactive sports wagering operator stops accepting sports wagers.

⁶ Gross wagering revenue is the total of amounts received by an interactive sports wagering operator from sports wagers as authorized under Article 9 of Chapter 18C less the amounts paid as winnings before any deductions for expenses, fees, or taxes.

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From the tax proceeds, the Department would be allowed up to \$500,000 annually for administrative costs. The Department would also reimburse the Commission for any unreimbursed expenses associated with the administering Article 9 of Chapter 18C. The Department would then be required to credit the remaining tax revenue in the following priority:

1. \$2,000,000 annually to the Department of Health and Human Services for problem gambling.
2. \$1,000,000 annually to North Carolina Amateur Sports for grants to purchase youth sports equipment or provide for public facility upgrades or improvements which benefit youth sports.
3. \$300,000 annually to each of the following to support collegiate athletic departments:
 - Appalachian State University
 - East Carolina University
 - Elizabeth City State University
 - Fayetteville State University
 - North Carolina Agricultural & Technical State University
 - North Carolina Central University
 - University of North Carolina at Asheville
 - University of North Carolina at Charlotte
 - University of North Carolina at Greensboro
 - University of North Carolina at Pembroke
 - University of North Carolina at Wilmington
 - Western Carolina University
 - Winston-Salem State University
4. \$1,000,000 annually to the North Carolina Outdoor Heritage Advisory Council, to be used as follows:
 - Grants up to \$5,000 per sports team per county for travel assistance.
 - Incentive grants up to \$25,000 to attract nonprofessional sporting events.
5. Any remaining proceeds would be credited as follows:
 - 20% annually to the collegiate institutions listed in #3, above.
 - 30% to the North Carolina Major Events, Games, and Attractions Fund.
 - 50% to the General Fund.

Pari-Mutuel Wagering

Pari-mutuel wagering is a form of wagering in which the organizer pools all wagers placed together and pays the winners with the collected bets. In pari-mutuel wagering, the odds of a placed bet, and the potential payout, are recalculated with each bet. Therefore, the odds and payout of a placed bet are not certain until the betting window is closed for that event. This is in contrast to traditional sports wagering which applies "fixed-odds" betting. Fixed-odds betting locks in the odds and payout to the bettor at the time the bet is placed. Pari-mutuel wagering is most prominently used in horse racing, but is also used in other events, such as dog racing and jai alai.

The Interstate Horseracing Act governs interstate off-track pari-mutuel wagering related to horse racing in the United States. An interstate off-track wager is a legal wager placed or accepted in one State with respect to the outcome of a horse race taking place in another state and includes pari-mutuel wagers, where lawful in each state involved, placed or transmitted by an individual in one state via telephone or other electronic media and accepted by an off-track betting system in the same or another state, as well as the combination of any pari-mutuel wagering pools. However, while the Interstate Horseracing Act governs pari-mutuel wagering on horse races generally, it does not have any effect until a state legalizes

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pari-mutuel wagering within that State. North Carolina has not legalized pari-mutuel wagering on horse racing generally in the State, except for pari-mutuel wagers placed at certain approved Indian lands.⁷

The bill would create Article 10 of Chapter 18C of the General Statutes to authorize pari-mutuel wagering on horse racing and live horse racing in North Carolina. The Commission would be charged with regulating both pari-mutuel wagering and live horse racing in the State.

ADW Licenses and Wagering

The Commission would be responsible for issuing licenses to ADW licensees and collecting any license application fees. An ADW licensee would be authorized to accept advance deposit account wagers in North Carolina. An advance deposit account wager would be a pari-mutuel wager in compliance with the Interstate Horseracing Act and any rules adopted by the Commission. An application to become an ADW licensee or renew that license would have to be submitted on a form prescribed by the Commission and include a \$1,000,000 application fee. Licenses would be valid for five years. All license applicants, as well as directors, officers, certain shareholders, and certain individuals with a pecuniary interest in the ADW licensee would be subject to background checks by the Commission. The Commission would be responsible for reviewing each ADW licensee annually to ensure compliance with the laws of the State and regulations adopted by the Commission. If the Commission determines that an ADW licensee is no longer in compliance, the Commission may suspend or revoke the license of the ADW licensee.

Each ADW licensee would be required to pay an annual fee equal to 1% of the total pari-mutuel wagers placed by residents of North Carolina accepted by the ADW licensee. The fee must be paid within four calendar weeks of the close of either the ADW licensee's calendar year or fiscal year, which must be designated at the time the ADW licensee applied for licensure. Once designated, the choice is irrevocable during the term of the license. The Commission may suspend or revoke the license of an ADW licensee for failure to timely pay the annual fee. The annual fee would be used by the Commission to offset the costs of administering Article 9 (Sports Wagering) and Article 10 (Pari-Mutuel Wagering) of Chapter 18C.

An individual seeking to place a pari-mutuel wager with an ADW licensee must create an account with the ADW licensee. The ADW licensee is responsible for verifying that the individual is at least 21 years of age. The ADW licensee is also required to take commercially reasonable steps to ensure that any individual placing a pari-mutuel wager with the ADW licensee is not specifically prohibited from doing so. Prohibited individuals are as follows:

- Any person under the age of 21.
- Any person adjudicated by law as prohibited from engaging in pari-mutuel wagering.
- Any member or employee of the Commission. A member of the Commission determined to have placed a pari-mutuel wager will be deemed to have resigned from the Commission. An employee of the Commission deemed to have placed a pari-mutuel wager is subject to disciplinary action.
- Any person on the sports wagering voluntary exclusion list.

Live Horse Racing

The Commission would be tasked with adopting rules to regulate live horse racing in this State. The Commission is exempt from traditional rulemaking under Chapter 150B of the General Statutes.

⁷ 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 horse races. 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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Criminal Penalties

The bill would also create the following criminal offenses related to pari-mutuel wagering:

- Class 2 misdemeanor for knowingly offering or engaging in pari-mutuel wagering in violation of the Article.
- Class 2 misdemeanor for engaging in pari-mutuel 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 pari-mutuel wagering pursuant to the Article.
- Class I felony for any ADW licensee who willfully gives false information on their license application.

North Carolina Major Events, Games, and Attractions Fund

The bill would also create the North Carolina Major Events, Games, and Attractions Fund. The Fund would be administered by the Department of Commerce. 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: Sections 1, 2, 3, 4, 5.1, 5.5, and 6 of this act become effective January 8, 2024. Section 5 of this act becomes effective January 8, 2024, and applies to gross wagering revenue received on or after that date. Except as otherwise provided, this act is effective when it becomes law.

BACKGROUND: Section 2(6) of Article V of the North Carolina Constitution states that "[t]he rate of tax on incomes shall not in any case exceed seven percent, and there shall be...deductions so that only net incomes are taxed." As the current edition establishes an 18% tax on total wagers received minus winnings paid, the bill raises a constitutional concern. As there are no North Carolina court holdings on point, it is unclear whether the current tax structure would amount to a "rate of tax on incomes" that exceeds 7%.

Section 34 of Article I of the North Carolina Constitution states that "[p]erpetuities and monopolies are contrary to the genius of a free state and shall not be allowed." As the current edition limits the number of licenses available to interactive sports wagering operators, the bill raises another constitutional concern.