

HOUSE BILL REPORT

ESHB 2638

As Amended by the Senate

Title: An act relating to authorizing sports wagering subject to the terms of tribal-state gaming compacts.

Brief Description: Authorizing sports wagering subject to the terms of tribal-state gaming compacts.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representatives Peterson, MacEwen, Stonier, Harris, Robinson, Young, Ortiz-Self, Stokesbary, Tharinger, Walsh, Riccelli, Appleton, Griffey, Hansen, Kloba, Lekanoff, Sells, Chapman, Gregerson and Ramel).

Brief History:

Committee Activity:

Commerce & Gaming: 1/27/20, 1/30/20 [DPS];
Appropriations: 2/8/20, 2/11/20 [DPS(COG)].

Floor Activity:

Passed House: 2/13/20, 83-14.
Senate Amended.
Passed Senate: 3/5/20, 34-15.

Brief Summary of Engrossed Substitute Bill

- Authorizes the amendment of tribal-state gaming compacts, upon a tribe's request, to allow sports wagering at the tribe's facility when conducted pursuant to the terms of negotiated tribal-state gaming compacts.
- Amends and adds to the powers and duties of the Gambling Commission, including related to licensing, inspections and audits, the filing of suspicious activity and betting reports, and ensuring sports integrity.
- Establishes new crimes and amends existing crimes in the Gambling Act.

HOUSE COMMITTEE ON COMMERCE & GAMING

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Peterson, Chair; Kloba, Vice Chair; Chambers, Assistant Ranking Minority Member; Blake, Kirby, Morgan, Ramel and Young.

Minority Report: Do not pass. Signed by 1 member: Representative Vick.

Minority Report: Without recommendation. Signed by 1 member: Representative Jenkin.

Staff: Peter Clodfelter (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Gaming be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 4 members: Representatives Ormsby, Chair; Chopp, Hoff and Kraft.

Minority Report: Without recommendation. Signed by 3 members: Representatives Cody, Springer and Sutherland.

Staff: Michael Hirsch (786-7157).

Background:

In May 2018, in the case of *Murphy v. National Collegiate Athletic Association*, the United States Supreme Court ruled that the federal Professional and Amateur Sports Protection Act (1992) violates the Tenth Amendment to the United States Constitution by prohibiting states from authorizing sports betting. In the wake of this court decision ending the decades-long federal ban on sports betting, states throughout the country are examining their laws and policies pertaining to betting on sporting events.

The federal Indian Gaming Regulatory Act (1988) (IGRA) affirmed tribal gaming rights and provides a framework for Indian tribes and states to negotiate, on a government-to-government basis, for how class III gaming will be conducted within a state and on tribal lands. Types of gaming are separated into three classes under IGRA. Class III gaming is casino-style gaming including lotteries, roulette, and house-banked card games such as blackjack and baccarat. Whereas tribes and the state negotiate regarding Class III gaming and how it will be authorized and regulated, Class I and II gaming is regulated by tribes only. Class I gaming includes social games for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals in connection with tribal ceremonies or celebrations. Class II gaming includes bingo and certain non-house-banked card games.

In Washington, the Gambling Commission (Commission) negotiates compacts for Class III gaming with federally recognized Indian tribes. There are 29 federally recognized Indian tribes in Washington, all of whom have a gaming compact with the state. When a tentative agreement on a proposed compact is reached, the Director of the Commission (Director) transmits a copy to all voting and ex officio members of the Commission and to the appropriate standing committees of the Legislature. Additionally, within 30 days after receiving a proposed compact from the Director, one standing committee from each house of the Legislature holds a public hearing on the proposed compact and forwards its respective comments to the Commission.

The Commission may also hold public hearings on the proposed compact any time after receiving a copy of the compact from the Director. Within 45 days after receiving the proposed compact from the Director, the Commission, including the four ex officio members, votes on whether to return the proposed compact to the Director with instructions for further negotiation or to forward the proposed compact to the Governor for review and final execution. If the Director forwards a proposed compact to the Commission and the designated standing committees within 10 days before the beginning of a regular session of the Legislature, or during a regular or special session of the legislature, the 30-day time limit and the 45-day limit are each 45 days and 60 days, respectively.

