

# H.127 of 2023 – An act relating to sports wagering



Vermont’s “State Control” Model of Sports Wagering Regulation

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June 14, 2023

# Background of Sports Wagering in the States

- Until 2018, sports wagering was prohibited by the Professional and Amateur Sports Protection Act of 1992 (“PASPA”). Under the nationwide prohibition, only four states were granted exemptions for purposes of their existing sports wagering markets: Delaware, Montana, Nevada, and Oregon.
- In 2018, the Supreme Court of the United States held that PASPA violated the anti-commandeering principle by attempting to control the exercise of state legislative authority. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018).
- Immediately following the decision in *Murphy v. NCAA*, state legislatures and tribal governments began to authorize retail and mobile sports wagering. By 2022, over 30 states and the District of Columbia had established legal sports wagering markets.

# Vermont's Early Steps

- In 2021 Acts and Resolves No. 70, Sec. 6, the General Assembly directed the Office of Legislative Counsel and the Joint Fiscal Office to perform comprehensive research on the sports wagering laws, regulatory models, and tax systems of every state with a regulated sports wagering market.
- In 2022 Acts and Resolves No. 183, Sec. 55, the General Assembly established the Sports Betting Study Committee and directed the Committee to digest the OLC/JFO study and return with proposals for legislative action.
- The Sports Betting Study Committee held thirteen meetings and issued a report with six primary findings. The Committee determined that the State should:
  - legalize sports wagering and establish a State-controlled market;
  - grant the Department of Liquor and Lottery the administrative authority over sports wagering;
  - ensure that the administrative agencies have sufficient authority to respond to the rapidly changing market;
  - Legalize only mobile and online sports wagering;
  - establish a revenue share through the competitive bidding process; and
  - adopt comprehensive responsible gaming measures.

# What is State Control?

- The “state control” model is not dissimilar from other lottery systems and has 3 notable features:
  - The state has sole authority to offer sports wagering. This could be through a state-run lottery system (Delaware, Montana, Oregon) or through exclusive franchises offered to third-party contractors (New Hampshire, New York, Connecticut).
  - The state collects a revenue share through its operator agents.
  - The regulatory agency plays a dual role of regulator and market actor. The state uses both its regulatory authority and its franchise contracts to monitor and enforce compliance. The regulatory agency also plays an active role in determining wagering categories, approving events, and authorizing marketing plans.

# H.127 – What is sports wagering?

- “Sports wagering” is wagering on sports events, portions of sports events, or the individual statistics of athletes participating in a sports event. 31 V.S.A. § 1301(15).
- “Sports events” mean any sport or athletic event in which two or more persons participate; horse racing; or equestrian events. “Sports events” does not include high school sports, events involving Vermont-based colleges or universities (except tournaments), or any event in which the majority of participants are under 18. 31 V.S.A. § 1301(10) and (12).
- Any event or category of event must be approved by DLL before an operator may accept wagers on that event. 31 V.S.A. § 1302(e).
- H.127 authorizes DLL to contract with operators to offer sports wagering through “a mobile sports wagering platform.” H.127 does not authorize retail sports wagering.

# H.127 – How will the State operate a sportsbook?

- H.127 authorizes DLL to operate its sportsbook through operator agents. DLL must select no fewer than 2 or more than 6 operators through a competitive bidding process. The Department is required to adopt procedures governing the competitive bid and selection of operators. 31 V.S.A. §§ 1302(b) and 1303.
- At minimum, DLL must consider the following when selecting operators: the estimated gross revenue generated by the applicant and the proposed revenue share to the state; the number of “skins” used by the operator; responsible gaming plans; the jurisdictions where the operator currently runs a sportsbook; player acquisition models and marketing strategies; speed to market; integrity monitoring systems; plan for maximization of sustainable revenue to the State; and criminal background. 31 V.S.A. § 1320.
- DLL is also required to adopt procedures that govern minimum standards for nearly every component of the mobile sports wagering operation, including system security, records retention, minimum internal controls, accounting and auditing standards, and promotional play standards. 31 V.S.A. § 1303(b).

# H.127 – Contract Requirements

- H.127 contains two express requirements for the contract with any selected operator:
  - A prohibition on the use of sports wagering advertisements or branding on products sold in Vermont and intended primarily for persons under 21.
  - An advertising plan, which must include strategies to limit advertising aimed at persons under 21. 31 V.S.A. § 1302(g).
- However, DLL may include provisions that apply its duties to the operators:
  - Age and identity verification;
  - Geofencing and location services;
  - Wager limits;
  - Statewide voluntary exclusion programs; and
  - Security mechanisms for personal and financial information.

# H.127 – What is the revenue share and where does it go?


- H.127 authorizes DLL to negotiate revenue share with each operator selected through the bidding process. The bill sets the minimum revenue share at 20% of the adjusted gross sports wagering revenue. 31 V.S.A. § 1320(d).
- Each operator is also required to pay an operator fee of \$550,000. The renewal term for the fee may be fixed by contract, but in no instance may be applied more than once every three years. 31 V.S.A. § 1320(c).
- The revenue share and fees are deposited in the Sports Wagering Enterprise Fund, which is structured the same as the Liquor Enterprise Fund and the State Lottery Fund. Revenue will likely be moved to the General Fund through a “direct app” in the future (this is how the State’s liquor revenue is credited to the General Fund). 31 V.S.A. § 1304.






## Responsible Gaming – DLL and Operator Duties

- Annually, each operator must submit a responsible gaming plan to DLL and the Department of Mental Health. Each operator is subject to a quintennial review of the operator's plan. 31 V.S.A. § 1340(a).
- Annually, DLL and DMH are required to submit a report concerning the impact of sports wagering on problem gambling in Vermont. 31 V.S.A. § 1340(b).
- Each operator must comply with specific platform requirements that are consistent with the current best practices for addressing problem gambling. 31 V.S.A. § 1340(c).




# Responsible Gaming – Operator Platform Requirements

- Each operator must use a mobile sports wagering platform that:
  - prohibits an individual from establishing multiple accounts or using a credit card;
  - allows players to set deposit, wager, and spending limits;
  - establishes a statewide voluntary exclusion process; and
  - provides responsible gaming information to players and conspicuously displays account information, including periodic pop-up messages and mechanisms to initiate “breaks in play.”



## Responsible Gaming – Advertising Restrictions

- H.127 proposes to prohibit sports wagering advertisements that depict individuals who are under 21 or that target individuals under 21. There are narrow exemptions for the depiction of athletes who are under 21.
- The bill also prohibits Vermont’s postsecondary schools from allowing sports wagering to be advertised on property belonging to the school. *F. ex. “stadium wrapping.”*
- Operators are prohibited from using targeted advertising in the area of Vermont’s postsecondary campuses. 31 V.S.A. § 1340(f).



## Responsible Gaming – The Creation of the “Problem Gambling Program”

- H.127 tasks the Department of Mental Health with establishing a Problem Gambling Program to provide support to problem gambling organizations (education, assistance, treatment, and recovery services); and to promote public awareness concerning gambling addiction and assistance programs.