

# HOUSE . . . . . No. 70

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## The Commonwealth of Massachusetts

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*January 27, 2021*

To the Honorable Senate and House of Representatives,

On May 14, 2018, the Supreme Court of the United States decided in *Murphy v. National Collegiate Athletic Association* that the Professional and Amateur Sports Protection Act (“PASPA”) provision prohibiting state authorization of sports gambling violates the “anticommandeering” principle of the Tenth Amendment to the United States Constitution. As a result, I filed legislation in January 2019 to allow and regulate sports wagering in Massachusetts. At the time, New Jersey and six other states including our neighbor, Rhode Island, had legalized and implemented sports wagering. Now two years later more than twenty states, including our neighbor New Hampshire, have done so.

To allow the Commonwealth to compete with neighboring states and meet growing public demand, I am refiling and submitting for your consideration “An Act Expanding Sports Wagering in the Commonwealth.” This legislation would establish a system for the Massachusetts Gaming Commission (“MGC”) to license and regulate sports wagering in Massachusetts. Existing Category 1 and Category 2 gaming licensees would be permitted to offer in-person sports wagering at on-site sports wagering lounges and would also be able to provide online-based sports wagering either on their own or in partnership with online gaming operators. This legislation would also allow online sports wagering on websites and mobile applications that are not affiliated with a casino.

To protect sports wagering patrons and consumers, the legislation proposes to utilize the existing Massachusetts gaming regulatory structure administered by the MGC, including the

licensing process, investigatory and enforcement powers and other protections such as the prohibition against the participation of persons under the age of 21. The legislation also seeks to maintain separation between gambling and amateur and collegiate sports, and between gambling and electronic sports or “eSports.” As a result, the legislation would prohibit wagering on these types of sports events.

The legislation further proposes tax rates for sports wagering and daily fantasy contests, which are currently governed by regulations promulgated by the Massachusetts Attorney General. The bill imposes a tax rate of 10% on in-person sports wagering and a rate of 12.5% for online sports wagering and daily fantasy contests. Regulating this form of gaming in Massachusetts provides an opportunity to implement a structure to safeguard consumers while generating a projected \$35 million in revenue in the upcoming Fiscal Year 2022 that will benefit all 351 cities and towns in the Commonwealth.

Again, I am refiling the legislation that I had previously filed but I am encouraged by the movement that occurred on this subject during the previous legislative session. I know that others may have alternative ideas on the best way to implement and regulate sports wagering in the Commonwealth, and I look forward to working with the Legislature to develop and implement a system that is most beneficial to the residents and consumers of Massachusetts. I believe that there is an opportunity to act early in the current legislative session to prevent the Commonwealth from continuing to face a competitive disadvantage from other states. As a result, I urge your prompt consideration of this legislation.

Respectfully submitted

Charles D. Baker,  
*Governor*

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## The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
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An Act expanding sports wagering in the Commonwealth.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Subclause (ii) of clause Tenth of section 7 of chapter 4 of the General Laws,  
2 as appearing in the 2018 Official Edition, is hereby amended by inserting after the word “game”,  
3 the following words:- or sports pool or online sports pool.

4           SECTION 2. Section 2 of chapter 23K of the General Laws, as so appearing, is hereby  
5 amended, in the definition of “Game”, by inserting at the end thereof the following words:- This  
6 term shall also include sports pools and online sports pools as defined in section 20A.

7           SECTION 3. Said section 2 of said chapter 23K, as so appearing, is hereby further  
8 amended, in the definition of “Gaming establishment”, by inserting after the word “area”, the  
9 first time it appears, the following words:-, a sports wagering lounge as defined in section 20A.

10          SECTION 4. Said section 2 of said chapter 23K, as so appearing, is hereby further  
11 amended, in the definition of “Gaming license”, by inserting at the end thereof, the following  
12 words:- , sports pool or online sports pool as defined in section 20A.

SECTION 5. The first sentence of subsection (a) of section 8 of said chapter 23K, as so appearing, is hereby amended by inserting after the word “licenses”, the first time it appears, the following words:- and sports wagering licenses as defined in section 20A.

SECTION 6. Section 9 of said chapter 23K, as so appearing, is hereby amended by adding the following subsection:-

(c) The commission may waive certain provisions of subsection (a) that it deems inapplicable to the issuance of a sports wagering license as defined in section 20A.

