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THE STATE OF NEW YORK SPORTS BETTING

AN EXAMINATION OF THE FORCES SHAPING THE MARKET

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PART I: A FERTILE LANDSCAPE FOR SPORTS BETTING

Until quite recently, New York gambling laws and policy were maintained with good foresight.

Legal sports betting in the state originates under the Upstate New York Gaming Economic Development Act of 2013¹ and a referendum that amended Article 1 of the state's Constitution. Voters by means of a ballot measure that year empowered the General Assembly to construct the legislative pillars for a new commercial casino industry with the primary goal of stimulating the dormant upstate economy. Assemblyman Gary Pretlow conjointly sponsored the policy bill and the legislatively referred amendment,² which passed with approval from 57.1% of New York voters.³

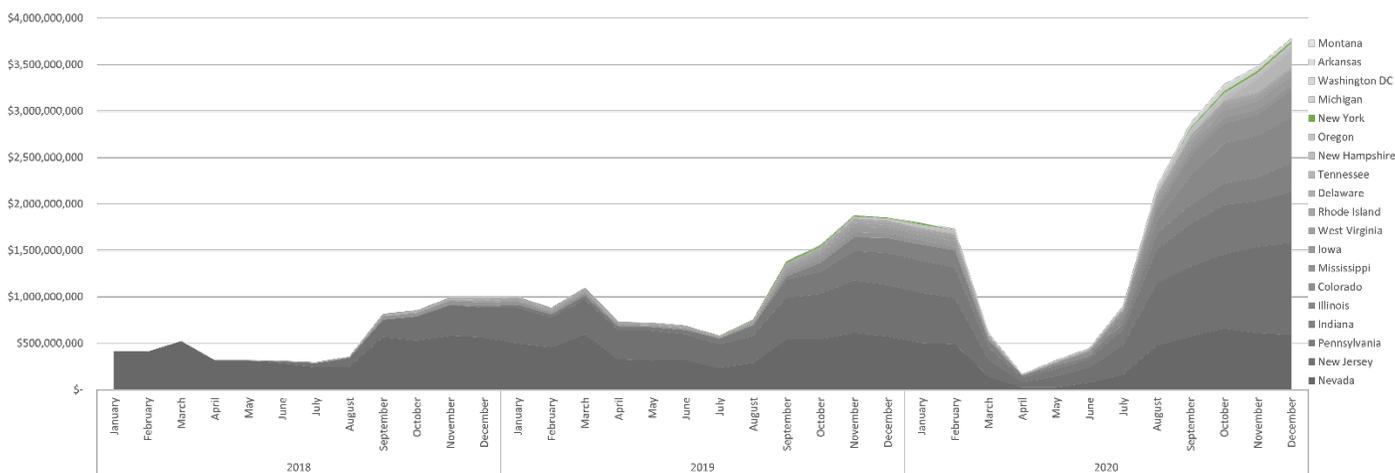
At the time, federal law prohibited New York (and most states outside of Nevada) from legalizing and regulating sports betting within their borders. The authors, however, included in the Act a section that speculatively authorized sportsbooks at those new casinos pending the outcome of relevant court cases initiated by Delaware and New Jersey.

Sure enough, Pretlow's bet on the underdog came in.

The US Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) in 2018,⁴ removing the ban on state-regulated sports betting and transforming the national gambling landscape. While dozens of states scrambled to draft enabling legislation, New York was ahead of the game with a preemptive law on the books.

Less than three years later, US sports betting has already sprouted into a multi-state, multi-billion-dollar industry stretching from coast to coast. A total of 21 states and jurisdictions—including the nation's capital—now have legal sports gambling in some form, generating more than \$1.5 billion in combined gross revenue in 2020. More than \$300 million of those earnings were converted to taxes⁵ at the local, state, and federal levels.

Sports bettors in the US legally wagered a total of \$40 billion between the fall of PASPA and the end of 2020, and the industry is still in its infancy.



What the law says

From a practical standpoint, New York's sports betting law is mostly unremarkable. Section 1367 of the Act lays out the fundamental parameters:

- Delegates regulatory authority to the NYS Gaming Commission
- Allows casinos to contract with third-party vendors and suppliers
- Requires sportsbook operators to obtain a standalone license
- Prohibits wagering on collegiate sporting events that involve a New York team or venue
- Requires wagers to be placed by persons physically present in a sports betting lounge inside of a casino

There is, however, one remarkable omission. The law disallows all forms of online betting, prohibiting the most popular way to wager in the modern digital age.

New York taxes sports betting revenue at a rate of 10%, with 8% allocated to fund education and property tax relief at the state level. The remaining 2% is shared among local jurisdictions.

Current operations

The first four casinos authorized by that referendum opened in 2016 and 2017.

¹ <https://www.nysenate.gov/legislation/bills/2013/s5883>

² <https://assembly.state.ny.us/leg/?bn=A08068&term=2013>

³ <https://www.elections.ny.gov/NYSBOE/elections/2013/proposals/2013GeneralElection-Prop1.pdf>

⁴ https://www.supremecourt.gov/opinions/17pdf/16-476_dbfi.pdf

⁵ The term "tax" is used for brevity throughout this paper, but it also encompasses the share of sports betting revenue retained by jurisdictions where such a split is based on a contractual relationship rather than an actual tax mechanism (Delaware, Montana, New Hampshire, Oregon, Rhode Island, District of Columbia).

- Del Lago in Waterloo
- Rivers in Schenectady
- Resorts World Catskills in Monticello
- Tioga Downs in Nichols

On July 16, 2019, the new sportsbook at Rivers became the first in the state to book a legal sports wager.⁶ Pretlow, to commemorate his role in bringing casinos and sports gambling to New York, was among the first patrons at the window to place a bet.

Three of the state’s Native American nations—Mohawk, Oneida, and Seneca—hold reciprocal agreements to offer the same games as their commercial counterparts and have subsequently opened competing sportsbooks at a total of seven of their tribal properties.

- Seneca Niagara in Niagara Falls
- Seneca Allegany in Salamanca
- Seneca Buffalo Creek in Buffalo
- Turning Stone in Verona
- Yellow Brick Road in Chittenango
- Point Place in Bridgeport
- Akwesasne Mohawk in Hogsburg

None of these 11 retail sportsbooks are located within the New York City metropolitan area, removing access to the majority of the prospective gambling population. Resorts World Catskills, some 95 miles north, represents its closest legal in-state sportsbook. This circumstance defines legal sports betting in New York, and the effects are additionally apparent in the neighboring markets.

