

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 12, 2021
To: Veterans and Legal Affairs Committee
From: Janet Stocco, Legislative Analyst
LD 1352 An Act To Regulate Sports Betting (*Sen. Luchini*)
LD 1404 An Act To Legalize Sports Betting and Strengthen Public Education (*Sen. Baldacci*)
LD 1405 An Act To Regulate, Tax and Control Sports Wagering (*Sen. Pres. Jackson*)
LD 1527 An Act To Ensure proper Oversight of Sports Betting in the State (*Rep. Roche*)

SUMMARY

These bills authorize the Department of Public Safety, Gambling Control Unit (GCU) and the Director of the GCU to regulate sports wagering in the State.

A. Common features of the sports wagering bills

1. ***Facility Operators and Mobile Operators.*** A facility sports wagering license authorizes acceptance of sports wagers placed by customers within a physical location in the State. A mobile sports wagering licenses authorizes acceptance of sports wagers placed through mobile applications or digital platforms approved by the director by customers physically located within the State.
 - **Local control:** Municipalities retain home rule authority to enact zoning and public safety ordinances related to the location and operation of sports wagering facilities.
2. ***Management Services licenses.*** An entity must demonstrate sufficient sports wagering knowledge and experience to obtain a management service license. A licensed facility or mobile operator may contract with a licensed management services provider to manage its sports wagering operations. The written contract and any substantial change to the contract between the management services provider and the facility or mobile operator must be approved by the director. Subcontracting of the management services provider's responsibilities to unlicensed entities is prohibited.
3. ***Supplier Licenses.*** Only a licensed supplier may sell or lease sports wagering equipment, systems or services to operators in the State. The equipment, systems or services provided must conform to standards established by the director by rule, which may include accepting another jurisdiction's approval. A supplier may only sell or lease sports wagering equipment, systems or services that have been tested and approved by an independent testing laboratory approved by the director.
4. ***License Fees:*** In addition to paying the cost of all background investigations, applicants must pay:

• <i>Facility operator:</i>	\$2,000, 2-year initial fee	\$2,000, 2-year renewal fee
• <i>Mobile operator:</i>	\$20,000, 2-year initial fee	\$20,000, 2-year renewal fee
• <i>Management services:</i>	\$20,000, 2-year initial fee	\$20,000, 2-year renewal fee
• <i>Supplier:</i>	\$20,000, 2-year initial fee	\$20,000, 2-year renewal fee
5. ***Background Investigations & Administrative Sanctions.*** Applicants must disclose the identities of and consent to a fingerprint-based background investigation of: (a) the applicant, (b) each person that owns $\geq 10\%$ of a corporate applicant and has the ability to control the corporation's activities; (b) each direct or indirect owner of a noncorporate applicant whom the director determines has ability to control its business operation; and (c) all key personnel with significant influence over the applicant's relevant business operation. Grounds for denying an initial or renewed license include:

- Knowingly false application statement including failure to disclose required information;
- Past revocation of any gambling-related license by any government authority;
- Past felony conviction or other criminal conviction or civil violation adjudication involving dishonesty, deception, misappropriation or fraud;
- Past conviction for gambling crimes in any jurisdiction;
- Being a fugitive from justice, drug user, person with substance use disorder, illegal alien or dishonorably discharged from U.S. Armed Forces;
- Not being current in the filing or payment of federal or state taxes in any state;
- Not being “of good moral character”—evidence of dishonesty, lack of fiduciary care, etc.;
- Lack of demonstrated financial assets or financial responsibility; and
- Violations of any provision of the sports wagering laws or rules in Maine.

6. **Temporary Licenses.** The director may issue a temporary license upon payment of the initial license fee as long as the director is not aware of any reason the applicant may be ineligible and the applicant meets the requirements established by rule, including that a tribe must have a high-stakes beano facility license to obtain a temporary sports wagering facility license. A temporary license lasts for one year or until the final decision on the application, whichever is shorter.

7. **Occupational Licenses.** A person may not be employed **by a facility operator** in a job classified by the director as engaged directly in sports wagering-related activities without being licensed. The licensing process must be, as far as possible, identical to the casino employee licensing process.