SECTION 7. Said chapter 23K of the General Laws, as so appearing, is hereby further amended by inserting after section 20, the following 6 sections:-

Section 20A. In addition to the definitions set forth in section 2, the following definitions shall apply to sections 20A to 20F, inclusive:-

“Collegiate sport or athletic event”, a sport or athletic event offered, sponsored by, or played in connection with a public or private institution that offers educational services beyond the secondary level;

“Electronic Sports” or “eSports”, a multiplayer video game played competitively for spectators by professionals;

“Online sports pool”, a sports pool operation in which wagers on sports events are made through computers or mobile or interactive devices and accepted at a sports wagering lounge through an online gaming system which is operating pursuant to a sports wagering license issued by the commission pursuant to section 20B;

“Online sports pool operator”, an entity that holds a gaming license or a gaming vendor license as defined in section 2 and that holds a license issued by the commission to operate an online sports pool;

“Operator”, a gaming licensee that has elected to operate a sports pool, either independently or jointly, and any entity with whom a gaming licensee contracts to operate a sports pool or online sports pool, including an online sports pool operator;

“Professional sport or athletic event”, an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event;

“Prohibited sports event”, any amateur sport or athletic event, including any collegiate sport or athletic event or high school sport or athletic event regardless of where the event takes place; and any electronic sports or eSports event;

“Sports event”, any professional sport or athletic event, any Olympic or international sports competition event, or any portion thereof, including, but not limited to, the individual performance statistics of athletes in a sports event or combination of sports events, except “sports event” shall not include a prohibited sports event or a fantasy contest, as defined in section 135 of chapter 219 of the acts of 2016;

“Sports governing body”, a sports organization that has a regulatory, sanctioning or organizing function for a specific sport or athletic event; provided, that this definition shall include but not be limited to a professional sports organization as defined in 28 U.S.C. section 3701(3) and national governing body as defined in 36 U.S.C. section 220501(b)(8);

“Sports pool”, the business of accepting wagers on any sports event by any system or method of wagering, including but not limited to single-game bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play bets, proposition bets, and straight bets;

“Sports wagering license”, a license issued by the commission that permits the licensee to operate a sports pool or online sports pool;

“Sports wagering licensee”, an operator or online sports pool operator who holds a sports wagering license under this chapter; and

“Sports wagering lounge”, an area wherein a licensed sports pool is operated located in a gaming establishment. For the purposes of this chapter, the sports wagering lounge shall be considered part of the gaming area.

Section 20B. (a)The commission shall issue all sports wagering licenses and renewals thereof to gaming licensees. In addition to games permitted under this chapter, a gaming licensee which holds a sports wagering license issued by the commission may operate a sports pool in accordance with the provisions of this chapter and applicable regulations promulgated by the commission. A gaming licensee that holds a sports wagering license may conduct an online sports pool or may authorize an internet sports pool operator that holds a gaming license, sports wagering license or gaming vendor license, to operate an online sports pool on its behalf, provided that the terms of that agreement are approved by the commission. Each sports wagering licensee may provide a limited number of individually branded websites, each of which may have an accompanying mobile application bearing the same brand as the website for an online sports pool; provided that, said websites and mobile applications, in the case of a gaming

licensee, may be in addition to or conjunction with any websites and mobile applications that also offer fantasy contests as defined in section 135 of chapter 219 of the acts of 2016. The commission shall determine the number of individually branded websites and accompanying mobile application that each sports wagering licensee may provide.

(b) An applicant for a sports wagering license shall pay to the commission a nonrefundable application fee of \$100,000 to defray the costs associated with the processing of the application and investigation of the applicant; provided, however, that if the costs of the investigation exceed the initial application fee, the applicant shall pay the additional amount to the commission within 30 days after notification of insufficient fees or the application shall be rejected.

(c) The commission shall determine the minimum licensing fee for the issuance or renewal of a sports wagering license, which shall not be less than \$500,000 for initial issuance, to be paid within 30 days after the award of the license. The commission shall set any renewal fee for such license based on the cost of fees associated with the evaluation of a sports wagering licensee under this chapter which shall be deposited into the Gaming Local Aid Fund established in section 63. Such renewal fee shall be exclusive of any subsequent licensing fees under this section.