How does New York measure up?

As a whole, the US sports betting industry was worth more than \$1.5 billion in gross gaming revenue across its 21 legal jurisdictions in 2020.

New York is the largest single market by some margin, comprising 18.8% of the adult population⁷ with legal betting on their home turf. Sports betting revenue in the state amounted to just \$10.8 million for the year,⁸ however, a fraction of its true potential and less than 1% of the nationwide total. Only Arkansas and Montana generated fewer dollars from sports betting in 2020. Total taxes collected from sports betting in the Empire State barely reached \$1 million, a rounding error in a budget surpassing \$175 billion.

Under a modernized framework, New York’s population of more than 15 million adults should make it the largest legal sports betting market in the country. Instead, key limitations on implementation make it one of the smallest. The disparity is particularly evident in comparisons with New Jersey and Pennsylvania. Despite having substantially more eligible bettors than its two largest neighbors, New York’s industry does not stack up favorably to either of them.

For that matter, it doesn’t stack up favorably to any state’s.

New Jersey has now taken the US sports betting crown from Nevada, booking almost \$1 billion in wagers in December 2020 alone.⁹ Its revenue of \$399 million for the calendar year was nearly 40 times larger than New York’s despite having less than half as many adult bettors. Pennsylvania was a similar success story, with \$3.58 billion in wagers yielding \$270 million in revenue.¹⁰

New York sportsbooks, by comparison, have booked just \$153 million in total wagers over their first 18 months of operation combined. For context from a less-populous state, the new Tennessee market just opened in November 2020 and has already doubled New York’s lifetime output.

Performance in the Empire State is particularly underwhelming in the context of tax revenue. The sports betting industry generated just \$0.07 in taxes per adult resident in 2020—the lowest rate in the country and well below the national average of \$2.90. Since regulated operations began in 2019, in fact, total taxes collected from sports betting in New York amount to a meager \$1.86 million. New Jersey and Pennsylvania meanwhile reached the \$100 million lifetime milestone together in December 2020, with a substantial percentage of that haul coming from gamblers who were just visiting from New York.

State	Revenue	Handle	State Tax/Share
New Jersey	\$ 398,522,935	\$ 6,016,968,399	\$ 59,603,914
Pennsylvania	\$ 269,903,944	\$ 3,580,864,476	\$ 68,293,247
Nevada	\$ 262,799,000	\$ 4,339,421,139	\$ 17,738,933
Illinois	\$ 137,410,656	\$ 1,882,620,542	\$ 20,191,144
Indiana	\$ 136,395,416	\$ 1,769,270,606	\$ 13,165,417
Colorado	\$ 75,841,205	\$ 1,185,754,617	\$ 2,962,865
Mississippi	\$ 43,741,529	\$ 363,775,649	\$ 5,248,983
Iowa	\$ 41,609,155	\$ 575,233,747	\$ 2,858,854
Tennessee	\$ 27,124,908	\$ 312,344,523	\$ 5,443,918
West Virginia	\$ 26,455,520	\$ 392,488,754	\$ 2,645,552
Rhode Island	\$ 24,067,477	\$ 221,916,076	\$ 12,274,413
New Hampshire	\$ 23,637,613	\$ 292,550,269	\$ 11,011,414
Delaware	\$ 23,522,330	\$ 90,242,755	\$ 13,725,525
Oregon	\$ 20,072,367	\$ 218,246,357	\$ 10,036,184
Michigan	\$ 18,276,859	\$ 130,763,498	\$ 1,535,256
District of Columbia	\$ 13,548,200	\$ 80,527,759	\$ 1,293,704
New York	\$ 10,768,728	\$ 91,174,922	\$ 1,076,873
Arkansas	\$ 4,306,524	\$ 32,882,808	\$ 583,375
Montana	\$ 1,288,040	\$ 10,309,053	\$ 1,181,004
2020 Total	\$ 1,559,292,407	\$ 21,587,355,948	\$ 250,870,575

⁶ <https://www.timesunion.com/news/article/Schenectady-casino-takes-first-sports-bets-14099294.php>

⁷ Population data in this report comes from the US Census Bureau <https://data.census.gov/cedsci/>

⁸ <https://www.gaming.ny.gov/gaming/index.php?ID=2>

⁹ <https://www.njoag.gov/about/divisions-and-offices/division-of-gaming-enforcement-home/financial-and-statistical-information/monthly-gross-revenue-reports/>

¹⁰ <https://gamingcontrolboard.pa.gov/?p=317>

The elephant in the room

The lack of significant revenue from sports betting in New York quite simply stems from an incomplete implementation.

The existing law does not permit betting on in-state collegiate sports, for starters, taking Syracuse, Buffalo, and St. John's games off the board among others. Although such a restriction is counterproductive to the goals of producing revenue and protecting student-athletes, the provision remains intact in the modernized version on the table in 2021. The map of sportsbooks locations meanwhile lowers the revenue ceiling across all sports, littering the rural upstate region with properties that compete with the tribes while neglecting downstate urban bettors entirely.

This geography problem points to the primary underlying cause of the market's underperformance: the lack of online betting.

At the time of publication, 20 states plus the District of Columbia offer legal sports betting in some form. Among the 15 that allow statewide online betting, more than 80% of all wagers are placed via the internet—either through a web browser or a sports betting app. In Colorado, where land-based casinos are as remote as New York's, that share is higher than 95%.

Arkansas, Delaware, New Mexico, and New York are the only states where legal sports betting is restricted to manual, in-person activity at brick-and-mortar sportsbooks. Two other states, Mississippi and Montana, allow limited digital wagering only for patrons who are physically located within one of the land-based gambling facilities.

None of these retail markets come anywhere close to realizing their potential, combining to generate less than \$100 million of gross gaming revenue in 2020. Operators in New Jersey meanwhile churned out nearly \$400 million by themselves over the same period.

Put simply, states without online betting do not capitalize on the industry. They cannot.

Diverging paths to a common goal

The New York legislature and governor have long been on opposite sides of the online sports wagering argument, a dynamic that continues into 2021. Although Cuomo has seemingly come around to the argument that existing law can be expanded in a manner consistent with the Constitution, the chief executive has a different vision for implementation than his lawmakers do.