- *License fee:* \$250 initial one-year license fee and \$50 annual renewal fee
- *Exception:* an individual actively licensed as a casino employee need not be pay a separate fee to be licensed to work for a facility operator.

Compare: Under [8 M.R.S. §1015](#), employees of a slot machine or casino operator, slot machine or table game distributor or gambling services vendor must be licensed by the board. Employees may work under a temporary license after the board receives: the completed application form, applicant’s fingerprints, employer-conducted background investigation results and the fee. The board may waive licensing of certain employees for whom “the public interest is not served” by the license requirement. The initial license fee is \$250 and the annual renewal fee is \$25. [§1018\(1\)\(E\)](#).

8. **House Rules:** Operators must adopt comprehensive house rules that meet minimum standards established by the director, including by specifying: the amount paid on winning wagers, effects of schedule changes, circumstances for voiding wagers, and treatment of errors, late wagers and related issues. House rules must be approved by the director, advertised and readily available to customers.

9. **Persons prohibited from making wagers:** Operators may not accept sports wagers from:

- Individuals under 21 years of age;
- Athletes, participants or officials involved in the event subject to the wager;
- Any operator or management services licensee, employee of such a licensee and persons living in their households, although household persons may wager through other operators;
- Interested parties defined by the director by rule—including the owners and employees of teams in the event, owners and employees of other league teams and of the league itself;
- Persons on a list established by the director—both those who voluntarily ask to be placed on the list and those who are placed on the list involuntarily under standards established by rule;
- Third persons making wagers on behalf of or as the agent or custodian of another person; and
- Gambling Control Unit employees.

10. ***Sports events subject to wagers.*** Professional, collegiate or amateur sports or athletic events, including international events, motor vehicle races, and e-sports are subject to sports wagers.

Exceptions: Wagers may **not** be accepted on: (1) high school events; (2) events with majority of participants under age 18 and (3) collegiate-level events in which a Maine team participates.

11. ***Child support interception:*** Operators must intercept sports wagering winnings for the payment of past due, court-determined child support debt if the winnings exceed the amount for which the licensee is required to file Form W-2G with the IRS—*i.e.*, (a) winnings that are at least \$600 and at least 300x the amount of the wager or (b) winnings that, less the wager, are at least \$5,000. [See testimony of Jerry Joy](#), DHHS Director of Division of Support Enforcement for more information.

12. ***Required rulemaking.*** The director of the GCU shall adopt routine technical rules addressing:

- Additional qualifications for and procedures for obtaining each category of license;
- Qualifications and procedures for obtaining temporary licenses;
- Sports wagering operation methods, including—authorized wagering systems; use of credit and checks; required receipts; protection of patrons; promotion of social responsibility; and display of resources for problem gambling at each facility and on each mobile application or digital platform;
- Establishment of a maximum per-event, per-person wager, if deemed necessary by director;
- Standards for house rules and procedures for approval of house rules by the director;
- Minimum design and security requirements for facility operators, including—security of premises; self-serve kiosk requirements, identity and age verification requirements; and requiring a refund of any wager placed by a prohibited person;
- Minimum design and security requirements for mobile applications and digital platforms, including—identity, age and geolocation verification requirements and requiring a refund of any wager placed by a prohibited person;
- Identification of interested parties prohibited from making wagers;
- Minimum design, security, testing and approval requirements for sports wagering equipment, systems and services sold by licensed suppliers;
- Minimum requirements for contracts between operators and management services licensees;
- Minimum operator internal control standards and recordkeeping requirements, including—audit requirements and required reporting of wagers and revenues to the director; and
- Establishment of a list of persons prohibited from making wagers, including—voluntary placement on the list and standards for involuntary placement on and removal from the list.

The director may adopt initial sports wagering rules through emergency rulemaking procedures.