(d) (1) No sports wagering license shall be issued by the commission to any applicant unless it has been qualified for licensure by the commission under sections 12 and 16.

(2) No category 1 or category 2 licensee shall be permitted to operate a sports pool or accept wagers via an online sports pool unless a sports wagering lounge is established and has commenced operation in its facility; provided, however, that an applicant for a sports wagering

98 license may petition the commission to commence operation of the sports pool at a temporary  
99 facility or an online sports pool during the pendency of construction of a sports wagering lounge  
100 in its facility. Such temporary facility may include, at the discretion of the commission, the  
101 utilization of designated windows and self-service wagering machines located in the gaming area  
102 or a cashless wagering system pursuant to the provisions of section 29; provided that the  
103 provisions of this clause shall not apply to an online sports pool operator.

104 (3) No sports wagering license shall be issued to any entity that is not qualified under this  
105 chapter.

106 (e) No applicant shall be authorized to operate a sports pool or online sports pool unless it  
107 has produced, to the satisfaction of the commission, information, documentation, and assurances  
108 concerning its financial background and resources, including cash reserves, that are sufficient to  
109 demonstrate that it has the financial stability, integrity, and responsibility to operate a sports pool  
110 or online sports pool.

111 (f) (1) No online sports pool shall be opened to the public, and no sports wagering, except  
112 for test purposes, may be conducted therein, until an online sports pool operator receives from  
113 the commission a permit to conduct an online sports pool.

114 (2) No applicant for an online sports wagering license shall be approved unless it  
115 provides a system of verification for users on its online sports pool website or mobile  
116 application.

117 (g) No later than 5 years after the date of the issuance of a sports wagering license and  
118 every 5 years thereafter or within such lesser periods as the commission may direct, an operator  
119 or online sports pool operator shall submit to the commission such documentation or information



as the commission may by regulation require, to demonstrate to the satisfaction of the commission that the operator or online sports pool operator continues to meet the requirements and regulations of this chapter.

(h) Sports wagering licensees and operators may provide promotional credits, incentives, bonuses, complimentaries, or similar benefits designed to induce sports betters to wager. The commission shall establish by regulation, standards governing the provision of these measures.

(i) The server or other equipment used by a gaming licensee, operator or sports pool operator, to accept wagers at a sports pool or online sports pool shall conform to requirements which the commission may impose by regulation.

Section 20C. (a) The operator or online sports pool operator shall establish or display the odds at which wagers may be placed on sports events.

(b) An operator shall accept wagers on sports events only from persons physically present in the sports wagering lounge or through self-service wagering machines located in the gaming area.

(c) An online sports pool operator shall accept wagers through an online sports pool.

(d) An operator or online sports pool operator shall not accept wagers on prohibited sports events.

Section 20D. (a) The following persons shall not be permitted to (1) have any ownership interest in, control of, or otherwise be employed by an operator, online sports pool operator, a sports wagering licensee, a gaming establishment or gaming licensee in which a sports wagering lounge is located or (2) place a wager on a sports event that is overseen by that person's sports

governing body based on publicly available information: (i) Any person who is an athlete, coach, referee, or director of a sports governing body or any of its member teams; (ii) a sports governing body or any of its member teams; (iii) a player or a referee personnel member, in or on any sports event overseen by that person's sports governing body based on publicly available information; (iv) a person who holds a position of authority or influence sufficient to exert influence over the participants in a sporting contest, including but not limited to coaches, managers, handlers, and athletic trainers; (v) a person with access to certain types of exclusive information on any sports event overseen by that person's sports governing body based on publicly available information; or (vi) a person identified by any lists provided by the sports governing body to the commission.

(b) Any employee of a sports governing body or its member teams who is not prohibited from wagering on a sports event under subsection (a) shall provide notice to the commission prior to placing a wager on a sports event.

(c) The direct or indirect legal or beneficial owner of 5 per cent or greater of a sports governing body or any of its member teams shall not place or accept any wager on a sports event in which any member team of that sports governing body participates.