Under Cuomo's plan,¹¹ the state Gaming Commission would issue a request for proposals to select and license one or more platform providers via a competitive bidding process. This blueprint most closely mirrors the framework in place in a nearby market with barely one million adult residents and no commercial or tribal casinos. The lottery in New Hampshire chose DraftKings in 2019 as its sole sports betting operator in exchange for 50% of gross revenue,¹² a relationship which benefitted the state to the tune of \$11.0 million in the 2020 calendar year.¹³

Most of the remaining details of the governor's proposal remain undisclosed or undetermined as budget talks begin.

Lawmakers, on the other hand, have spent three years consulting with analysts, attorneys, experts, and stakeholders to craft a fully conceived plan for expansion via the state's existing gambling operation. Their model would create an inclusive and competitive market built upon the commercial and tribal casinos, a framework more akin to New Jersey's than to New Hampshire's.

Which proposal is the best for New York depends on which stakeholder(s) you ask, and the answer is not as clear-cut as any of them might suggest. While a monopoly sports betting model typically returns a larger share of each wager to a state, a competitive model generates substantially more total wagers (and therefore more total gaming revenue).

New Hampshire sportsbooks won \$21 per adult resident in 2020, for instance, compared to the \$54 per capita mustered by New Jersey sportsbooks. At the end of the day, however, per-capita tax revenue was just about the same for both. Across all US online markets with more than 12 months of operation, in fact, the group of monopoly states and the group of competitive states drive nearly identical per-capita tax revenue.

	State	Adult Pop.	2020 Handle	2020 Revenue	2020 Taxes	Handle/Adult	Revenue/Adult	Taxes/Adult
Monopoly	Oregon	3,471,000	\$ 218,246,357	\$ 20,072,367	\$ 10,036,184	\$ 62.88	\$ 5.78	\$ 2.89
	New Hampshire	1,124,000	\$ 292,550,269	\$ 23,637,613	\$ 11,011,414	\$ 260.28	\$ 21.03	\$ 9.80
	Rhode Island	875,000	\$ 221,916,076	\$ 24,067,477	\$ 12,274,413	\$ 253.62	\$ 27.51	\$ 14.03
	District of Columbia	577,000	\$ 80,527,759	\$ 13,548,200	\$ 1,293,704	\$ 139.56	\$ 23.48	\$ 2.24
	Group Total/Average	6,047,000	\$ 813,240,461	\$ 81,325,657	\$ 34,615,715	\$ 134.49	\$ 13.45	\$ 5.72
Competitive	Pennsylvania	10,358,000	\$ 3,580,864,476	\$ 269,903,944	\$ 68,293,247	\$ 345.71	\$ 26.06	\$ 6.59
	New Jersey	7,372,000	\$ 6,016,968,399	\$ 398,522,935	\$ 59,603,914	\$ 816.19	\$ 54.06	\$ 8.09
	Indiana	5,259,000	\$ 1,769,270,606	\$ 136,395,416	\$ 13,165,417	\$ 336.43	\$ 25.94	\$ 2.50
	Iowa	2,448,000	\$ 575,233,747	\$ 41,609,155	\$ 2,858,854	\$ 234.98	\$ 17.00	\$ 1.17
	Nevada	2,406,000	\$ 4,339,421,139	\$ 262,799,000	\$ 17,738,933	\$ 1,803.58	\$ 109.23	\$ 7.37
	West Virginia	1,494,000	\$ 392,488,754	\$ 26,455,520	\$ 2,645,552	\$ 262.71	\$ 17.71	\$ 1.77
	Group Total/Average	29,337,000	\$ 16,674,247,121	\$ 1,135,685,970	\$ 164,305,917	\$ 568.37	\$ 38.71	\$ 5.60

¹¹ <https://www.governor.ny.gov/news/governor-cuomo-announces-proposal-enable-online-sports-wagering-part-2021-state-state>

¹² https://www.nhlottery.com/Files/PDFs/RFP_LOT_2020-01_Scoring_Summary.aspx

¹³ Although the contractual rate is 50%, the actual state share from New Hampshire sports betting in 2020 amounted 46.3% of total revenue according to official reports from the NH Lottery.

The open model, however, can provide some auxiliary benefits that the closed model cannot. Using casinos as the keyholders for expanded sports gambling (rather than the state itself) can most notably bolster their total gaming revenue and shore up their relationship with the local economy and its workers.¹⁴ Spectrum Gaming noted this consideration in the exhaustive 2020 report¹⁵ it compiled for the General Assembly:

Gaming policy in New York and elsewhere is established on a principle that is often unrecognized but very real: the state and its regions are effectively partners with the operators. Policies that encourage investment, employment and fiscal benefits work best when both the operators and the state benefit.

Multi-player markets also tend to exhibit an increased level of total betting activity brought about by a rise in promotional wagers awarded to players and the operational incentive to provide a competitive product with fair pricing.

PART II: THE LONG AND WINDING ROAD TO MODERNIZATION

Despite the overwhelming financial and practical incentives to do so, modernizing the state's sports betting industry has so far proven to be a task too tall in New York. Lawmakers have been unable to muster enough support to get a bill on the governor's desk, a feat which by itself would not even guarantee success. Constitutional concerns within the Cuomo administration had, until 2020, become the primary roadblock to progress.

Then came the coronavirus pandemic and the ensuing financial crisis during which the state's deficit ballooned from \$6 billion to \$15 billion. Casinos shut down, further depressing the financial outlook for properties upstate while removing a critical source of local tax income. Without online options, gambling revenue in New York temporarily went to zero.

The online gambling enterprise in neighboring New Jersey was meanwhile the lifeline for its land-based casino industry, remaining in action even while the brick-and-mortar properties were shuttered. Pennsylvania was reaping the benefits of its modernized laws too, with operators in both states rechanneling their customers into the digital realm to stem their brick-and-mortar losses.

Although the coronavirus impacted sports and sports betting in every state, those with online gambling operations were able to keep some revenue flowing. And when the sports calendar returned to normal, online betting surged in a way never before seen in the country. More money was legally wagered over the internet in 2020 in the US than in all the years prior put together.

