



**Written Testimony of the Sports Betting Alliance  
Committee On Judiciary  
Hearing on LD 585,  
“An Act To Restore to the Penobscot Nation and Passamaquoddy Tribe the Authority To  
Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010”  
February 17, 2022**

Chairpersons Carney and Harnett, Members of the Committee:

The Sports Betting Alliance (SBA) appreciates the opportunity to submit written testimony regarding legalizing sports wagering in Maine. SBA is a coalition of the leading mobile sports betting operators in the United States, including FanDuel, DraftKings, BetMGM, Bally’s, and Fanatics. Some of our members – DraftKings, Bally’s and FanDuel – also operate fantasy sports contests in 45 states across the country, including Maine. Although SBA members are competitors in the marketplace, we are aligned in working with U.S. states and jurisdictions to create a viable, successful, and safe sports wagering market.

SBA welcomes the opportunity to bring our members’ extensive and proven track records in operating sports wagering to Maine. Since the repeal of the Professional and Amateur Sports Protection Act in 2018, 32 states plus the District of Columbia and Puerto Rico have created legal frameworks for sports wagering, including many of Maine’s neighbors. Importantly, these jurisdictions are taking the opportunity to protect consumers, by drawing them from the illegal market, while raising revenue for the State.

**SBA’s Opposition to Part J of the Proposed Committee Amendment to LD 585**

Unfortunately, Part J of this amendment is a significant step backwards from the existing proposal to legalize sports betting market in Maine, LD 1352. SBA wants to make it clear that our members do not have opinions on the non-gaming aspects of LD 585 and the proposed committee amendment; our members oppose a limited market that restricts the number of experienced operators eager to bring innovative and engaging products to Maine, including existing contributors to the Maine economy, and, above all, a process that ignores multiple years of work by the Veterans and Legal Affairs Committee, stakeholders and Mainers.

Process

The Maine State Legislature passed a sports betting bill three years ago with tremendous bipartisan support. The bill created mobile sports wagering licenses for the federally recognized Indian tribes, casinos, off-track-betting facilities and experienced mobile operators. That bill had received the support of our members as well as the federally recognized Indian tribes. In January 2020, Governor Mills vetoed the bill, acknowledging nonetheless the extensive work by the Veterans

and Legal Affairs Committee. The Senate successfully overrode the veto; however, the House was a mere 10 votes short. Following the 2020 legislative session, SBA's members had extensive conversations with lawmakers and stakeholders alike, working together to present a proposal that afforded in-state stakeholders – including the federally recognized Indian tribes, OTBs and casinos – greater economic security. Above all, we needed to address the important public policy concerns raised in the Governor's veto letter.<sup>1</sup>

Several sports betting bills with variations on a legal framework had a public hearing, three work sessions and a separate voting session, in addition to being the topic of dozens of conversations among lawmakers and stakeholders. The Veterans and Legal Affairs Committee was able to address and incorporate the concerns raised in the Governor's veto letter and forge a consensus on the underlying framework. All of this work was in addition to the extensive time and effort put in by the Veterans and Legal Affairs Committee in the previous legislative session. The Veterans and Legal Affairs Committee voted out three "Ought to Pass with Amendment" Reports. One of those reports, LD 1352, ultimately passed in the Senate with over 65% of the body in support and overwhelmingly in the House, such that it was done under the hammer. We would like to take a moment to recognize Chair Caiazzo, former Chair Luchini, Members of the Veterans and Legal Affairs Committee, and all those who supported LD 1352 for their extensive work.

LD 1352 continues to remain on the Appropriations table despite a positive fiscal note. Had the bill been voted out before last year's session ended, the federally recognized Indian tribes and in-state gaming stakeholders could have launched mobile sports betting this year. Equally important, Mainers could have had the chance to place bets legally in Maine on the Super Bowl rather than drive to a state where it is legal or continue to wager in the illegal market.

While we are disappointed that LD 1352 has not yet been enacted, SBA members are encouraged by the fact that the bill was carried over to this year's session. We believe it is a better framework for Maine because of the extensive deliberations described above that took place to shape LD 1352, in addition to the reasons we identify below. That is why we urge the Committee on Judiciary to validate the Veterans and Legal Affairs Committee's work from last session and reject Part J of the proposed amendment.

### Competition

While states have taken slightly different approaches in their respective sports wagering frameworks, one thing is clear: an online marketplace with multiple qualified and experienced operators is critical to the success of the industry. In leading, regulated markets across the country, nearly 90% of sports wagering activity takes place online and that was the trending rate even before the pandemic. In order to eliminate the illegal offshore sports wagering market accessible by Mainers — which generates anywhere from \$80 to \$200 billion in sports wagers from U.S. residents<sup>2</sup> — and transition customers into legal, regulated platforms, a dynamic and regulated market that permits real competition is the best option for Maine. Mainers must be given all the same conveniences and variety in the legal market that they can already find in the illegal market.

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<sup>1</sup> The Honorable Janet T. Mills, Governor, State of Maine, Veto Letter to the Members of the 129th Legislature on L.D. 553, "An Act to Ensure Proper Oversight of Sports Betting in the State." January 10, 2020.

<sup>2</sup> Eilers & Krejci Gaming, "Regulated Sports Betting: Defining the U.S. Opportunity".

Unfortunately, Part J of this proposal would cap the number of mobile options for Mainers to, at best, four and, at worst, one. Compared to other states and LD 1352, the proposed market in Maine would lack serious competition – leading to diminished revenue, fewer options for consumers, and continued infiltration by the illegal offshore market. Conversely, LD 1352 allows the federally recognized Indian tribes, OTBs and casinos to each partner with a qualified mobile sports betting operator and offer collectively more than a dozen mobile options in Maine. States with a tribal presence like Arizona and Michigan all have robust competitive mobile sports betting markets where commercial mobile operators “tether” their mobile license to an entity or partner licensed to offer retail sports betting, including federally recognized Indian tribes. The level of competition provided by LD 1352 means not only better products and customer engagement, but it also means more local advertising dollars, licensing fees and tax revenue for the State. Finally, competitive pricing is a critical component of the public policy goal to eliminate the illegal market, which is not subject to any of the same taxation and regulatory costs that operators face in U.S. jurisdictions that have legalized mobile sports betting. Better prices ensure more Mainers will transition to the taxed and regulated market.

### Miscellaneous

Part J of the proposed amendment caps the fee paid by an operator to a management services licensee, i.e., the entity that operates the mobile sportsbook, to 30% of the operator’s adjusted gross sports wagering receipts, with limited exceptions.<sup>3</sup> This ignores the fact that agreements of that nature require the management services licensee to cover all the costs of the online sportsbook out of the management services licensee’s share. These costs include server hosting, geolocation, identity verification, payment processing, risk management services, customer service support and marketing costs.

### **Conclusion**

If done right, legalizing sports wagering will provide significant benefits to Maine and its residents. That is why we ask the Committee on Judiciary to vote down Part J of LD 553 and support LD 1352. LD 1352 will provide the federally recognized Indian tribes and in-state gaming stakeholders the opportunity to provide Mainers a robust mobile sports wagering market. We look forward to continuing to work with the Committee on Judiciary and the legislature as a whole on creating a framework that eradicates the illegal market, protects consumers and generates tax revenue and investment in the State.

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<sup>3</sup> Proposed Committee Amendment to LD 585 (February 14, 2022), Section 1203(2)(J).