

## Massachusetts Poised to Legalize Sports Betting

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### Key Takeaways:

- The Massachusetts legislature has approved a bill that will create a framework for legalized sports betting.
- Betting will be conducted through a combination of existing brick-and-mortar casinos, slots parlors, and racing establishments, as well as online operators.
- The Massachusetts Gaming Commission will soon be able to issue temporary licenses to permit sports betting for one year, and will then roll out a process for applying for five-year licenses.

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On August 1, 2022, the Massachusetts legislature passed H.B. No. 5164, an Act Regulating Sports Wagering (the “Act”), which will create a framework for legalized sports betting in Massachusetts, to be overseen by the Massachusetts Gaming Commission (the “Commission”). As explained below, the Act will permit both in-person and online betting through a combination of already-licensed brick-and-mortar casinos, a slots parlor, and simulcast operators as well as online platforms, some of which may be independent of the brick-and-mortar betting establishments. There are up to seven (7) licenses available for operators of mobile sports betting platforms that do not need to be affiliated with an existing Massachusetts casino, horse racing track or simulcast facility. The Governor, who has been supportive of sports betting, has 10 days to sign, amend or allow the Act to become law without his signature.

### Categories of Operator Licenses

The Act creates three categories of operator licenses:

1. Category 1 licenses will be issued to the three current operators of casinos and slots parlors in Massachusetts. Category 1 licenses permit the licensee to offer sports betting in person and to offer betting through no more than two individually-branded mobile applications or other digital platforms.
2. Category 2 licenses will be issued to operators of live horse racing tracks and establishments that conduct simulcast wagering on horse or greyhound racing in Massachusetts. Category 2 licenses permit the licensee to offer sports betting in person and to offer betting through no more than one individually-branded mobile application or other digital platform. Licensees in this category are required to make a capital investment of at least \$7.5 million within three years after receipt of a license.
3. Category 3 licenses will be issued to entities that offer sports betting through a mobile application or digital platform. There will be a maximum of seven Category 3 licenses issued that are not connected to a Category 1 or 2 license. We are awaiting further regulations or guidance from the Commission on the selection process and timeline for issuance of these licenses.

### Temporary Licenses for Eligible Entities

After the Act takes effect, entities eligible to apply for Category 1 and Category 2 operator licenses will be able to apply to the Commission for a temporary license immediately to engage in sports wagering operations. Such entities must submit a request to the Commission for a temporary license and pay a \$1,000,000 temporary license fee. Upon receiving the request and required fee from an eligible entity, the Executive Director of the Commission will verify that the applicant is eligible to receive a license and, if so, will issue a temporary license to engage in sports wagering for a period of one year or until the Commission makes a final determination on the

entity's operator license.

## Final Operator Licenses

Following the adoption of regulations from the Commission governing the operator license application process, entities eligible for Category 1, Category 2, and Category 3 operator licenses can submit applications to the Commission and the Commission will investigate the suitability of the applicants. In evaluating suitability, the Commission will consider the integrity, honesty, character, and reputation of the applicant, the financial stability of the applicant, the applicant's history of compliance with gaming or sports wagering requirements in other jurisdictions and other criteria specified in the Act and regulations to be promulgated by the Commission. Although it is not expressly stated in the Act, we expect that the Commission's regulations will include a process for receiving competitive applications from entities eligible for Category 3 operator licenses and criteria for determining which Category 3 applicants shall receive one of the seven available Category 3 operator licenses.

If an applicant meets the suitability requirements of the Act and regulations and pays the \$5,000,000 initial license fee, the Commission will grant an operator license to the applicant. Such operator licenses are valid for 5 years and may be renewed for 5-year periods upon payment of a \$5,000,000 renewal fee. All entities that receive operator licenses have a continuing obligation to meet the requirements of the Act and any rules and regulations to be promulgated by the Commission.

Operator licenses cannot be transferred by licensees without the majority approval of the Commission. An entity seeking to receive a transferred license must demonstrate to the Commission that it is qualified and eligible to hold the license based on the criteria set forth in the Act and any applicable rules and regulations that may be issued by the Commission. The Commission also has plenary authority to deny a license transfer request if it determines that the transfer would be "injurious to the interests of the Commonwealth."

## Other Notable Provisions of the Act

- All sports wagers must be made by individuals physically located within the Commonwealth. Out of state bets are not permitted, even on mobile applications or other digital platforms.
- A 15% state excise tax will be imposed on in-person sports wagering and a 20% state excise tax will be imposed on wagering through mobile applications and other digital platforms. The excise is imposed on gross receipts (*i.e.*, funds received from sports wagering minus winnings paid to participants and excise taxes paid pursuant to federal law).
- Wagering on college teams is permitted, but wagering on Massachusetts-based college teams is not unless the teams are participating in a collegiate tournament (*e.g.*, March Madness).
- Individuals will not be permitted to wager using credit cards, meaning that mobile wagering will need to be conducted using debit cards.

Finally, the Act requires the Commission to conduct a feasibility study for allowing sports wagering "kiosks" at locations within the Commonwealth. The Commission must report its findings from the study to the Joint Committee on Consumer Protection and Professional Licensure and the Joint Committee on Economic Development and Emerging Technologies no later than December 31, 2022.

We welcome any questions you might have about the Act including regarding potential agreements with operators and applying for an operator license.

## RELATED PRACTICES

- [Massachusetts Gaming and Sports Betting](#)

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