Now it appears that both chambers of the General Assembly and the governor are all finally ready to legalize online sports betting, but that doesn't mean it's going to be easy. The path to expanded sports betting in the state twists its way through a minefield of legal and practical concerns.

Legal considerations

The statutory backdrop that frames gambling in New York is perhaps as complicated as any in the US. Its Constitution, like many other states, includes a blanket ban on gambling that cannot be changed without a referendum by voters authorizing the legislature to do so.

The people of New York have previously approved carveouts for horse betting (1939), bingo (1957), lottery (1966), games of chance (1975, 1984), and commercial casinos (2013), the latter of which arguably included sports betting. Rearranged for readability, the amended statute now looks like this:

No lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling shall hereafter be authorized or allowed within this state, except:

1. lotteries operated by the state and the sale of lottery tickets in connection therewith
2. pari-mutuel betting on horse races
3. casino gambling at no more than seven facilities

That last line, added in 2013, empowered the General Assembly to create this new commercial gambling industry. In order for lawmakers in 2021 to have the discretion to pass expanded sports betting legislation, the activity needs to align with those terms that voters agreed to at the ballot box eight years ago. Statewide online sports betting needs to fall under the statutory definition of "casino gambling at no more than seven facilities."

Attempting to legislate beyond those boundaries would require another referendum, a protracted process that first involves the passage of joint resolutions in two consecutive sessions.

Is sports betting "casino gambling"?

The legislature appears to have firm footing on the first matter, which stipulates that sports betting is a form of casino gambling. Such an interpretation is broadly consistent with state and federal case law, including New York's own criminal statutes. Section 225.10 of the penal code,¹⁶ for instance, classifies "bookmaking" as an offense related to the crime of "promoting gambling."

Legislative intent is also a key consideration, and the fact that the modern casino and sports betting laws were drafted in parallel adds further weight to their definitional relationship. The goal, today's sponsors contend, was to limit the number of casinos rather than to restrict the forms of gambling available within them.

¹⁴ <https://www.thegazette.com/subject/news/sports-betting-iowa-casinos-20191213>

¹⁵ <https://gaming.ny.gov/pdf/Spectrum%20New%20York%20Gaming%20Study%20Main%20Report.%20Final.pdf>

¹⁶ <https://www.nysenate.gov/legislation/laws/PEN/225.10>

New York firm Gibson Dunn highlighted this understanding in its 2019 legal brief¹⁷ on the topic:

The contemporaneous passage of the constitutional amendment authorizing casino gambling alongside enabling legislation conditionally authorizing sports betting makes clear that it was understood that the constitutional amendment’s reference to “casino gambling” included sports wagering. Further, the legislation makes clear that the amendment was even designed in part to authorize sports betting in New York State.

Judicial precedent additionally cited within the brief dictates that the legislature’s interpretation has “persuasive force” when that interpretation appears contemporaneously with the constitutional provision. This logic is furthermore consistent with the implementation of sports betting found elsewhere in the country. Nevada’s casinos, most notably, have been putting sportsbooks beside their slots and table games for 70+ years.

Does online sports betting occur “at” a casino?

Legislative authority in New York also revolves around the notion that online sports betting occurs “at” the server rather than the location of the bettor. In other words, where the transaction is processed matters more than where it is initiated. Here, precedent provides more of a mixed bag.

A 1999 New York Supreme Court case involving World Interactive Gaming Corporation, an offshore-based gambling company that served New York customers illegally, casts constitutional doubt on the proposed framework. In that ruling,¹⁸ the court held that the location of the bettor was a factor that determined the location of the bet. “[U]nder New York Penal Law,” the decision reads, “if the person engaged in gambling is located in New York, then New York is the location where the gambling occurred[.]”

The legislature’s proposed interpretation, on the other hand, does find some favorable precedent with horse betting. The enabling law from 1939 permits wagers by telephone, and regulations subsequently codified that such bets are “deemed to have been made in the county in which the telephone exchange receiving such telephone call bet is located.”¹⁹ Additional case law from decisions like the one in 1978 involving Saratoga Harness Racing²⁰ and the general principles of contract law further reinforce this interpretation.

In an attempt to satisfy the Constitutional language, proposed sports betting legislation in 2021²¹ requires transactional servers to be physically located at the same casinos—those “no more than seven facilities” approved by voters. The bills furthermore include this clause expressly defining where a bet is “at” for legal purposes:

All sports wagers [...] are considered placed or otherwise made when received by the operator at the licensed gaming facility, regardless of the authorized sports bettor’s physical location at the time the sports wager is initiated.

The state believes it is duly empowered by the people to modernize their existing sports betting law in this manner, but the issue of a wager’s location would likely be the primary objection raised by anyone who may seek to challenge that authority in court.

Practical considerations

Legal provisions aside, policymakers crafting the framework for legal sports betting also need to answer a long list of fundamental and practical questions that ultimately define the shape of their market. While there is no single blueprint for universally successful sports betting policy, a few sound decisions in the crafting phase can make it difficult for a well-regulated industry to fail. Seemingly trivial mistakes at this stage, on the other hand, can inhibit growth and depress the long-term profitability in ways that cannot be easily undone.

New York’s diverse gambling industry is both a blessing and a curse in this regard, creating a breadth of opportunities while also bringing a number of complicating factors into the equation.

License eligibility

The very first question that a sports betting law typically needs to answer is which entities get to offer the activity in the state.

Considering the US industry was incubated in Nevada for many decades, policymakers in states with similar characteristics tend to begin with a similar set of foundational blocks. Those with commercial casinos tend to use those properties as the primary licensees, with separate categories of permits for their operational partner(s) and the companies that power the underlying services like geolocation and banking.

Such a framework typically provides the most direct route from the drawing board to the launchpad, relying on existing gambling operators that have already passed a rigorous suitability check. Most of the prospective online operators in New York are already active in multiple jurisdictions, meaning they have experience with the sorts of compliance measures required to operate in a complex regulatory environment.

This casino-down model is additionally a way for a state to reward its brick-and-mortar properties for their investment in the local economy. Retail sportsbooks act as an extra amenity for the gaming floor, satisfying regular patrons and attracting a separate set of non-traditional gamblers that may not otherwise be inclined to visit. This “sports betting bump” could be especially beneficial to New York’s upstate casinos that had failed to meet their revenue targets even prior to the pandemic-related shutdowns of 2020.

