



HOUSE BILL 347: Sports Wagering.

2023-2024 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 22, 2023
Introduced by:	Reps. Saine, Bell, Hawkins, Clemmons	Prepared by:	Nicholas Giddings
Analysis of:	Second Edition		Erika Churchill Staff Attorneys

OVERVIEW: *House Bill 347 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.*

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to the act taking effect a one-year deadline to pass legislation permitting sports wagering.² In 2014, New Jersey repealed its previous legislation prohibiting certain sports gambling in the state in an effort to challenge PASPA and was sued by the NCAA, among others.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

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

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).

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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BILL ANALYSIS: House Bill 347 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 fees. Licenses would be valid for five years. 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 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: \$1,000,000.
 - Renewal application 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. A service provider license is not required for interactive sports wagering licensees that provide covered services in-house. 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 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.

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.

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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:

- 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 their 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 sports facility or at a place of public accommodation associated with a sports facility. A sports facility would include certain motorsports facilities, facilities that host professional golf tournaments, or facilities that are the home location of certain professional sports teams.⁵ A place of public accommodation associated with a sports facility is 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 on the premises of the sports facility, within one-half mile of a sports facility associated with 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 during a professional golf tournament at a sports facility associated with the professional golf tournament that operates only within the time period that begins five days prior to the tournament and ends five days after the tournament.

Sports wagers include parimutuel wagering and 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 Commission may begin accepting license applications when the act

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

- A motorsports facility that hosts a National Association for Stock Car Auto Racing national touring race and has a minimum seating capacity of 17,000 people.
- 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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becomes law; however, any license issued would not become effective until January 1, 2024. 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:

- 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 or service provider licensee who willfully gives false information on their license application.

Tax and Revenues

A privilege tax of 14% would be levied on each interactive sports wagering operator. The tax would be applied on the gross wagering revenue⁶ received by an interactive sports wagering operator minus the following:

- 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. This deduction would be phased out January 1, 2027.
- Uncollectible receivables from registered players, not to exceed 2% of gross wagering revenue minus winnings paid out to the registered players.
- Federal excise tax payments.

The Department of Revenue would collect the tax. If an interactive sports wagering operator's monthly liability is a negative number because the amount deducted exceeds the gross wagering revenue received, that amount could be carried forward to offset the next successive tax liabilities of the operator until the carryforward is used up, however, no amount could be carried forward more than twelve months.

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 the costs 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 the North Carolina Department of Parks and Recreation for grants of \$10,000 to each county to benefit youth sports in the county.
3. \$300,000 annually to each of the following to support collegiate athletic departments:
 - Elizabeth City State University
 - Fayetteville State University

⁶ Gross wagering revenue is the total of all cash or cash equivalents, whether collected or not, as well as the cash value of any bonuses or promotional bets received by an interactive sports wagering operator from sports wagers.

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- North Carolina Agricultural & Technical State University
 - North Carolina Central University
 - University of North Carolina at Asheville
 - 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:
- 10% annually to the collegiate institutions listed in #3, above.
 - 30% to the North Carolina Major Events, Games, and Attractions Fund.
 - 60% 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. 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, and 5 of this act become effective January 1, 2024. Section 4 of this act becomes effective January 1, 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 a fourteen percent (14%) tax on 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. 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 seven percent.

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

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of licenses available to interactive sports wagering operators, the bill raises another constitutional concern.