13. Miscellaneous Provisions

- The GCU director must investigate complaints received or initiated by the GCU and may issue a notice of violation with a proposed administrative sanction. Licensee has the option to request a hearing before the DPS Commissioner and may then appeal to Superior Court.
- Administrative Sanctions include: written reprimands, conditions of probation on licenses, license suspensions or revocations or a civil penalty of up to \$25,000 per violation.
- Licensees must permit the director or a designee unrestricted access to any sports wagering facility (including locked areas), equipment, prize or record during regular business hours.

14. ***Fantasy Sports.*** The bills also state that they amend the fantasy sports laws to allow fantasy contests based on the performance of participants in college athletic events. *But see LD 1404 technical issue.*

B. Differences between the sports wagering bills

LDs 1352, 1404, 1405 & 1527

	LD 1352 (Luchini)	LD 1404 (Baldacci)	LD 1405 (Jackson)	LD 1527 (Roche)
Facility sports wagering eligibility	1. Commercial track	1. Commercial track	1. Commercial track	1. Commercial track
	2. Any OTB	2. OTB under §275-D only	2. Any OTB	2. OTB under §275-D only
	3. Casino / slot facility	3. Casino / slot facility	3. Casino / slot facility	3. Casino / slot facility
	4. Federally recognized Indian Tribe in the State	4. Federally recognized Indian Tribe in the State	4. Federally recognized Indian Tribe in the State	4. Federally recognized Indian Tribe in the State
Mobile sports wagering eligibility	1 - 4. Same as above	1 - 4. Same as above	1 - 4. Same as above	1 - 4. Same as above
	5. Qualified gaming entity —entity offering mobile sports wagering under another state’s regulatory structure			5. Qualified gaming entity —entity offering mobile sports wagering under another state’s regulatory structure
Tax rates (same for all)	10% for facility operators — 16% for mobile operators Tax imposed on: adjusted gross sports wagering receipts = [total wagers - (winnings paid out + federal excise taxes)]			
Facility sports wagering tax cascade	1% GCU admin. expenses 1% gambling prevention* 8% General Fund <i>Same as LD 1527</i>	1% GCU admin. expenses 1% gambling prevention* 8% K-12 Education	0.25% GCU admin. expenses 0.25% gambling prevention* 0.55% fund to supp. harness racing purses 0.55% Sire Stakes Fund 0.4% Agricultural Fair Promotion Fund 8% General Fund	1% GCU admin. expenses 1% gambling prevention* 8% General Fund <i>Same as LD 1352</i>
Mobile sports wagering tax cascade	1% GCU admin. expenses 1% gambling prevention 14% General fund <i>Same as LD 1527</i>	1% GCU admin. expenses 1% gambling prevention 14% K-12 Education	0.25% GCU admin. expenses 0.25% gambling prevention 0.55% fund to supp. harness racing purses 0.55% Sire Stakes Fund 0.4% Agricultural Fair Promotion Fund 14% General Fund	1% GCU admin. expenses 1% gambling prevention 14% General fund <i>Same as LD 1352</i>
Unlicensed operation of sports wagering	Penalties in Title 17-A, Chapter 39, governing unlawful gambling, apply. (described on next page)	<ul style="list-style-type: none"> <i>First violation:</i> Fine of up to \$10,000 and imprisonment up to 90 days <i>Second violation:</i> Fine of up to \$50,000 and imprisonment up to 6 months <i>Subsequent:</i> Fine between \$25,000 - \$100,000 and imprisonment between 1 - 5 years 		

* For more information on the Gambling Addiction Prevention and Treatment Fund, see [Title 5, Chapter 521](#) of the Maine Revised Statutes.

1. **Provisions unique to LD 1352**

- *Advertising restrictions:* Rules adopted by the director must prohibit misleading or false advertisements and also prohibit advertising that is specifically designed to appeal to minors or has a high likelihood of reaching minors, including by proximity to schools.
- *Penalties for unlicensed operation of sports wagering:* [Title 17-A, chapter 39](#) applies:

Offense	Offense description	Penalty
Unlawful gambling §954(1)	Person—not the bettor—who intentionally or knowingly profits from unlawful gambling activity.	<ul style="list-style-type: none"> • <i>Individual:</i> up to \$2,000 fine & 1-year imprisonment • <i>Organization:</i> up to \$10,000 fine <u>And</u> forfeiture of all involved income
Aggravated unlawful gambling §953(1)(A)	Same as above except violation involves receiving or accepting >5 bets totaling >\$500 in value in 24 hours	<ul style="list-style-type: none"> • <i>Individual:</i> up to \$20,000 & 10-years imprisonment • <i>Organization:</i> Fine of up to \$40,000 <u>And</u> forfeiture of all involved income

2. **Provisions unique to LD 1405**

- *Agricultural Fair Promotion Fund:* is established to benefit organizations identified by the DACF Commissioner as having had, for at least 25 years, a primary purpose of promoting agricultural fairs in Maine; 0.4% of adjusted gross sports wagering receipts are sent to this fund.
- *Fund to supplement harness racing purses:* bill clarifies calculation of this fund’s disbursements.
- *Clarifying statutes applicable to OTBs licensed under P.L. 2019, ch. 626, §16.* Part B of LD 1405 clarifies which laws apply to these OTBs. See explanation in [bill analysis to LD 860](#).

3. **Provisions unique to LD 1527**

- *Prohibited types of wagers:*
 - For events with a sports governing body in the United States, operators may not accept wagers on injuries, penalties or outcomes of disciplinary or replay rulings.
 - Any sports governing body may request that the director prohibit certain types, forms or categories of wagering on its events by demonstrating good cause to believe the wagers are “likely to undermine the integrity or perceived integrity” of the sporting event or governing body. The director must consider comments from operators for each request but may first provisionally grant such requests if it is more likely than not that good cause will be shown.
- *Abnormal wagering activity.* Operators must report “abnormal wagering activity” that raises concerns about the integrity of the sports event or potential match fixing to the director and the relevant sports governing body. Operators must also use commercially reasonable efforts to cooperate with information requests from law enforcement and sports governing bodies.
 - Information shared with the director by sports governing bodies for purposes of investigating or preventing this type of abnormal wagering conduct must be kept confidential unless disclosure is required by the director, directed by law or the sports governing body consents.
 - Information shared with a sports governing body by operators must not be used for commercial purposes and may not be disclosed except (a) in conducting and in resolving integrity-related investigations and (b) to the public to preserve actual or perceived integrity of its sports events, after notice to the operator and an opportunity to object to the disclosure.

➤ *Official League data.*

- Operators are not required to use official league data for “tier 1” wagers on the final outcome of a sporting event when the wager is placed before the event begins.
- U.S. sports governing bodies may notify the director that operators must use official league data for all other (“tier 2”) wagers on its events provided that the sports governing body can provide a feed of official league data and does so on commercially reasonable terms.
- Operators may request a determination from the director that the terms and conditions for obtaining official league data are commercially unreasonable. *See* factors p.17, lines 4-23. During the pendency of the determination (up to 60 days), official league data is not required.
- The sports governing body is not required to obtain a license to enter into an agreement with operators to share in the profits of sports wagers placed on the body’s own sports events.

➤ *Recordkeeping requirements.* In addition to requiring the director to establish recordkeeping requirements through rulemaking (as all 4 bills require), LD 1527 also requires operators to:

- Maintain itemized records of all: wagers placed and abnormal wagering activity for 3 years and video recordings of in-person wagers for at least 1 year. Operators must make these records available to the director upon request or as required by court order.
- Maintain anonymized but itemized wagering information in “real time” and disclose this information to (a) the director upon request in a form established by the director by rule and (b) to the relevant sports governing body for integrity monitoring purposes if the sports governing body informs the director that it uses such data for this purpose.

ADDITIONAL INFORMATION

1. **Recent legislation.** In the 129th Legislature, this Committee considered 6 substantive bills related to sports betting (LDs [1348](#), [1515](#), [1571](#), [1642](#), [1656](#) and [1657](#)) and combined selected provisions from those bills into a concept draft, [LD 553](#). The committee vote was 9-3-1: OTPA/OTPA/ONTP.

