

# STATE OF NEW YORK

8658--A

## IN ASSEMBLY

January 10, 2022

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Racing and Wagering -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the racing, pari-mutuel wagering and breeding law, in relation to the definition of wager and the licensing of mobile sports wagering operators

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (w) of subdivision 1 of section 1367 of the  
2 racing, pari-mutuel wagering and breeding law, as amended by section 3  
3 of part Y of chapter 59 of the laws of 2021, is amended to read as  
4 follows:

5 (w) "Sports wager" means cash [~~or~~], cash equivalent or thing of value  
6 that is paid by an authorized sports bettor to a casino or a mobile  
7 sports wagering licensee to participate in sports wagering offered by  
8 such casino or mobile sports wagering licensee;

9 § 2. Paragraph (y) of subdivision 1 of section 1367 of the racing,  
10 pari-mutuel wagering and breeding law, as amended by section 3 of part Y  
11 of chapter 59 of the laws of 2021, is amended to read as follows:

12 (y) "Sports wagering gross revenue" means: [~~+~~] the amount equal to  
13 the total of all sports wagers not attributable to prohibited sports  
14 events that a casino or mobile sports wagering licensee collects from  
15 all sports bettors, excluding wagers placed with promotional wagering  
16 credits or other things of value, less the total of all sums not attrib-  
17 utable to prohibited sports events paid out as winnings to all sports  
18 bettors, however, that the total of all sums paid out as winnings to  
19 sports bettors shall not include the cash equivalent value of any  
20 merchandise or thing of value awarded as a prize, and less all excise  
21 taxes on sports wagers not attributable to prohibited sports events paid  
22 pursuant to federal law;

23 § 3. Subdivision 7 of section 1367 of the racing, pari-mutuel wagering  
24 and breeding law, as added by section 3 of part Y of chapter 59 of the  
25 laws of 2021, is amended to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 7. For the privilege of conducting sports wagering in the state, casi-  
2 nos shall pay a tax equivalent to ten percent of their sports wagering  
3 gross gaming revenue, excluding sports wagering gross gaming revenue  
4 attributed to mobile sports wagering offered pursuant to section thir-  
5 teen hundred sixty-seven-a of this title. Platform providers shall pay a  
6 tax constituting a certain percentage of the sports wagering gross  
7 gaming revenue attributed to mobile sports wagering offered through such  
8 platform provider's platform pursuant to section thirteen hundred  
9 sixty-seven-a of this title; provided however, that such percentage  
10 shall be determined [~~pursuant to a competitive bidding process conducted~~  
11 ~~by the commission~~] as outlined in subdivision seven of section thirteen  
12 hundred sixty-seven-a of this title; and provided further, that such  
13 percentage shall be no lower than twelve percent. [~~When awarding a~~  
14 ~~license pursuant to section thirteen hundred sixty-seven-a of this~~  
15 ~~title, the commission may set graduated tax rates; provided however,~~  
16 ~~that any such tax rates may not be lower than the minimum rate estab-~~  
17 ~~lished in this subdivision.~~] This tax shall be in lieu of all other  
18 state and local taxes and fees imposed on the operation of, or the  
19 proceeds from, the operation of sports wagering, except as provided in  
20 this section and section thirteen hundred sixty-seven-a of this title.

21 § 4. Subdivision 8 of section 1367 of the racing, pari-mutuel wagering  
22 and breeding law, as added by section 3 of part Y of chapter 59 of the  
23 laws of 2021, is amended to read as follows:

24 8. Notwithstanding section thirteen hundred fifty-one of this article,  
25 mobile sports wagering gross gaming revenue and tax revenue shall be  
26 excluded from sports wagering gross gaming revenue and tax revenue.  
27 Mobile sports wagering tax revenue shall be separately maintained and  
28 returned to the state for deposit into the state lottery fund for educa-  
29 tion aid except as otherwise provided in this subdivision. Any interest  
30 and penalties imposed by the commission relating to those taxes, all  
31 penalties levied and collected by the commission, and the appropriate  
32 funds, cash or prizes forfeited from sports wagering shall be deposited  
33 into the state lottery fund for education. In the first fiscal year in  
34 which mobile sports wagering licensees commence operations and accept  
35 mobile sports wagers pursuant to this section, the commission shall pay  
36 into the commercial gaming fund one percent of the state tax imposed on  
37 mobile sports wagering by this section to be distributed for problem  
38 gambling education and treatment purposes pursuant to paragraph a of  
39 subdivision four of section ninety-seven-nnnn of the state finance law;  
40 provided however, that such amount shall be equal to six million dollars  
41 for each fiscal year thereafter. In the first fiscal year in which  
42 mobile sports wagering licensees commence operations and accept mobile  
43 sports wagers pursuant to this section, the commission shall pay one  
44 percent of the state tax imposed on mobile sports wagering by this  
45 section to the general fund, a program to be administered by the office  
46 of children and family services for a statewide youth sports activities  
47 and education grant program for the purpose of providing annual awards  
48 to sports programs for underserved youth under the age of eighteen  
49 years; provided however, that such amount shall be equal to five million  
50 dollars for each fiscal year thereafter. The commission shall require at  
51 least monthly deposits by a platform provider of any payments pursuant  
52 to subdivision seven of this section, at such times, under such condi-  
53 tions, and in such depositories as shall be prescribed by the state  
54 comptroller. In a month when the amount of sports wagering gross reven-  
55 ue for a platform provider is a negative number, such platform provider  
56 may carry over the negative amount to the return filed for the subse-

1 quent month. However, no amount shall be carried over for a period of  
2 more than twelve months after the month in which the amount carried over  
3 was originally due. The deposits shall be deposited to the credit of the  
4 state commercial gaming revenue fund. The commission shall require a  
5 monthly report and reconciliation statement to be filed with it on or  
6 before the tenth day of each month, with respect to gross revenues and  
7 deposits received and made, respectively, during the preceding month.

8 § 5. Subdivision 7 of section 1367-a of the racing, pari-mutuel wager-  
9 ing and breeding law, as added by section 4 of part Y of chapter 59 of  
10 the laws of 2021, is amended and two new subdivisions 8 and 9 are added  
11 to read as follows:

12 7. A platform provider may be licensed by the commission only after  
13 having been selected for potential licensure by the commission following  
14 a competitive bidding process in which the commission shall issue a  
15 request for applications no later than July first, two thousand twenty-  
16 one; provided however, that the deadline for submission of applications  
17 shall be no later than thirty days after the date upon which the commis-  
18 sion issues such request for applications.

19 (a) The commission shall select platform providers based upon the  
20 criteria set forth in this section no later than one hundred fifty days,  
21 to the extent practicable, after the final application is received. The  
22 commission may disqualify applicants from licensure consideration if the  
23 applicant or the mobile sports wagering operator or operators included  
24 in their bid have not satisfied provision of required application infor-  
25 mation, fail to meet any platform provider and mobile sports wagering  
26 operator eligibility criteria established pursuant to the request for  
27 applications, or are deemed by the commission to have not satisfied the  
28 criteria pursuant to subdivision five of this section.

29 (a-1) The commission shall publish on its website the criteria that  
30 will be used to score applications based upon the criteria set forth in  
31 paragraph (c) of this subdivision; provided however, that such scoring  
32 methodology shall award additional points to an applicant that has  
33 entered into an agreement that includes revenue sharing related to such  
34 mobile sports wagering with compacted Native American tribe(s) or  
35 nation(s).

36 (b) The commission shall determine the form of application for  
37 bidders, which shall require, at a minimum, the following information:

38 (i) Different scenarios for the number of platform providers and  
39 number of mobile sports wagering operators licensed by the commission.  
40 For each scenario, this shall include estimates of mobile sports wager-  
41 ing gross gaming revenue and the bases for such estimates [~~7, the percent-~~  
42 ~~age of gross revenue from mobile sports wagering the applicant will pay~~  
43 ~~to the state for the privilege of licensure if chosen], and the percent-~~  
44 age of overall mobile sports wagering gross gaming revenue estimated to  
45 be generated;

46 (ii) The number of mobile sports wagering operators the applicant will  
47 host on its mobile sports wagering platform, if the applicant is  
48 licensed as a platform provider;