Summary of Engrossed Substitute Bill:

Upon the request of a federally recognized Indian tribe, the tribe's class III gaming compact may be amended pursuant to the Indian Gaming Regulatory Act and state law to authorize the tribe to conduct and operate sports wagering on federal Indian lands. The compact amendment must address topics including licensing, fees associated with the Gambling Commission's (Commission) regulation of sports wagering, how sports wagering will be conducted, operated, and regulated, issues related to criminal enforcement, money laundering, sport integrity, information sharing between the tribe and Commission, and responsible and problem gambling.

Gambling information may be transmitted over the Internet for any sports wagering conducted and operated under the new authorization, provided that a wager may be placed and accepted at a tribe's gaming facility only while the customer placing the wager is physically present on the premises of that tribe's gaming facility.

"Sports wagering" is defined as the business of accepting wagers on any of the following sporting events, athletic events, or competitions:

- a professional sport or athletic event;
- a collegiate sport or athletic event;
- an Olympic or international sports competition or event;
- an electronic sports or esports competition or event;
- a combination of the above sporting events, athletic events, or competitions; and
- a portion of any of the above sporting events, athletic events, or competitions.

The term "collegiate sport or athletic event" is a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution offering education services beyond the secondary level, other than an institution located within Washington. The term

"electronic or esports event" is a live event or tournament attended or watched by members of the public where games or matches are contested in real time by players and teams, and players or teams can win a prize based on their performance in the live event or tournament. The term "professional sport or athletic event" is an event that is not a collegiate sport or athletic event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in the event.

The existing authority of the Commission to authorize and require licensure of those who engage in the selling, distributing, or suppling of gambling devices for use in Washington is amended to add "manufacturing" to the activities and to add "equipment, software, hardware, or any gambling-related services" to the things within the commission's licensing authority. Also, a person participating as an employee in the operation, management, or provision of gambling-related services for sports wagering is added as a person who must be listed on the application for a gambling license. Additionally, the Commission may adopt rules related to licensing those who engage in any authorized sports wagering-related activities. It is provided that existing criminal money laundering statutes are included in the types of penal laws relating to gambling activities the Commission has authority to enforce.

Databases, hardware, software, and any other electronic data storage device are added to the things subject to inspection and audit by the Commission and law enforcement when owned by a person conducting, profiting from, or having an interest in authorized gambling. Also, compliance with federal and state laws is added to the scope of inspections and audits by the Commission. The Commission may require the submission of reports on suspicious activities or irregular betting activities to effectively identify players, wagering information, and suspicious and illegal transactions. The Commission may also ensure sport integrity and prevent and detect competition manipulation through education and enforcement of applicable laws. The Commission may track and monitor gambling-related transactions occurring within Washington to aid in its enforcement of applicable laws, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification by a player.

The following new class C felony criminal prohibitions are added to the Gambling Act:

- No person may offer, promise, give, or attempt to give any thing of value to any person for the purpose of influencing the outcome of a sporting event, athletic event, or competition upon which a wager may be made.
- No person may place, increase, or decrease a wager after acquiring knowledge unavailable to the general public that anyone has been offered, promised, or given any thing of value for the purpose of influencing the outcome of a sporting event, athletic event, or competition upon which the wager is placed, increased, or decreased.
- No person may offer, promise, give, or attempt to give any thing of value to obtain confidential or insider information not available to the public with intent to use the information to gain a wagering advantage on a sporting event or competition.
- No person may accept or agree to accept any thing of value for the purpose of wrongfully influencing his or her play, action, decision making, or conduct in any sporting event, athletic event, or competition upon which a wager may be made.

New criminal prohibitions are also added applicable to those who operate any gambling activity. A person, association, or organization may not, directly or indirectly, do the following in the course of operating the gambling activity:

- alter or misrepresent the outcome of a game or event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
- place, increase, or decrease a bet or determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome;
- knowingly entice or induce another person to go to any place where a gambling activity is being conducted or operated in violation of the Gambling Act, with the intent that the other person play or participate in that gambling activity;
- place or increase a bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet;
- reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the game or event that is the subject of the bet.