¹⁷ <https://www.legalsportsreport.com/wp-content/uploads/2019/03/Sports-Wagering-White-Paper-1.pdf>

¹⁸ <https://www.casemine.com/judgement/us/59147f4dadd7b0493445f69e>

¹⁹ [https://gaming.ny.gov/pdf/New%20York%20State%20Gaming%20Commission%20rules%20Chapter%201,%20Subchapter%20F%20\(Off-Track%20Parimutuel%20Betting\)%20updated%202016-06.pdf](https://gaming.ny.gov/pdf/New%20York%20State%20Gaming%20Commission%20rules%20Chapter%201,%20Subchapter%20F%20(Off-Track%20Parimutuel%20Betting)%20updated%202016-06.pdf)

²⁰ <https://www.casemine.com/judgement/us/591494eeadd7b049345c580d>

²¹ <https://www.nysenate.gov/legislation/bills/2021/s1183>

Not every state has this option, of course. An absence of casinos typically means a lack of a formal gaming commission, which typically lands the duty of oversight on the desk of the state lottery. Even then, policymakers must make the keystone choice between competition and monopolization. New Hampshire uses its lottery to administer a DraftKings-only sports betting product, for example, while the lottery in Tennessee instead oversees a competitive multi-operator commercial industry.

The inclusive bills on the table in New York would allow—and the Constitution would arguably require—the casinos to bear the licenses for online sports betting. Native American nations would additionally have the option to participate in the statewide digital industry. Third-party operators would need to secure (1) a casino partnership and (2) standalone license in order to bring their platform to market. Off-track betting parlors, VLT facilities, racetracks, and large professional sports venues would additionally be able to enter into affiliate agreements with licensed casinos to install sports betting kiosks at their facilities.

Under the governor's exclusive plan, on the other hand, the state would establish a direct partnership with as few as one single operator.

Skin limitations

The authorization of multiple brands, or "skins", in a piece of online sports betting legislation allows companies without a physical presence in the state to participate in the regulated industry. FanDuel, for example, serves New Jersey under the license of Meadowlands. Some other markets, typically much smaller ones like New Hampshire, delegate an agency like the lottery to administer sports betting via a single supply chain.

Skin considerations can be a point of policy contention in markets with diverse gaming interests, as is the case in New York. While companies that primarily offer online sports betting tout the benefits of competition as they press for inclusion, the state's resident gambling operators and agencies seek protectionism via exclusivity.

Which framework is best is a question that each state must answer individually.

Pennsylvania, for instance, uses a single-skin model for its casino operators, while New Jersey allows up to three skins apiece for each of its 12 gambling facilities. Both are thriving, top-three markets in the US to begin 2021. On the other hand, the larger percent of gross revenue captured by monopoly states like Rhode Island and New Hampshire helps to offset an overall depression in per-capita betting brought about by a lack of competition.

As covered previously, the net result is essentially a wash. Maturing monopoly states and competitive states returned essentially the same amount of per-capita tax revenue for the last calendar year.

The active bills would authorize up to two skins per licensee (up from one in previous iterations) for a maximum initial total of 14 individual brands. The governor's plan would limit the number of available brands to as few as one via a state-contracted operation.

License fees and tax rates

For better or for worse, the legislative responsibility to drive revenue to the state often acts as the primary impetus for expanded sports betting legislation. This dynamic has become even more pronounced in 2021, as budget season shines a bright light on the financial toll taken by the coronavirus pandemic in 2020.

Common knowledge and common lobbying language within the sports betting industry dictates that tax rates have a significant impact on the total amount wagered, as tighter margins for operators in a high-tax model impair their ability to offer competitive pricing and bonusing. Here's how Spectrum Gaming outlined this concept in its report:

Sports wagering operators in high-tax-rate jurisdictions are less likely to offer attractive promotions to players, whereas low-tax-rate environments do allow for more aggressive promotional activity. Although difficult to quantify, we believe tax rates have a degree of influence on overall wagering volume, especially when the tax rate exceeds 20 percent.

Although the sample size is small, historical data in the US does not clearly support this claim.

Among competitive commercial markets, the 36% share of revenue Pennsylvania takes is by far the largest in the country. Yet an average adult in that state in 2020 wagered \$346, well above the US average. It's ahead of states like Indiana (\$336) despite the 9.5% tax rate there being among the nation's very lowest. Both states generated \$26 in gross gaming revenue per adult for the calendar year.

Based on the data so far, competition has a much larger impact on the total wagering activity than the tax rate.

This is particularly true in markets that allow operators to deduct promotional spend from gross revenue in order to offset a portion of their tax obligation. Such a mechanism keeps more dollars flowing through the local sports betting ecosystem, but it does impact the amount the state ultimately collects in its bucket. After writing off promotions, the actual effective state tax in Pennsylvania for 2020 amounted to 24% of gross revenue (\$57.9 million)—not the statutory 36%. Operators created that gap by awarding a combined \$80.2 million in promotions, offsetting a total of \$28.9 million in potential tax obligations. The numbers from Colorado are even more striking, with its 10% statutory tax becoming 3.6% effective after promotional deductions.

In the same way markets will seemingly self-adjust to a given tax rate within reason, one-time license fees become essentially negligible over a long enough time frame. Like a height requirement on a roller coaster, steep fees primarily serve to limit the pool of prospective operators that can participate without changing the fundamental experience of the ride. In a market the size of New York, upfront fees imposed at the license office can simultaneously amount to hundreds of millions of dollars for the state while at the same time being a bargain investment for a major multistate operator.

The active bills would impose a one-time license fee of \$12 million per operator and a permanent tax rate of 12% on gross revenue—well within a reasonable range and perhaps even lower than optimal. The governor’s plan would instead allow the proposal process to dictate the state share of proceeds.

What about integrity fees?

Even before the fall of PASPA, lobbyists for the professional US sports leagues—primarily the NBA and MLB—began working to convince lawmakers that their organizations were entitled to a share of the proceeds from the proliferation of legal betting. Pitched under the dubious guise of protecting the very fabric of sports, these proposed payments became known colloquially as “integrity fees.”²²

Lawmakers outside of New York have universally shunned the inclusion of such fees in every piece of enacted legislation to date, and the leagues eventually called off the press once failure became evident. They have since shifted their attention to forming commercial partnerships and private data agreements as their primary means to capitalize on the industry.