- The [majority report](#) was substantively the same as LD 1352, except that it imposed the unlicensed conduct penalties described in the chart above that apply under LD 1404, 1405 and 1527 and it did not require adoption of rules that would restrict advertising to minors.
- The [minority report](#) to LD 553 matched the majority report, except that it would not have authorized the licensure of qualified gaming entities as mobile operators (it required tethering).

The Legislature accepted the majority report and it was passed to be enacted, but the Governor’s subsequent veto was sustained. *See* veto letter attached to this bill analysis.

2. **Relevant federal laws - prohibit acceptance of interstate electronic/mobile sports wagers**

- The [Interstate Wire Act of 1961](#) prohibits the use of “a wire communication facility for the transmission in interstate . . . commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event.” 18 U.S.C. §1804(a). A “wire communication facility” is defined by §1801 in a manner that includes the Internet or mobile applications.
 - Violations by persons “engaged in the business of betting or wagering” are punishable by up to 2 years imprisonment and a fine of up to twice the gain to the defendant. §1804, [§3571](#).
- The [Unlawful Internet Gambling Enforcement Act of 2006](#) (UIGEA) makes it illegal to accept credit, funds, electronic funds transfers, or any check or similar instrument drawn on a financial

institution in association with “unlawful Internet gambling.” 31 U.S.C. §5363. “Unlawful internet gambling” includes the transmission of a “bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable *federal or* state law...in which the bet or wager is initiated [or] received.” 31 U.S.C. §5362(1).

- Violations by persons “engaged in the business of betting or wagering” are punishable by up to 5 years imprisonment and a fine of up to twice the gain to the defendant. §5366, [§3571](#).

3. **Dormant Commerce Clause.** Article I, §8 of the U.S. Constitution grants Congress the authority “to regulate commerce . . . among the several States.” As the U.S. Supreme Court has explained:

the Commerce Clause prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. Thus, state statutes that clearly discriminate against interstate commerce are routinely struck down unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism.

West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 192 (1994) (citations omitted).

In *Granholm v. Heald*, 544 U.S. 460, 472 (2005), for example, the Supreme Court invalidated two states’ laws authorizing in-state wineries but not out-of-state wineries to ship their products directly to consumers. The Court held that the states failed to show that the laws “advance[d] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.”

- The states had argued that restricting direct wine shipments was necessary to avoid increasing alcohol consumption by minors, who the states noted have easy access to credit cards and the Internet and might take advantage of direct shipments to purchase wine illegally. Yet, the Supreme Court concluded there was no “concrete evidence” that direct shipping of wine was likely to increase minors’ alcohol consumption (after all, they prefer beer and hard liquor!). Even if Internet sales had been shown to increase the risk of underage drinking, the Court noted that this fact “would not justify regulations limiting *only out-of-state* direct shipments.” Instead, the states could impose uniform requirements for an adult signature upon delivery and stringent penalties to deter noncompliance by both in-state and out-of-state wineries.
- The Court also rejected the states’ arguments that the laws were necessary to protect public safety and to provide regulatory accountability, noting: “improvements in technology have eased the burden of monitoring out-of-state wineries. Background checks can be done electronically. Financial records and sales data can be mailed, faxed or submitted via email.” *Id.* at 492.

Accordingly, if the “tethering requirement” in LD 1404 or LD 1405 is enacted and subsequently challenged under the dormant commerce clause, a court will first examine whether requiring a mobile operator to contract with a licensed physical gambling facility discriminates against out-of-state commerce. If it concludes this provision discriminates against out-of-state entities, the State will be required to demonstrate—with concrete evidence—that mandatory tethering serves a legitimate State interest not related to economic protectionism that could not be accomplished by nondiscriminatory means.

4. **Other states’ sports wagering laws.** OPLA’s Research staff has compiled a chart comparing the sports wagering legislation enacted in 27 states and the District of Columbia, including recently enacted but not yet operational sports wagering laws. The chart compares the types of operators authorized to obtain licenses (and whether tethering is required), types of bets authorized (i.e., are college sports included?) and applicable tax rates. See [Electronic LD file](#) for these bills.