(d) The prohibition set forth in subsection (a) shall not apply to (i) a person owning less than 5 per cent of the common stock of the applicant company, directly or indirectly, or a holding, intermediary or subsidiary company as defined in section 2 of a specific sports governing body member team; and (ii) a person owning less than 5 per cent of the common stock of the applicant company, directly or indirectly, or a holding, intermediary or subsidiary company as defined in said section 2 in a gaming establishment or gaming licensee.

Section 20E. (a) An operator shall adopt procedures to prevent persons from wagering on sports events who are prohibited from placing sports wagers. An operator shall not accept wagers from any person; (i) whose identity is known to the operator and whose name appears on the exclusion list maintained by the commission pursuant to section 45; (ii) who is the operator, director, officer, owner, or employee of the operator or any relative thereof living in the same household as the operator; (iii) who has access to nonpublic confidential information held by the operator; or (iv) who is an agent or proxy for any other person.

(b) An operator shall adopt procedures to be approved by the commission to obtain personally identifiable information from any individual who places any single wager in an amount of \$10,000 or greater on a sports event while physically present in a gaming establishment.

(c) A sports wagering licensee may contract with a gaming vendor to conduct that operation, in accordance with regulations promulgated by the commission. The gaming vendor shall obtain a gaming vendor license prior to the execution of any such contract and in accordance with the regulations promulgated by the commission.

(d) An operator shall promptly report to the bureau: any criminal or disciplinary proceedings commenced against the operator or its employees in connection with the operations of the sports pool or online sports pool; any abnormal betting activity or patterns that may indicate a concern about the integrity of a sports event or events; any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including but not limited to match fixing; and suspicious or illegal wagering activities, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal

activity, use of agents to place wagers, or use of false identification. The bureau is authorized to share any information under this section with any law enforcement entity, team, sports governing body, or regulatory agency the bureau deems appropriate.

(e) An operator shall maintain records of sports wagering operations in accordance with regulations promulgated by the commission.

(f) A sports wagering licensee may, in addition to having a sports wagering lounge, conduct wagering on authorized sports events through one or more kiosks or self-service wagering stations located within its facility. Such self-service wagering stations located at a casino may offer any game authorized under regulations promulgated by the commission.

(g) (1) All wagers on sports events authorized under this chapter shall be initiated, received and otherwise made within the commonwealth unless otherwise determined by the commission in accordance with applicable federal and state laws. Consistent with the Unlawful Internet Gambling Enforcement Act of 2006 (31 U.S.C. s.5361 et seq.), the intermediate routing of electronic data relating to a lawful intrastate wager authorized under this provision shall not determine the location or locations in which such wager is initiated, received or otherwise made.

(2) Notwithstanding the provisions of clause (1) of this subsection, wagers may be accepted thereunder or pooled with wagers from persons who are not physically present in the commonwealth if the commission determines that such wagering is not inconsistent with federal law or the law of the jurisdiction, including any foreign nation, in which any such person is located, or such wagering is conducted pursuant to a reciprocal agreement to which the commonwealth is a party that is not inconsistent with federal law.

(h) (1) Applicants for and holders of a sports wagering and online sports wagering license shall be required to disclose the identity of the following: each board appointed officer of the corporation; each director of the corporation; each person who directly holds any voting or controlling interest of 5 percent or more of the securities issued by such applicant or holder; each person who directly holds any non-voting or passive ownership interest of 25 percent or more of the securities issued by such applicant or holder; and each holding or intermediary company of an applicant for or holder of an operator.

(2) As to each holding, intermediary and subsidiary company of an applicant for or holder of a sports wagering license, such applicants and holders shall be required to establish and maintain the qualifications of the following: each board appointed officer of the corporation; each director of the corporation; each person who directly holds any voting or controlling interest of 5 percent or more of the securities issued by such applicant or holder; and each person who directly holds any non-voting or passive ownership interest of 25 percent or more in such holding or intermediary company.

(i) (1) All persons employed directly in wagering-related activities conducted within a gaming establishment in a sports wagering lounge or an online sports pool shall be licensed as a key gaming employee or a gaming employee or so designated by the commission. All other employees who are working in the sports wagering lounge or an online sports pool shall register with the commission as a gaming service employee.

(2) Each operator shall designate one or more gaming key employees who shall be responsible for the operation of the sports pool or online sports pool. At least one such gaming key employee shall be in the gaming establishment whenever sports wagering is conducted.

