Massachusetts Legislature Passes Bill to Legalize Sports Betting in the Commonwealth

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After years of negotiations and pressure by stakeholders, the Massachusetts House and Senate recently passed House Bill 5164 (H.5164) which would legalize sports betting in the Commonwealth. Instead of crossing state lines to place bets in Rhode Island or Connecticut, Massachusetts residents are on the verge of being able to submit their wagers closer to home. The bill is currently pending Governor Baker’s approval.

The Long Road to Legalized Sports Betting in the Commonwealth

In 2018, the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act, the federal law that prohibited states from legalizing sports betting. To date, 30 states and the District of Columbia offer some form of sports gambling,
and several more have legalized it. If Governor Baker signs H.5164 into law, Massachusetts will join this growing majority of states.

As it has with other forms of gaming, Massachusetts has taken a very slow, cautious approach to its sports betting policymaking. Casino gaming has only been legal in the state for a little over a decade. Many sports betting bills predated H.5164. We wrote previously about H.4559, the bill that came out of the Joint Committee on Economic Development and Emerging Technologies in March 2020. However, the bill languished as the pandemic took hold, some legislators were focused on other priorities, and a debate over whether sports betting should include collegiate sports could not be resolved. In particular, legislators, as well as stakeholders and Massachusetts residents, were divided over whether Massachusetts residents should be permitted to bet on all collegiate sports teams, on only out-of-state sports teams, or on no collegiate sports at all. Integrity fees, tax rates, and advertising limits were also part of the debate. As one might expect given the fervent fan base for Massachusetts professional sports teams, the legalization of sports betting, in general, has polled very favorably in the Commonwealth.

Last year, members of the Massachusetts Gaming Commission and legislative leaders signaled that sports betting would pass this session. On August 1, 2022, the House and Senate finally reached a compromise by passing H.5164 several hours after the midnight deadline to the legislative session. Governor Baker has 10 days in which to decide whether to sign the bill into law. The Governor has publicly supported bringing sports betting to Massachusetts, but filed his own sports betting bill in 2019 that, unlike H.5164, prohibited wagering on all college sports. Only time will tell if he approves this legislation.

Overview of H.5164

H.5164 permits sports wagering conducted under proposed G.L. c. 23N and fantasy contests conducted under proposed G.L. c. 12, § 11M½. The Massachusetts Gaming Commission (the “Commission”), which currently regulates casino gaming and horse racing, will regulate the process of applying for, issuing, and renewing sports betting licenses, and will generally enforce and oversee all sports betting operations in the Commonwealth.

To be eligible to conduct sports betting in the Commonwealth, the entity must satisfy one of the following:

- already hold a chapter 23K Category 1 or 2 gaming license (currently, MGM Springfield, Wynn MA, LLC, and Penn National Gaming);
- be a horse racing licensee with certain qualifications;
- or offer “an interactive sports wagering platform through a mobile application or other digital platform.”

Before commencing sports wagering operations, the entity must obtain a license from the Commission.

Under the proposed chapter 23N, “sporting events” on which regulated betting is
allowed are defined as a “professional sport or athletic event, collegiate sport or athletic event, a collegiate tournament, motor race event, electronic sports event or other event authorized by the Commission under this Chapter.” Excluded from the definition are (i) high school and youth sports or athletic events or (ii) a collegiate sport or athletic event involving one or more Massachusetts college teams unless they are involved in a tournament.

Permitted wagers include single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets and straight bets, but exclude bets that are outcome-dependent on the performance of an individual athlete in any collegiate sport or athletic event. For example, in-game or in-play wagers and bets based on injuries, penalties, player discipline, or replay review are not permitted.

**Licensing Process**

H.5164 outlines the procedure to apply for a sports betting license, as follows:

A qualified gaming entity may submit to the Commission a request for a temporary license. The temporary license fee is $1,000,000. If the Commission deems the applicant a qualified gaming entity that has paid the fee, the applicant can launch sports betting immediately. The temporary license allows operation for a period of one year or until a final determination on the applicant’s operator license application is made. The temporary license holder must comply with house rules for game play that are approved by the Commission.

The fee for an operator license is $5,000,000, which provides the qualified gaming entity the right to conduct sports wagering for a five-year period. To renew the license for additional five-year periods, a license holder must pay a $5,000,000 renewal fee. The operator is not allowed to conduct sports wagering until its house rules are approved by the Commission and must stay in compliance throughout the license period.