ISSUESD RAISED AND AMENDMENTS PROPOSED

1. **Impact on harness racing:** the Maine Association of Agricultural Fairs, State Harness Racing Commission, Maine Harness Horsemen’s Association and Maine Standardbred Breeders and Owners Association testified in favor mitigating the potential impact on the harness racing industry (1) by tethering mobile sports wagering to casinos, OTBs and commercial tracks—*i.e.*, locations that introduce customers to the harness racing industry and (2) by directing a percentage of sports wagering tax revenue to agricultural fairs and the harness racing industry
2. **Penn National Gaming, Inc.:** (1) reduce tax rates to 7.5% on in-person and 10% on mobile sports wagers and (2) do not mandate the use of official league data in statute.
3. **DraftKings / FanDuel / BetMGM:** clarify that, although sports wagers may not be placed on any single game or match in which a Maine collegiate team participates, betting is authorized on other games or matches in tournaments, even though a Maine collegiate team is part of the tournament.
4. **National Football League:** although it did not specifically propose bill amendments, the National Football league listed several issues it suggests should be addressed in sports wagering legislation:
 - a. Prohibiting sports wagers by folks with insider information (athletes, coaches, referees, etc.);
 - b. Require operators to enforce prohibition on wagers by persons under 21 years of age;
 - c. Prohibit wagers on in-match events that are more likely to be subject to “match fixing”;
 - d. Require the use of official league data to determine the outcome of wagers;
 - e. Require maintenance of detailed records in a location in the State for at least 5 years;
 - f. Require operators to share real-time information on disciplinary proceedings against the operator, abnormal sports wagering activity or other suspicious wagering with leagues;
 - g. Provide resources for compulsive gambling treatment and addiction;
 - h. Ensure a competitive mobile market to compete with illegal off-shore operators.
5. **National Council on Problem Gambling.** Like the NFL, this organization did not suggest amending any of the bills before the committee but suggested that the committee consider:
 - a. Dedicate a portion of sports wagering revenue to preventing and treating gambling addiction;
 - b. Survey gambling addiction prevalence before and during implementation to monitor impacts;
 - c. Fund and promote a helpline to address problem gambling; and
 - d. Require operators to provide for customer self-exclusion and setting of limits on time and money spent betting, with information on these programs contained in all external marketing.

TECHNICAL ISSUES

1. **LD 1404 - fantasy sports.** The summary of LD 1404 indicates that the bill allows licensed fantasy contest operators to offer fantasy contests based on the performances of participants in collegiate athletic events. Yet, the text of LD 1404 does not contain a provision amending 8 M.R.S. §1104(2) to effectuate this change. *Compare* LD 1527, §2 on p.1, lines 10-14.
2. **LD 1405 - OTBs via P.L. 2019, ch. 626.** LD 1405 amends [8 M.R.S. §1072\(1\)\(B\)](#) to provide that an OTB licensed under [P.L. 2019, ch. 626, §16](#) may receive a share of revenues generated by the tax on advance deposit wagering commissions earned on wagers placed on horse races conducted in the State. Is the intent of the bill to also allow these OTBs to receive a share of the tax revenues generated on ADW wagers placed on out-of-state horse races under [§1072\(2\)\(B\)](#)?

3. **JUD review.** If a majority of the committee votes in favor of legislation that renders information in the possession of the state government or an agency confidential, it is subject to special review by the Judiciary Committee under the Freedom of Access Act. See [OPLA summary](#).
 - All four bills contain confidentiality provisions regarding the results of fingerprint-based background checks and child support interception information
 - LD 1527 additionally requires the director to keep confidential information provided by a sports governing body for investigating or preventing abnormal wagering activity.
4. **CJPS Review.** Under Joint Rule 319, if a majority of the committee votes in favor of legislation that “enacts a new crime or increases the penalty for an existing crime” it is subject to review by the CJPS Committee to determine the “impact on the criminal justice system.”
 - Except for LD 1352, each bill creates new crimes that would require CJPS review.
5. **Conflicting Legislation.** If enacted, [LD 554](#) would render all state gambling laws, including laws governing sports betting, inapplicable to the conduct of gaming by the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians. Instead, IGRA would apply to these Tribe’s conduct of sports betting, a type of Class III gaming, and would require negotiation of a tribal-state compact governing sports wagering. LD 554 would not conflict with state laws regulating the conduct of gaming by the Aroostook Band of Micmacs, however.