Proposed legislation in New York has seen through the integrity pretense while retaining the fee itself, characterizing such payments as a “royalty fee” since their first appearance in 2018. The matching bills on the table in 2021 still incorporate a straight royalty fee amounting to 0.2% of handle, which would redirect upwards of \$20 million to the leagues annually. The governor’s proposal does not expressly contemplate direct payments to sports organizations.

Data sources

Another controversial provision regarding the source(s) of data used to grade bets seems unlikely to change under the terms of expanded legislation in New York. The proposed language would require operators to use only league (or league-approved) sources of data to settle bets, thereby providing another mechanism by which they would capture a portion of sports betting proceeds. Such a restriction has no practical merit other than to signal a level of deference to the professional leagues headquartered in the state.

Illinois and Tennessee are currently the only US states with sports betting laws that include a restriction on permissible data sources,²³ and both are limited narrowly to in-play betting. The law in Michigan also empowers the leagues to request the exclusive use of their data for live betting, though that clause remains inactive at the time of writing.

The legislative proposals in New York mirror that limited framework, requiring operators to source official data to determine the outcome of some in-play tickets. Expanding on the two-tier model first used in Illinois at the leagues’ behest, these bills define three tiers of wagers:

- Tier 1: A wager that is determined solely by the final score or final outcome of the sports event
- Tier 2: An in-play sports wager that is not a tier one wager
- Tier 3: A sports wager that is neither a tier one nor a tier two sports wager

The bills would require the use of official data for Tier 2 wagers and allow leagues to additionally request the same for Tier 3. The governor’s proposal, on the other hand, does not contemplate the source(s) of data used to settle bets.

Present and potential stakeholders

Regardless of which path policymakers pick, the future success of sports betting in New York ultimately boils down to which stakeholders get to participate in the industry—and on what terms.

Commercial casinos

The four upstate casinos operate the existing commercial sports betting product in New York and stand at the front of the line to participate in expansion.

The bills would allow two skins for each of the four existing commercial casinos, giving them a maximum total presence of eight brands. But voters authorized “no more than seven” new casinos, leaving three unbuilt pending the 2023 expiration of a moratorium designed to shield the upstate casinos from competition during their formative years. Activating those licenses would not only bring the state a windfall from upfront licensing fees, it would also seemingly increase the skin capacity for online sports betting by six.

The governor’s plan uses the commercial casinos as mere hosts, requiring any prospective online operator(s) to act in partnership with a brick-and-mortar property. Such an arrangement was evidently crafted to satisfy the same statutory requirement regarding the location of a wager.

Tribal casinos

The three tribal nations that operate casinos in New York are also high on the list of likely participants in an expanded sports betting market. Compacts allow their eight combined Class III properties to provide the same gambling options as the four commercial casinos, granting them matching authority to offer sports betting. Tribal sportbooks furthermore have an advantage in the marketplace in that their exemption from gaming taxes theoretically allows them to offer better pricing and more aggressive promotions.

The bills would treat the tribal casinos like the commercial ones, awarding two skins apiece for each of the three nations for a maximum total presence of six brands. To put them on equal constitutional footing, it would additionally require and allow them to install transactional servers within one of the voter-approved commercial casinos at no cost.

²² <https://www.legalsportsreport.com/integrity-fee/>

²³ <https://www.legalsportsreport.com/official-league-data/>

The governor's plan excludes the tribes from online betting entirely, which would no doubt create further legal friction. The relationship between the tribes and the state is already contentious, and the proposal for enhanced sports betting sits against a complicated backdrop framed by repeated litigation over the decades-long expansion of commercial gambling and other issues.

Other gaming facilities

New York also has a number of secondary gaming facilities that could be in line to participate in an expanded sports betting industry.

The state is a destination for horse wagering, for starters, home to some premier racetracks and nearly 200 off-track betting sites. Given the current state of racing, an additional amenity like sports betting could breathe new life into an operation in the way it has for Monmouth Park in New Jersey. That track generated \$5.31 million in gross revenue from retail sports betting during a difficult 2020.

New York also has a supporting casino industry that consists of eight video lottery terminal facilities, including a critical trio in the downstate region: Empire City in Yonkers and Resorts World and Jakes 58 on Long Island. These three properties are the only ones in the state with direct access to the New York City market, and their 12,500+ machines create around \$1 billion in combined tax revenue annually — more than the upstate commercial and tribal casinos combined. Participation by these properties in the sports betting industry would make a substantial impact on the state's total retail revenue.

The legal path to inclusion is more complicated for these secondary gaming facilities than their casino counterparts, but there is substantial pressure to consider them in a modernized sports betting framework. The bills would do so by allowing them to host betting kiosks operated by one of the primary licensees or its partner(s), an arrangement that is again designed to comply with the constitutional limitations on gambling. The governor's plan does not include these OTB or VLT licensees as sports betting stakeholders.

Sports venues

New York is additionally home to dozens of professional sports facilities, some of which could be allowed to participate in an expanded betting framework. Proposed legislation notably includes limited permissions for on-site betting at those with a capacity exceeding 15,000 seats. Seven New York facilities meet those criteria, including some of the most famous venues in the world:

- Bills Stadium
- Yankee Stadium
- Citi Field
- Madison Square Garden
- Barclays Center
- KeyBank Center
- Times Union Center

Revenue from sportbooks inside of these venues, particularly those in and around New York City, would easily surpass the existing retail operations at the comparatively remote casinos upstate. Only Illinois, Virginia and the District of Columbia have so far passed laws that expressly allow on-site betting at sporting venues, though both remain unproven through the end of a disrupted 2020.

On the other hand, a statewide mobile betting framework that allows fans to bet from their seats would essentially reduce such a physical betting space to a mere customer activation touchpoint. This form of in-arena implementation can be found just across the river in New Jersey, where William Hill has a branded footprint at Prudential Center²⁴ despite a prohibition on in-arena sportsbooks.

DraftKings similarly leased space inside of Madison Square Garden to activate New York fantasy sports customers starting in 2017—a partnership that was refreshed in 2020²⁵—and the duo have spent the last two years expanding their relationship to accommodate the possibility of modernized betting. The venue's smartphone app now includes a free-to-play pick'em game, and its in-house television network has experimented with gambling-forward alternate broadcasts for Knicks games.