All the above new prohibitions are class C felonies. The existing gross misdemeanor crime of a person operating a gambling activity and employing a device or scheme to defraud another person is changed to a class C felony. Engaging in bookmaking is added to the existing crime of Professional Gambling in the First Degree.

By December 1 of the year following any authorization by the Legislature of a new gambling activity, any report by the Commission to the Governor and the appropriate committees of the Legislature submitted pursuant to an existing reporting duty must include information on the state of the gambling industry both within Washington and nationwide.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- excludes minor league sports from the definition of "professional sport or athletic event" and prohibits sports wagering on any minor league sport; and
- authorizes the Gambling Commission (Commission) to also use the \$6 million appropriation loaned to the Gambling Revolving Account for implementation of the act, so the Commission is not limited to using the appropriation only for enforcement actions in the illicit market for sports wagering.

Appropriation: The sum of \$6 million is appropriated from the State General Fund for fiscal year ending June 30, 2020, for expenditure by the Gambling Commission solely for enforcement actions in the illicit market for sports wagering. The appropriation is a loan from the State General Fund to the Gambling Revolving Account that must be repaid with net interest by June 30, 2021.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) This is a sensible step into legalized sports wagering in Washington. It is an activity already occurring and will continue to grow, so it is incumbent on the Legislature to find the best path forward. Tribes and the state have an excellent working partnership already as sovereign-to-sovereign governments, including work done related to problem gambling, and so it makes sense to continue that partnership and add sports wagering as an additional offering at tribal casinos. The state has a history of acting conservatively in terms of expanding gambling. Tribal gaming is a structured regulatory environment and there are significant internal controls. Because tribes are located throughout the state, there will be access for consumers to sports betting no matter where they live. It is best to start slowly by authorizing sports wagering at existing tribal facilities, without adding mobile sports betting, and then to evaluate how it works. Gaming revenue supports and has transformed communities all across Washington. Gaming revenue funds essential tribal government services including social services, medical needs, child care, elder care, housing, and transportation. Revenue also supports charities, nonprofits, problem-gambling treatment and support, and local first responders. Gaming revenue provides options for free tuition to a college or school of one's choice; and those tribal members who benefit from these opportunities return to Washington and continue to improve their community. This has created opportunity for people in their twenties and thirties that would not exist absent tribal gaming. The impact of tribal gaming on Washington's economy is tremendous. Tribes directly employ around 30,000 people in Washington, and this includes tribal members and non-tribal members. Tribal gaming adds billions of dollars of economic activity to the state. Employment opportunities in tribal gaming provide a living wage and sustainable career path. Tribes appreciate their relationships with and the work of the Gambling Commission (Commission), which is the appropriate regulatory entity for sports wagering. It does not make sense to equate tribes with non-tribal private industry in the context of the argument that, to level the playing field, sports betting must also be authorized at non-tribal card rooms. For tribal gaming, 100 percent of the profit supports tribes, and the money is re-invested in the community; this is not the case with gaming conducted by private companies where the law authorizes gaming as a commercial stimulant to a bar or restaurant, not a standalone activity like for tribal gaming.

(Opposed) A comprehensive approach to sports betting that will provide tax revenue to the state and truly combat the illicit off-shore sports betting market is a wiser approach than this bill. It is easy to set up an off-shore betting account on a phone or computer with a credit card, and many people who want to bet on sports have to do so through these unregulated and illegal services. There is consumer demand for sports betting, including mobile sports betting. Mobile and Internet-based engagement is the way the world is heading. Without allowing mobile sports betting, the illicit market will continue to thrive. The data from New Jersey's sports betting program supports this, where over 85 percent of bets are placed through mobile devices. Licensed card rooms are heavily regulated, just as tribal gaming is, and card rooms also consider themselves partners with the state. Card rooms employ thousands of employees in Washington, including card room workers, management, cooks, and dishwashers. Local card rooms under common ownership have already instituted a system-wide self-exclusion policy to combat problem gambling. States across the country are realizing tax revenue from sports wagering; Washington should develop a law that does so as well. Stakeholders are committed to working together to find a solution that benefits

the state, tribes, employees, and all communities. Allowing sports betting at card rooms would create jobs for veterans. This is a missed opportunity if not all groups with the capacity and desire to offer sports betting to consumers have the opportunity to do so. The state should be creating more opportunities, not less.