49 (iii) A description of how the applicant will use technology to ensure  
50 all bettors are physically within approved locations within the state,  
51 that any wager is accepted through equipment physically located at a  
52 licensed gaming facility and that necessary safeguards against abuses  
53 and addictions are in place;

54 (iv) The applicant and any associated operators such applicant  
55 proposes in its application possess the qualifications, capabilities and  
56 experience to provide a mobile sports wagering platform;

1 (v) A list of all jurisdictions where the applicant and parent compa-  
2 ny, and mobile sports wagering operator or operators and parent company  
3 or companies have been licensed or otherwise authorized by contract or  
4 otherwise to conduct sports wagering operations. This shall include the  
5 applicant and its mobile sports wagering operator or operators' experi-  
6 ence in such other markets;

7 (vi) Player acquisition model, advertising and affiliate programs and  
8 marketing budget, including details on how the applicant and its mobile  
9 sports wagering operator or operators will convert customers from wager-  
10 ing through illegal channels to wagering legally in the state;

11 (vii) Timeframe to implement mobile sports wagering from award of  
12 license;

13 (viii) The applicant and mobile sports wagering operator or operators'  
14 capacity to bring authorized sports bettors into their mobile sports  
15 wagering platform; and

16 (ix) Integrity monitoring and reporting including any current affil-  
17 iations related to integrity monitoring.

18 (c) In determining whether an applicant shall be eligible for a plat-  
19 form provider license, the commission shall evaluate how each applicant  
20 proposes to maximize sustainable, long-term revenue for the state by  
21 evaluating the following factors:

22 (i) A market analysis detailing the benefits of the applicant's bid as  
23 it relates to maximizing revenue to the state;

24 (ii) Estimates of mobile sports wagering gross gaming revenue gener-  
25 ated by the applicant under different scenarios;

26 (iii) The percentage of mobile sports wagering gross gaming revenue to  
27 be paid to the state under different scenarios pursuant to paragraph (d)  
28 of this subdivision;

29 (iv) The potential market share of the mobile sports wagering operator  
30 or operators under different scenarios;

31 (v) Advertising and promotional plans of the mobile sports wagering  
32 operator or operators;

33 (vi) Past experience and expertise in the market of the applicant and  
34 any mobile sports wagering operator or operators which are part of such  
35 applicant's application;

36 (vii) The applicant's capacity to rapidly and effectively bring  
37 authorized sports bettors into its platform;

38 (viii) A demonstration of how and to what degree the applicant fosters  
39 racial, ethnic, and gender diversity in its workforce;

40 (ix) Timeframe to implement mobile sports wagering from award of  
41 license;

42 (x) Any other factors that could impact the integrity, sustainability  
43 or safety of the mobile sports wagering system; and

44 (xi) Any other factors that could impact revenue to the state.

45 (d) The commission shall award a license to [~~each of the two~~] the  
46 highest scoring platform providers that submit applications; provided  
47 however, that such awards shall require that [~~both~~] winning platform  
48 providers pay the same tax rate; and provided further, that the commis-  
49 sion shall require that no less than [~~four~~] fourteen mobile sports  
50 wagering operators will be operating in the state by January thirty-  
51 first, two thousand twenty-three and sixteen by January thirty-  
52 first, two thousand twenty-four. In the event that the commission fails to  
53 approve the required number of operators by these deadlines, it shall  
54 not interfere with the ability of previously licensed platforms or oper-  
55 ators from continuing to operate in the state. The commission may award  
56 additional licenses if it determines that such additional awards are in

1 the best interests of the state[~~, provided however, that any additional~~  
2 ~~platform providers awarded licenses must also agree to pay the same tax~~  
3 ~~rate as those platform providers that were initially awarded licenses by~~  
4 ~~the commission]. The award of any such license shall require each appli-~~  
5 ~~cant to remit the [highest] percentage of gross gaming revenue from~~  
6 ~~mobile sports wagering [contained in an applicant's bid selected by the~~  
7 ~~commission considered for licensure. A qualified applicant shall be~~  
8 ~~afforded the ability to revise its bid in any such manner in order for~~  
9 ~~such bid to meet the percentage of gross gaming revenue from mobile~~  
10 ~~sports wagering as required by the commission for license award,~~  
11 ~~provided that the bid does not incorporate any additional operators not~~  
12 ~~already included in the bid, and provided however that it is not deter-~~  
13 ~~mined by the commission that the revised bid no longer meets all~~  
14 ~~requirements and criteria established pursuant to this section and the~~  
15 ~~request for applications. Any applicant that does not revise its bid to~~  
16 ~~meet the percentage of gross gaming revenue from mobile sports wagering~~  
17 ~~required by the commission for license award shall not be awarded a~~  
18 ~~license.] based on the number of licensed mobile sports wagering opera-~~  
19 ~~tors as listed below:~~