The bills would treat large professional sports venues like OTBs, allowing them to partner with one of the casino licensees to provide betting kiosks on site. Again, the governor's plan does not include provisions for the installation of any physical sports betting equipment.

Online gambling companies

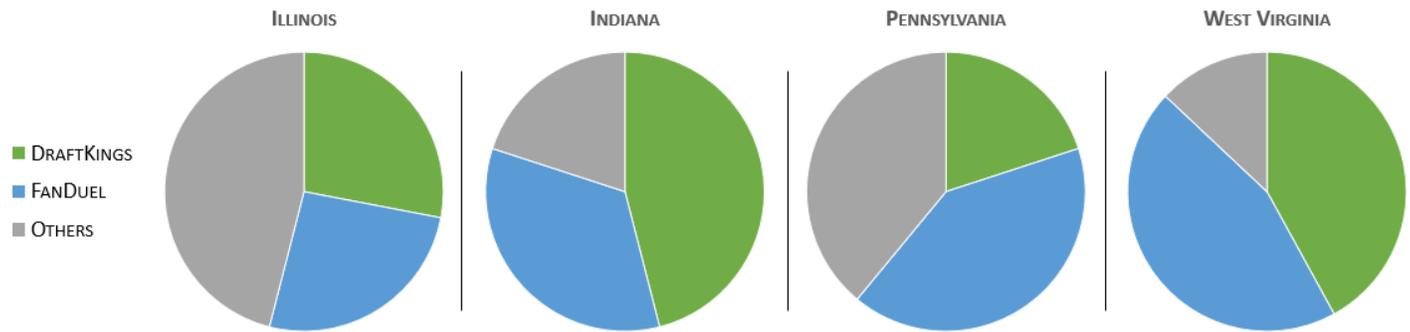
By far the biggest opportunity for New York sports betting comes not from casino companies or sports facilities, but via the inclusion of a new wave of gambling operators that deal primarily in the digital realm. Incentivized by expansion from coast to coast, relatively young operators now dominate this industry that was until 2018 monopolized by the Las Vegas casino conglomerate.

Growth is primarily being driven by DraftKings and FanDuel, rivals with roots in the fantasy sports industry that have leveraged their existing technology and customer base into starring roles amid the expansion of legal sports betting. They are the two market leaders in nearly every state they serve, responsible for more than half of all US online sports betting revenue outside of Nevada in 2020.²⁶

²⁴ <https://www.williamhill.us/william-hill-becomes-first-sports-book-to-partner-with-new-jersey-devils-and-prudential-center/>

²⁵ <https://www.globenewswire.com/news-release/2020/01/02/1965763/0/en/The-Madison-Square-Garden-Company-and-DraftKings-Announce-Renewed-Partnership.html>

²⁶ The precise nationwide share is impossible to calculate from publicly available data due to a lack of by-operator breakdowns in a number of states.



Both companies have secured access—or at least the right to bid for access—to an expanded New York market, locking up their partners in the immediate aftermath of the 2018 Supreme Court decision. Bet365 and BetRivers would additionally have a role in any single-skin model, while Barstool owner Penn National Gaming holds a secondary partnership that could allow it to operate in the state contingent on the final framework. William Hill, Fox Bet, and Kambi could also have a role in a competitive industry thanks to their existing partnerships with the three tribal nations.

It’s worth noting here that MGM purchased Empire City casino in Yonkers in 2019,²⁷ and the prospect of bringing its BetMGM app to the big market was no doubt a motivation behind its \$850 million investment.

Commercial			
Del Lago	Resorts World	Rivers	Tioga Downs
DraftKings	bet365	BetRivers, Barstool	FanDuel
Tribal			
Oneida	Mohawk	Seneca	
William Hill	Fox Bet	Kambi	

The bills in New York would mirror most other states by allowing these companies to participate via the license of their land-based casino partners. The governor’s proposal retains that partnership mandate but would additionally require any prospective operator to bid for a role in the expanded sports betting industry.

Revenue projections

This paper has largely focused on the factors that work to inhibit the success of sports betting in New York, but the Empire State does have in place most of the elements required to create a thriving industry.

- Large population of adult residents and tourists
- Robust presence across professional and collegiate sports
- Land-based gambling industry, including casino games and horse betting
- Fundamental regulatory structure for sports betting

The only thing that’s missing is online betting, though the implementation thereof will also dictate the market’s long-term revenue potential to a substantial degree.

The sponsors of the competitive model have pitched their bills with the promise that it will drive \$79 million in annual tax revenue to the state at maturity—a number they claim is a conservative estimate. It is indeed on the low end of the forecast from Spectrum Gaming, which projected a range of \$74-104 million in its report. Presuming the proposed 12% tax rate sticks, that would require sportsbooks to realize approximately \$700 million of gross gaming revenue from \$10 billion in total wagers.

The governor’s team meanwhile contends that its closed model would return \$357 million in tax revenue to the state in the first full year of operation, increasing to a full \$500 million by year four. To put that claim into context, a half a billion dollars is twice as much money as the total state tax revenue from sports betting across all 21 legal jurisdictions in 2020 combined. Presuming a 50% revenue share and a 10% hold, meeting this target would require the same \$10 billion in handle.

We considered both models as proposed and found that we essentially agree with the legislative projections while finding the forecast from the governor’s team to be overly optimistic. The numbers below represent what we believe to be true forecasts based on data from other markets and the state-specific factors that influence the numbers in this one.