(j) Except as otherwise provided by this chapter, the commission shall have the authority to regulate sports pools, online sports pools, and the conduct of sports wagering under this chapter to the same extent that the commission regulates gaming.

(k) The commission, shall promulgate regulations necessary to carry out the provisions of sections 20B through 20F, inclusive, including but not limited to, regulations governing the:

(1) number of individually branded websites and accompanying mobile application that each sports wagering licensee may provide;

(2) amount of cash reserves to be maintained by operators to cover winning wagers;

(3) acceptance of wagers on a series of sports events;

(4) maximum wagers which may be accepted by an operator from any one person on any one sports event;

(5) type of wagering tickets which may be used;

(6) method of issuing tickets;

(7) method of accounting to be used by operators;

(8) types of records which shall be kept;

(9) use of credit and checks by patrons;

(10) a cashless wagering system for sports wagering pursuant to the provisions of section 29;

(11) protections for a person placing a wager, including a verification system for online sports pools, including age and identity verification; and

(12) the display of information on the signs of problem gambling and how to access assistance.

(l) Each operator shall adopt comprehensive house rules governing sports wagering transactions which shall be approved by the commission. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed in the sports wagering lounge, posted on the online sports pool operator's website or mobile application, and included in the terms and conditions of the cashless wagering system pursuant to the provisions of section 29, and copies shall be made readily available as required by the commission.

Section 20F. Nothing in sections 20A through 20F, inclusive, shall limit (1) the tribal-state compact entered into pursuant to section 91 of chapter 194 of the acts of 2011 and as approved by the general court pursuant to chapter 1 of the resolves of 2012, or (2) the attorney general's authority over daily fantasy contests as defined in section 135 of chapter 219 of the acts of 2016 pursuant to the General Laws and regulations promulgated by the attorney general.

SECTION 8. Section 21 of said chapter 23K, as so appearing, is hereby amended by adding, the following subsection:-

(e) The commission may waive certain provisions of this section that it deems inapplicable to the issuance of a sports wagering license as defined in section 20A.

SECTION 9. Section 23 of said chapter 23K, as so appearing, is hereby amended by inserting after the word “licensee”, in line 1, the following words:- and a sports wagering licensee as defined in section 20A.

SECTION 10. Section 37 of said chapter 23K, as so appearing, is hereby amended by inserting after subsection (g), the following subsection:- (h) Whoever willfully violates the provisions of section 20D shall be punished by imprisonment in the house of correction for not more than 6 months or by a fine not to exceed \$10,000, or both, and in the case of a person other than a natural person, by a fine not to exceed \$100,000.

SECTION 11. Said chapter 23K, as so appearing, is hereby further amended by inserting after section 55, the following section:-

Section 55A.(a) (1) The sums received by a sports wagering licensee from sports wagering, all as defined in section 20A, less only the total of all sums actually paid out as winnings to patrons, shall not be taxed as gross gaming revenue as defined in section 2 but shall be subject to a tax of 10 per cent.

(2) The sums received from an online sports wagering licensee on sports events, both as defined in section 20A, less only the total of all sums actually paid out as winnings, shall be subject to a tax of 12.5 per cent, which shall be paid to the Gaming Local Aid Fund established in section 63.

(3)The cash equivalent value of any merchandise or thing of value included in a jackpot or payout shall not be included in the total of all sums paid out as winnings for purposes of determining revenue under this subsection.



(b) The operator of fantasy contests as defined in section 135 of chapter 219 of the acts of 2016 shall pay a tax of 12.5 per cent, except that sums received from a fantasy contest, less only the total of all sums actually paid out as winnings, and shall be remitted to the commission no less frequently than monthly by the operator to be paid to the Gaming Local Aid Fund established in section 63.

SECTION 12. Subsection (e) of section 56 of said chapter 23K, as so appearing, is hereby amended by inserting after the first sentence, the following sentence:- The commission shall also assess an annual fee of \$1,000,000 in shares to be determined by the commission against each sports wagering licensee that is not a category 1 or category 2 gaming licensee.

SECTION 13. Subsection (2) of section 71 of said chapter 23K, as so appearing, is hereby amended by inserting after clause (vi), the following clause:- (vi  $\frac{1}{2}$ ) an assessment of the impacts on sports wagering on individuals, families, businesses, social institutions and the economy generally.