(Other) The Commission is neutral on what scope of sports betting the Legislature wants to authorize and looks at bills through the lens of ensuring gambling is legal and honest. The Commission appreciates that the bill includes the different regulatory components that the Commission believes any sports betting bill should address to establish a sound regulatory structure. The Commission understands it would be the primary regulator of sports betting, and the bill gives the Commission the tools it needs to do that job. The bill provides a renewed opportunity to focus on and combat the illicit market for sports betting. The Commission would already be obligated through the Administrative Procedure Act to work with interested sports leagues and teams related to sports wagering rules, which is why the new language in the original bill on that point is removed in the proposed substitute bill. It is critical that the horse racing industry have an opportunity to participate in any new sports wagering. Horse racing started in 1933, before other gambling was authorized, so the horse racing industry has the experience to participate in any newly authorized sports betting. The Emerald Downs facility is perfect for offering sports betting. It is a big facility with lots of parking. The existing facility needs new financial incentives to carry on and could easily add sports betting to its current offerings. Although Washington was conservative in expanding gambling early on, the politics of the state are now perhaps more libertarian, when considering changes like the legalization of recreational marijuana. Horse racing supports thousands of jobs in Washington and provides several hundred million dollars of economic benefit to the state. The horse racing industry has always been self-sustaining, but that has changed and things are critical in terms of the financial feasibility of continuing in the industry without a change. Every state that has authorized sports betting and that has a horse racing industry in the state has included authorization for sports betting at horse racetracks. Washington should do so as well and not be an outlier.

Staff Summary of Public Testimony (Appropriations):

(In support) This limited expansion of gambling activity would be safe and regulated. Tribes have experience overseeing gaming, and their gaming activities are regulated by federal, state, and tribal governments. Gaming is an essential part of the community of certain tribes. This bill generates additional revenue for tribes in Washington. There would be benefits to the local economy, including tribal and non-tribal members of the state. This bill keeps sports betting revenues in Washington to fund public priorities. A broader expansion of sports betting would not generate net revenue for the state.

(Opposed) This bill creates an unfair playing field. Card rooms in Washington are licensed and regulated, and they would not be able to participate in sports gaming. Most sports betting in New Jersey, a similar market that has legalized sports gambling, occurs online and this limited bill does not address issues of online sports betting and the illicit market, which is accessible and unregulated. This bill does not include statewide exclusion programs. This bill does not take a thoughtful approach and was not created with the input of all current stakeholders. This bill does not generate revenue for the state.

(Other) The Washington State Gambling Commission regulates authorized gambling activities and would negotiate tribal compacts on behalf of the state. The Legislature decides what gambling is and who can conduct it. This bill includes consideration of licensing and regulation, agency funding, money laundering and criminal enforcement, sport and gambling integrity, and responsible and problem gambling.

Persons Testifying (Commerce & Gaming): (In support) Representative Peterson, prime sponsor; David Bean, Puyallup Tribe; Sammy Mabe, Suquamish Tribe; Rebecca Kaldor, Washington Indian Gaming Association; Charlene Tillequots, Yakima Nation; Chris Masse, Miller Nash Graham and Dunn; Kara Fox-LaRose, Cowlitz Tribe; and Jerry Allen, 7 Cedars Resort.

(Opposed) Eric Persson, Vicki Christophersen, Craig Schweigert, and Joe Sohm, Maverick Gaming.

(Other) Pat LePley and MaryAnn O'Connell, Washington Horsemen's Benevolent and Protective Association; Dana Halvorson, Washington Thoroughbred Owners and Breeders Association; Amanda Benton, Washington Horse Racing Commission; and Brian Considine, Washington State Gambling Commission.

Persons Testifying (Appropriations): (In support) David Bean, Puyallup Tribe; Rebecca Kaldor, Washington Indian Gaming Association; Kevin Zenishek, Northern Quest Resort and Casino; and Rion Ramirez, Port Madison Enterprises.

(Opposed) Eric Persson, Maverick Persson, and Vicki Christopherson, Maverick Gaming; and Brenda Wiest, Teamsters Local Union 117.

(Other) Brian Considine, Washington State Gambling Commission.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.