²⁷ <https://www.mgmresorts.com/content/dam/MGM/mgm-empire-city/resources/press/mgm-empire-city-press-announce-transactions-to-acquire.pdf>

Open vs. Closed	Year 1	Year 2	Year 3	Year 4+	First 4 Years
Open					
Total Handle	\$ 7,000,000,000	\$ 8,500,000,000	\$ 10,000,000,000	\$ 11,500,000,000	\$ 37,000,000,000
Total Revenue	\$ 483,000,000	\$ 586,500,000	\$ 690,000,000	\$ 793,500,000	\$ 2,553,000,000
Federal Excise Tax	\$ 17,500,000	\$ 21,250,000	\$ 25,000,000	\$ 28,750,000	\$ 92,500,000
League Royalty Fee	\$ 14,000,000	\$ 17,000,000	\$ 20,000,000	\$ 23,000,000	\$ 74,000,000
Operator Revenue	\$ 393,540,000	\$ 477,870,000	\$ 562,200,000	\$ 646,530,000	\$ 2,080,140,000
State Revenue	\$ 57,960,000	\$ 70,380,000	\$ 82,800,000	\$ 95,220,000	\$ 306,360,000
Closed					
Total Handle	\$ 1,500,000,000	\$ 1,750,000,000	\$ 2,000,000,000	\$ 2,250,000,000	\$ 7,500,000,000
Total Revenue	\$ 150,000,000	\$ 175,000,000	\$ 200,000,000	\$ 225,000,000	\$ 750,000,000
Federal Excise Tax	\$ -	\$ -	\$ -	\$ -	\$ -
League Royalty Fee	\$ -	\$ -	\$ -	\$ -	\$ -
Operator Revenue	\$ 75,000,000	\$ 87,500,000	\$ 100,000,000	\$ 112,500,000	\$ 375,000,000
State Revenue	\$ 75,000,000	\$ 87,500,000	\$ 100,000,000	\$ 112,500,000	\$ 375,000,000

Despite taking the implementation of expanded sports betting in New York in vastly different directions, the gap between the end results—that is, state tax revenue—is much smaller than they claim. Both models would ultimately generate a comparable amount of revenue for the state. But only one of them, the legislative proposal, would also provide ancillary benefits and supplemental revenue for the existing brick-and-mortar gambling industry.

State revenue projections under an open framework could move higher if taxes and fees increase from the current proposal. Illinois, by way of comparison, imposes a license fee of up to \$20 million for online sports betting operators, while Pennsylvania taxes associated revenue at a rate of 36%. Although these numbers seem to mark the upper bounds of what is tenable even for a top-tier market, New York represents a greater revenue opportunity than either of them. A more aggressive approach, within reason, is unlikely to have an appreciable effect on the long-term level of participation and competition in the state.

The governor’s proposal has less headroom, though it is certainly possible a bidder would be willing to return more than half of its gross revenue in exchange for a monopoly in a market the size of New York and favorable contractual terms. Boosting that split to an unreasonable 67% would increase the state’s projected share of revenue to \$188 million at maturity, still not enough to get close to the cited \$500 million.²⁸

More aggressive taxes and fees and the removal of unnecessary royalties could, however, allow the two sides to find common ground and increase overall revenue to the state. We contend that a more-ideal framework for New York online sports betting includes 21 skins—three apiece for each of the seven casino stakeholders, expanding to 30 total brands with the eventual addition of three more properties. An increased tax rate of 20% on gross revenue would add additional incremental revenue for the state without negatively impacting the long-term health of the sports betting economy.

Tax revenue could ultimately reach \$172.5 million at maturity under such a model, a number that we see as the maximum for any proposal.

Ideal					
	Year 1	Year 2	Year 3	Year 4+	First 4 Years
Total Handle	\$ 8,000,000,000	\$ 9,500,000,000	\$ 11,000,000,000	\$ 12,500,000,000	\$ 41,000,000,000
Total Revenue	\$ 552,000,000	\$ 655,500,000	\$ 759,000,000	\$ 862,500,000	\$ 2,829,000,000
Federal Excise Tax	\$ 20,000,000	\$ 23,750,000	\$ 27,500,000	\$ 31,250,000	\$ 102,500,000
League Royalty Fee	\$ -	\$ -	\$ -	\$ -	\$ -
Operator Revenue	\$ 421,600,000	\$ 500,650,000	\$ 579,700,000	\$ 658,750,000	\$ 2,160,700,000
State Revenue	\$ 110,400,000	\$ 131,100,000	\$ 151,800,000	\$ 172,500,000	\$ 565,800,000

Outlook for 2021

The fate of the long-suffering effort to bring online sports betting to New York could be settled for the year by April 1, the deadline for the state to finalize the 2021 budget. But a lot of things need to happen very quickly to meet that target.

²⁸ It should be noted that the lack of a royalty fee would allow the New York sports betting ecosystem to retain an additional eight figures of revenue that would otherwise escape annually under the competing model currently being pushed by lawmakers. Running the operation through a state agency like the Gaming Commission would additionally obviate the imposition of a federal excise tax, keeping eight more figures of proceeds within the local economy.

Negotiations will first begin in earnest in both chambers following the issuance of their one-house budgets on March 15. Sen. Joseph Addabbo indicated that the Senate budget will embed the recently amended language from his S 1183 as the starting point for their negotiations with the governor.

This is nothing new.

The Senate has included online sports betting in its budget for the past two years, but pushback from both the governor and the lower chamber has derailed those attempted advances. The situation is slightly different this year, as the two-year executive budget proposal²⁹ now counts on actual revenue from online betting. That puts pressure on all sides to reach a resolution on the issue or find that money elsewhere, and the Assembly has already followed the Senate's lead with the inclusion of enabling language this time around.

The path to progress, however, has become even more complicated in 2021.

Entering budget negotiations, Cuomo is embroiled in one alleged coverup and one very public misconduct scandal. The governor's handling of the coronavirus pandemic is first of all under the microscope, particularly as it relates to allegations that he obscured the true death toll among the state's elderly nursing home residents.³⁰ Multiple women have meanwhile come forward to accuse Cuomo's of sexual harassment in a situation that is still developing at the time of writing,³¹ drawing a public apology and a chorus of calls to resign.

It is not yet clear how these extraordinary dynamics could affect the shape or timing of expanded sports betting legislation in the state. Although the governor indicates that he will not step down, his level of influence as it relates to his ability to shape policy seems to be at an all-time low.

Addabbo believes the administration will remain focused on hitting their April 1 deadline with a balanced budget that includes expanded sports betting. If online sports wagering is not included in the final budget package, however, the General Assembly would have until June 10 to pass standalone legislation before adjourning for the year.

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²⁹ <https://www.budget.ny.gov/pubs/archive/fy22/ex/fp/fy22fp-ex.pdf>

³⁰ <https://www.nytimes.com/2021/03/04/nyregion/cuomo-nursing-home-deaths.html>

³¹ https://www.washingtonpost.com/politics/cuomo-toxic-workplace/2021/03/06/7f7c5b9c-7dd3-11eb-b3d1-9e5aa3d5220c_story.html