- 20 4-5 operators.....sixty-four percent (64%)
- 21 6 operators.....sixty-two percent (62%)
- 22 7 operators.....sixty percent (60%)
- 23 8 operators.....fifty-eight percent (58%)
- 24 9 operators.....fifty-one percent (51%)
- 25 10-12 operators.....fifty percent (50%)
- 26 13-14 operators.....thirty-five percent (35%)
- 27 15 or more operators.....twenty-five percent (25%)

28 8. Pursuant to subdivision seven of this section, the commission shall  
29 award no fewer than fourteen mobile sports wagering licenses by January  
30 thirty-first, two thousand twenty-three and no fewer than sixteen by  
31 January thirty-first, two thousand twenty-four.

32 (a) The commission shall accept applications for mobile sports wager-  
33 ing licenses issued pursuant to this subdivision at the earlier of thir-  
34 ty days after all mobile sports wagering licensees awarded a license  
35 pursuant to subdivision seven of this section commence operations or  
36 September first, two thousand twenty-two.

37 (b) Applicants that participated in the request for proposal issued  
38 pursuant to subdivision seven of this section and not awarded a mobile  
39 sports wagering license shall automatically be eligible to reapply for  
40 consideration pursuant to this subdivision. The commission shall only  
41 accept such applications electronically and will give priority to the  
42 review and scoring of reapplying applicants.

43 (i) Nothing herein shall prohibit a platform provider that did not  
44 previously respond to the request for application from applying. New  
45 applicants shall submit applications demonstrating the criteria outlined  
46 in paragraphs (a-1), (b), and (c) of subdivision seven of this section.

47 (ii) Any applicant for a mobile sports wagering license pursuant to  
48 this subdivision shall satisfy any requirements in the request for  
49 application concerning possessing qualifications, capabilities and expe-  
50 rience to provide a mobile sports wagering platform, pursuant to subpar-  
51 agraphs (iv) and (v) of paragraph (b) and subparagraph (vi) of paragraph  
52 (c) of subdivision seven of this section, if there is an entity  
53 comprised of no more than six individuals qualified as members of a  
54 minority group as defined by subdivision eight of section three hundred  
55 ten of the executive law with a direct or indirect economic interest of  
56 at least five percent in the applicant. The commission shall advance for

1 licensure at least two applicants having such qualified minority invest-  
2 ment.

3 (c) The commission shall make determinations to award a license or  
4 disqualify the applicant on a rolling basis to expedite issuance of  
5 additional licenses and maximize revenue to the state.

6 (d) As a condition of licensure pursuant to this subdivision, the  
7 commission shall require that each platform provider authorized to  
8 conduct mobile sports wagering pay a one-time fee of twenty-five million  
9 dollars and each operator authorized to conduct mobile sports wagering  
10 on a platform licensed pursuant to subdivision seven of this section  
11 shall pay a fee of fifty million dollars. Such fee shall be paid within  
12 thirty days of commission approval prior to license issuance and depos-  
13 ited into the state lottery fund for education aid.

14 9. (a) An authorized sports bettor may make use of promotional wager-  
15 ing credits for purposes of placing a sports wager. Promotional wagering  
16 credit may include, but is not limited to, free plays, deposit matches  
17 and any other bonus that a mobile sports wagering operator offers or  
18 gives to a patron as an incentive.

19 (b) A mobile sports wagering operator may exclude sports wagers that  
20 were placed using promotional wagering credit from its sports wagering  
21 gross revenue.

22 § 6. This act shall take effect immediately.