FISCAL IMPACT

Not yet determined. But see fiscal notes in 129th Legislature to LD 553 [majority](#) and [minority](#) reports.



Janet T. Mills
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

January 10, 2020

The 129th Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 129th Legislature:

Pursuant to the authority vested in me by Article IV, Part Third, Section 2 of the Maine Constitution, I am vetoing L.D. 553, "An Act to Ensure Proper Oversight of Sports Betting in the State."

Since the Murphy decision in the United States Supreme Court in May of 2018, a number of states have rushed to pass laws that legalize, tax and regulate sports gambling in a great variety of ways.

The Supreme Court said we could regulate it; but that does not mean we have to.

I respect the long hours and hard work that the Committee on Veterans and Legal Affairs put into this bill following its submission as a concept draft and the number of work sessions in which the Committee tried to combine the best of several bills on this difficult subject matter. And I believe this bill is a good effort by those who wish to bring out into the open a black market activity that is practiced by many now and who want to regulate that activity without over-regulating or over-taxing it so as to drive it back underground. The bill is a step forward towards achieving that delicate balance.

But, respectfully, I remain unconvinced at this time that the majority of Maine people are ready to legalize, support, endorse and promote betting on competitive athletic events.

Before Maine joins the frenzy of states hungry to attract this market, I believe we need to examine the issue more clearly; better understand the evolving experiences of other states; and thoughtfully determine the best approach for Maine. That approach needs to balance the desire to suppress gambling activities now being conducted illegally and the need to protect youthful gamblers and those least able to absorb losses under a closely regulated scheme.

This bill prohibits gambling on sports by people under the age of 21, and I am aware that mobile sports gambling operators offer sophisticated mechanisms to detect problem gamblers and gambling by young people. But it is difficult to envision a system which does this and at the



same time would employ broad based marketing and aggressive advertising in social media and on television, including ads during the very games on which live bets are being placed. These ads would unduly draw in people who should not be risking money impetuously because of youth or financial or family circumstances.

It may be that the regulations permitted by this bill would allow reasonable oversight of marketing and access to youth. But that is far from certain given the federal and regional jurisdiction over much of the relevant media.

We are also told that the state can access new revenues by legalizing sports betting. But for the more than dozen states that have enacted legislation regarding this form of gambling, revenues have fallen far short of projections for a variety of reasons, and the economic impact of mobile sports gambling on preexisting facilities, given the potential saturation in the market, is uncertain. In addition, while legalized sports gambling may attract some revenue to the state coffers, the same economic premise in theory would justify legalizing all forms of gambling — betting on the weather, spelling bees and school board elections, for instance.

Finally, we are also told that Maine needs to legalize sports gambling in order to preserve its existing market share in the betting industry. That premise is still speculative, and, in any event, merits a longer term analysis given the constantly changing dynamics of gambling in New England.

Should the Legislature override this veto, or should Legislature take up a similar measure next year, my administration will continue to help with drafting and analysis to best address the unique needs of our state. In that respect, I commend the broad regulatory authority described in this bill that includes strict licensing criteria and the state's right to establish a maximum wager, to collect child support arrearages, to avoid insider betting and to promote social responsibility. At the same time, if the Legislature is serious about cracking down on illegal activities, it should consider penalties that are more serious and more consistent with the Maine Criminal Code, including recognizing the financial gain of the offender, rather than the misdemeanor penalties described in section 1216 of the bill. In the meantime, of course, federal sanctions prohibit gambling activities of any sort that are not allowed under state law.

I appreciate the Legislature's interest in this evolving issue and respectfully request that you sustain this veto while we closely monitor the impact of legalization and the successes and failures in other states as they seek to regulate and benefit from sports betting.

Thank you.

Sincerely,



Janet T. Mills
Governor