Upon receiving an operator license application, the Commission begins the review of the applicant’s “suitability.” During this process, the Commission considers the overall reputation of the applicant including factors such as honesty and integrity, financial responsibility and resources, business acumen, history of compliance with gaming licensing requirements outside of the Commonwealth, litigation involving business practices, and the suitability of parties in interest to the license, including its affiliates and close associates.

The applicant/operator must cooperate with the Commission by submitting any documentation or information that the Commission may require to determine compliance with the requirements of the legislation and attendant rules and regulations every five years or within shorter periods upon request of the Commission.

As part of the suitability review, the Commission will conduct thorough background checks into certain individuals that have influence over the applicant. This extends to a holder of a 10 percent or more interest who has the ability to control the applicant’s activities and an executive, employee or agent with authority to have
significant influence over the applicant’s sports wagering operations.

The applicant’s supervisory gaming employees will be subject to a suitability review, as well, and must themselves be licensed. The application fee for occupational licenses is $100.

The Commission has broad discretion to deny a license based on information revealed during the suitability investigation. There is a mandatory $200,000 fee for the Commission to process the applicant’s application and investigate the applicant’s suitability. If the costs of the investigation exceed $200,000, then the applicant must pay the Commission all additional costs.

Types of Licenses: Category 1, 2, and 3

The legislation creates three types of sports betting licenses. Category 1 licenses allow existing gaming establishments to host in-person sports wagering and two individually-branded apps or digital platforms that obtain a Category 3 license. The same entity cannot hold both a Category 1 and Category 2 license.

Category 2 licenses are for in-person wagering at certain horse and greyhound racing sites. The Category 2 license also allows those racing facilities to host up to one individually-branded app or digital platform that obtains a Category 3 license. This class of license carries a minimum capital investment requirement of at least $7,500,000 due within three years after receiving the license.

A Category 3 license may be awarded to entities that offer sports wagering through an app or digital platform that is approved by the Commission. The Commission may award up to seven Category 3 licenses that are not connected to a Category 1 or 2 license. Category 3 licensees are not required to have any relationship with Category 1 or 2 licensees.

Tax Rate

Sports wagering operators in the Commonwealth will have to pay an excise tax at the rate of: (i) 15 percent of the operator’s adjusted gross sports wagering receipts from the operation of in-person sports wagering as defined in the legislation; (ii) 20 percent of the operator’s adjusted gross sports wagering receipts from the operation of approved sports wagering apps and digital platforms; and (iii) 15 percent of the adjusted gross fantasy wagering receipts of a person or entity that offers fantasy contests, as defined in the legislation. These are fairly consistent with sports betting tax rates in other states.

Sports Wagering Fund and Other Provisions

Some of the revenue generated by the taxes and fees will be allocated to a Sports Wagering Fund. Revenue from this fund will be allotted primarily to the general fund (45 percent) and also to cities and towns, for educational purposes, and to enhance workforce opportunities for low-income communities and vulnerable youth and young adults in the Commonwealth. The Commission will assess a $1,000,000 fee against each sports wagering operator that is not a chapter 23K Category 1 or 2 gaming licensee to deposit in the fund dedicated to combatting problem gambling.
H.5164 directs the Commission to conduct a study on (1) the participation by minority business enterprises, women business enterprises and veteran business enterprises in the sports wagering industry in the Commonwealth; and (2) the feasibility of allowing Massachusetts retail locations to operate sports wagering kiosks. The Commission must also develop an annual research agenda geared towards understanding the social and economic effects of sports betting, including the collection of scientific data on the neuroscience, psychology, sociology, epidemiology and etiology of sports wagering.

In addition, the legislation contains various consumer protection and gaming integrity provisions that the Commission will develop in regulations.

What to Expect if Sports Betting Becomes Legal?

While many have lamented the slow adoption of sports betting, the Commonwealth and potential applicants have had the benefit of a long runway to prepare and reflect on the experiences of other states. As with any new market, however, prospective licensees should anticipate delays and some degree of uncertainty during the initial license process. If the Governor approves H.5164, the Commission will need to draft regulations and rules to implement the new legislation. This will be in addition to the Commission’s current regulatory duties with respect to casino gaming and horse racing.

In anticipation of their likely oversight role, the Commission has been studying the sports betting regimes of other jurisdictions and recently issued an ad hoc sports betting impact report. The Commission has recognized in prior statements that it will be under pressure to issue regulations quickly once sports betting becomes legal. There is every reason to expect that the Commission will work hard towards that goal.