

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 169
Ways and Means

(Delegate Patterson, *et al.*)

Expansion of Commercial Gaming - Referendum - Sports Wagering

This bill, which is subject to voter referendum, establishes that the General Assembly may authorize, by law, that the State Lottery and Gaming Control Commission may issue a license to offer sports wagering in the State to a video lottery operation licensee or a licensee for thoroughbred racing. The bill also provides the General Assembly's intent that, if the voter referendum is approved, State revenues generated by sports wagering be used for public education. **The bill takes effect July 1, 2020, contingent on passage of a referendum by voters in the next general election.**

Fiscal Summary

State Effect: None. If the bill is approved at referendum, legislation would still be needed to implement sports wagering.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 5 of the 2007 special session amended the Maryland Constitution so that after November 15, 2008, the General Assembly may only authorize additional forms or expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election.

Wagering on a contest, event, game, or match between individuals or teams sponsored by a professional league or association or hosted by a college or university is illegal in Maryland.

Chapter 346 of 2012 exempts a specified “fantasy competition” from prohibitions against betting, wagering, and gambling in State law. The law defines “fantasy competition” as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals.

Chapter 338 of 2019 authorizes an organization conducting an “eSports competition” to offer prize money or merchandise to winning participants in the eSports competition. An eSports competition is a competition involving video games, including first-person shooters, real-time strategy games, and multiplayer online battle arenas in which players compete against each other and the players’ skills generally determine the results.

Education Trust Fund

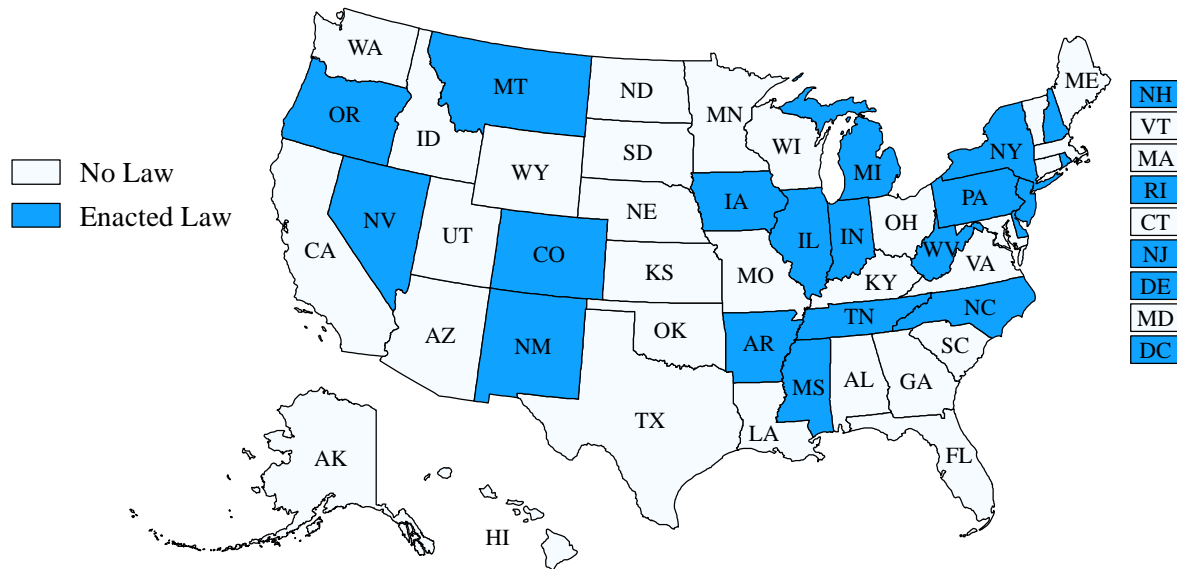
Established during the 2007 special session, the Education Trust Fund (ETF) is a nonlapsing, special fund supported by gaming revenues that has been used to provide funding for formulas and programs under the Bridge to Excellence in Public Schools Act. Chapter 357 of 2018, a constitutional amendment approved by the voters at the 2018 general election, requires the Governor to provide supplemental State funding for public education through the use of commercial gaming revenues that are dedicated to public education in the State budget beginning in fiscal 2020. Supplemental funding must total at least \$250 million in fiscal 2021, growing to 100% of all gaming revenues dedicated to ETF by fiscal 2023. This funding must be dedicated to public education as supplemental education or school construction funding, in addition to the State funding provided through the Bridge to Excellence in Public Schools Act.

Background: The federal Professional Amateur Sports Protection Act of 1992 (PASPA) made betting on sports in most states illegal under federal law. New Jersey challenged the PASPA in the U.S. Supreme Court, arguing in *Murphy v. National Collegiate Athletic Association* that the federal ban violated the U.S. Constitution by commandeering the states into enforcing federal law. In May 2018, the U.S. Supreme Court ruled in *Murphy* that the PASPA was unconstitutional, leaving states free to authorize sports betting.

On June 5, 2018, less than one month after the PASPA was struck down by the U.S. Supreme Court, Delaware became the first state outside of Nevada to offer single-game sports betting. New Jersey launched single-game sports betting just nine days

later. Since then, there has been a rush of legislative activity in states hoping to capture a new source of gaming revenue. **Exhibit 1** shows the states that have enacted sports betting laws as of January 2020.

