

Gaming



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New York Ready to Embrace Mobile Sports Betting

On January 6, 2021, Governor Andrew M. Cuomo announced that he would support legislation that would legalize mobile sports wagering in the State of New York. Governor Cuomo proposed that mobile sports wagering would be conducted by a single state-authorized operator (similar to how sports wagering was legalized by New Hampshire in 2020), rather than multiple operators competing for players in the state.

This week, [Senate Bill 1183](#) (“SB 1183”) and [Assembly Bill 1257](#) (“AB 1257”), were filed by Senator Joseph Addabbo and Assemblyman Gary Pretlow, respectively, both of which are now in committee and would amend Section 1367 of the racing, pari-mutuel wagering, and breeding law. Unlike Governor Cuomo’s proposal, each of these bills would permit each licensed casino in the state the opportunity to offer mobile sports wagering under up to two different brands (*i.e.*, “skins”), with a one-time license fee of \$12 million to be paid by each operator for each skin. The bills envision that each of the existing licensed commercial casinos could contract with one or more mobile sports wagering operators or platforms to operate those skins. The proposed legislation indicates that it will take effect immediately upon passage.

There are currently seven casinos in the state: four are commercial casinos located in upstate New York and three are tribal casinos. Thus, 14 total mobile

sports gambling platforms could be permitted. This suggests a relatively limited number of competitors, and fits between the Pennsylvania model where casino operators have only one skin each, and the New Jersey model, which allows three skins each. In New York, the current sports wagering licensees that operate land-based wagering are DraftKings, Caesars, Rush Street Interactive’s BetRivers, Flutter’s FanDuel, Bet365, Kambi, PointsBet, and FoxBet. Thus, if each of these operators obtain mobile licenses, only six additional licenses would be available. In-state sports stadiums and off-track betting facilities could be allowed to have mobile sports gambling, but only if they become an affiliate of one of the licensed casinos and install a casino-operated gambling kiosk.

The proposal would be to tax mobile sports wagering gross revenue at 12 percent plus a 0.2 percent royalty fee on handle. In comparison, land-based sports books are taxed at 8.5 percent of their gross revenue. Official league data would be required if a sportsbook wanted to offer in-play options. Patrons may sign up to create their accounts either in person at a casino, at an affiliate of the casino, on the operator’s Internet website or mobile application. Additionally, the bills would require the New York State Gaming Commission to expand existing integrity programs to ensure any entity operating mobile wagering apps include safeguards against abuses and

gambling addiction. A mobile sports wagering operator who contracts with a casino will be required to obtain a casino vendor enterprise license.

As a condition of registration as an operator in New York State, an Indian Tribe must enter into an agreement with the commission with respect to mobile sports wagering. Also, as a condition of registration as an operator, each casino must agree upon request of an Indian Tribe that has not entered into an agreement for mobile sports wagering with another casino, to provide a site for a mobile sports wagering server and related equipment for the Indian Tribe as directed by the commission.

The push for mobile sports wagering comes at a time when state budgets have been hit hard by the COVID-19 pandemic. New York State, in particular, faces a multi-billion-dollar budget deficit and Governor Cuomo sees mobile sports wagering as one way to help alleviate the financial impacts of the virus.

Governor Cuomo has stated that “At a time when New York faces a[n] historic budget deficit due to the COVID-19 pandemic, the current online sports wagering structure incentivizes a large segment of New York residents to travel out of state to make online sports wagers or continue to patronize black markets.”

A recent industry survey found that nearly 20 percent of New Jersey’s sports wagering revenue comes from New York residents who cross into New Jersey to place wagers.¹ Online sports wagering in New Jersey through the third quarter of 2020 generated \$257,548,003 in revenue and the state netted taxes of \$26,306,000.²

It is important to note that Governor Cuomo has stated that he would prefer a single state-authorized operator overseen by the New York State Lottery Commission, rather than multiple competing operators regulated by the New York State Gaming Commission, as Governor Cuomo believes a single operator functioning under the auspices of the State Lottery would produce greater

tax revenues to the state. Reported estimates of gross gaming revenue from mobile sports wagering offered under a competitive model run from \$800 million to one billion dollars per year; critics believe that a single-vendor model such as Governor Cuomo supports could cut those revenues in half. In announcing Governor Cuomo’s support for a single-vendor model, however, Budget Director Robert Mujica argued that the single-vendor model would push state tax revenues as high as \$500 million per year, as opposed to \$50 million in a competitive model. Which approach will ultimately be adopted in New York will no doubt be the subject of intense negotiation in Albany.

Notably, neither Governor Cuomo’s proposal nor the legislative proposals submitted thus far specifically address the question of amending the New York State Constitution to allow for mobile sports wagering. Various legal commentators have opined that an amendment to the New York State Constitution would be needed to allow state-licensed casinos to offer wagering of any kind to take place if the player is not on casino grounds at the time the wager is placed; while others have concluded that the State Constitution’s provisions allowing the legislature to authorize casino gambling are broad enough to permit mobile wagering taking place anywhere in the state as long as the computer servers for such wagering are on casino property. Governor Cuomo’s proposal to authorize mobile sports wagering through the State Lottery may be an effort to sidestep the constitutional challenge, based on the existing ability of the State Lottery to offer games to customers located anywhere in the state. As the state’s experience with efforts to legalize fantasy sports have demonstrated, however, even if the state’s political leaders can come to agreement on a solution that does not involve amending the State’s Constitution, the effort could still be undermined in court. New York State’s law authorizing fantasy sports has been tied-up in litigation since it was enacted in August 2016, with opponents arguing that the State Legislature lacked the authority under the State Constitution to declare that fantasy sports was not a

1. January 6, 2021, Press Release, “Governor Cuomo Announces Proposal to Enable Online Sports Wagering as Part of the 2021 State of the State”

2. New Jersey Division of Gaming Enforcement

form of gambling restricted by the Constitution. So far, a trial court and appellate court have both agreed with that argument. The case is currently briefed and awaiting argument before the New York State Court of Appeals, *White v. Cuomo*, APL-2020-00027.

The State of New York has the ability to be one of the largest mobile sports wagering jurisdictions in the United States, and the addition of mobile sports wagering in New York could prove to be a huge leap forward for sports betting companies. New York State has a population of almost 19.5 million people and is the nation's fourth largest state behind California, Texas, and Florida. The State of New York is home to two Major League Baseball teams, three National Hockey League franchises, two National Basketball Association teams, one Major league Soccer team, and one National Football League team (the New York Giants and the New York Jets technically are located in New Jersey).

Blank Rome's New York office and [Gaming](#) group are monitoring this legislation closely and are available to answer any questions that you may have.

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