Exhibit 1
States with Enacted Sports Betting Laws



Source: Department of Legislative Services

Along with Nevada, sports betting operations are now underway in 13 of those states as of January 2020. **Exhibit 2** shows how the states recent to sports betting have structured their operations and the revenues generated since going live. Additionally, six other states (Colorado, Illinois, Michigan, Montana, North Carolina, and Tennessee) and the District of Columbia are expected to launch sports betting operations in 2020. The majority of states with sports betting laws authorize online sports betting.

Exhibit 2
Post-PASPA Sports Betting Active States and Revenues

State	First Bet Placed	Tax Rate	Fees	Retail Sportsbooks Type / #	Mobile Betting	Sportsbook Data (Launch Date through December 2019)
DE	6/5/18	59.8% (includes a 9.8% share for race purses)	No separate sportsbook licensing fee required	Racetracks (3)	No	Handle – \$189,620,117 Revenue ¹ – \$21,407,621 State Share – \$10,703,827
NJ	6/14/18	8.5% onsite betting 13% online betting	\$100,000 application fee	Casinos and racetracks (10)	Yes	Handle – \$5,837,241,986 Revenue – \$393,503,018 State Share – \$46,802,942
MS	8/1/18	12% (includes a 4% local share)	Not specified	Landbased and riverboat casinos (23)	No	Handle – \$477,236,811 Revenue – \$56,148,121 State Share – \$6,737,774
WV	8/30/18	10%	\$100,000 application fee	Racetracks (4) and the private club at Greenbriar	Yes	Handle – \$282,110,247 Revenue – \$26,265,588 State Share – \$2,626,559
NM²	10/16/18	Not specified	Not specified	Tribal casinos (2)	No	Not currently available
PA	11/17/18	36% (includes a 2% local share)	\$10,000,000 application fee	Casinos and racetracks (12)	Yes	Handle – \$1,506,982,035 Revenue – \$86,664,503 State Share – \$31,199,221
RI	11/26/18	51%	No separate sportsbook licensing fee required	Casinos (2)	Yes	Handle – \$221,911,697 Revenue – \$16,265,850 State Share – \$8,749,801
AR	7/1/19	First \$150,000,000 at 13%, any additional revenues at 20%	Application fee not to exceed \$250,000	Racetracks (2) and proposed casinos (2)	No	Not currently available
NY	7/6/19	10%	No separate sportsbook licensing fee required	Casinos (4)	No	Handle – Not currently available Revenue – \$7,783,424 State Share – \$778,342

<u>State</u>	<u>First Bet Placed</u>	<u>Tax Rate</u>	<u>Fees</u>	<u>Retail Sportsbooks Type / #</u>	<u>Mobile Betting</u>	<u>Sportsbook Data (Launch Date through December 2019)</u>
IA	8/15/19	6.75%	\$45,000 application fee	Casinos and racetracks (18)	Yes	Handle – \$212,225,573 Revenue – \$19,283,573 State Share – \$1,301,641
OR	8/27/19	Not available	Not specified	Tribal casinos ³	Yes	Not currently available
IN	9/1/19	9.5%	\$100,000 application fee	Casinos and racetracks (16)	Yes	Handle – \$435,998,649 Revenue – \$41,385,968 State Share – \$3,931,665
NH	12/30/19	Negotiable	Not specified	Lottery (5)	Yes	Not currently available

AR: Arkansas

DE: Delaware

IA: Iowa

IN: Indiana

MS: Mississippi

NH: New Hampshire

NJ: New Jersey

NM: New Mexico

NY: New York

OR: Oregon

PA: Pennsylvania

PASPA: Professional Amateur Sports Protection Act

RI: Rhode Island

WV: West Virginia

¹ Vendor fees are subtracted from the handle before the distribution of the revenue.

² In New Mexico, two of that state’s nine tribal casinos offer sports betting under the existing tribal gaming compact, although the activity remains unsanctioned under state law.

³ Currently, only 1 of Oregon’s 10 tribal casinos offers sports betting. Oregon has a lottery-operated online app.

Note: Handle is the total amount of all wagers. Revenue (or gross gaming revenue) is the handle minus total win.

Source: Department of Legislative Services

The Department of Legislative Services (DLS) notes that retail sports betting revenues in Delaware, New Jersey, Pennsylvania, and West Virginia average approximately 2% of those states’ total gaming revenues from video lottery terminals and table games. Thus, if sports betting revenues in Maryland total 2% of Maryland’s gaming revenues, gross revenues after payouts to bettors could increase by \$36.5 million in fiscal 2022. Assuming that the current table games tax rate of 20% is applied, the State share of gross revenues in fiscal 2022 would be \$7.3 million. However, authorizing mobile sports betting could significantly increase revenues. Based on mobile sports betting revenues in surrounding states, DLS estimates that gross revenues could increase by \$91.1 million in fiscal 2022, totaling 5% of Maryland’s gaming revenues, if sports betting is authorized both online and

at Maryland casinos and racetracks. Assuming a 20% tax rate, the State share of revenues in fiscal 2022 would be \$18.2 million.

Additional Information

Prior Introductions: Similar bills, HB 963 of 2019 and HB 739 of 2019, received a hearing in the House Ways and Means Committee, but no further action was taken. The cross file of HB 739, SB 470, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. HB 1014 of 2018, a similar bill as amended by the House Ways and Means Committee, passed the House and received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Comptroller's Office; Maryland State Board of Elections; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

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an/jrb

Analysis by: Heather N. MacDonagh

Direct Inquiries to:
(410) 946-5510
(301) 970-5510