

CGS § 12-572b Prohibition on Advance Deposit Wagers

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September 27, 2022 | 2022-R-0178

Issue

Summarize (1) the prohibition on accepting advance deposit wagers enacted in 2019 ([CGS § 12-572b](#)), (2) proposed legislation in subsequent sessions to repeal the prohibition, and (3) public hearing testimony arguing for and against its repeal.

Summary

[CGS § 12-572b](#) explicitly prohibits any unauthorized person or business from (1) conducting off-track betting (OTB) in Connecticut or (2) accepting OTB wagers or advance deposit wagers (i.e., an OTB wager on racing events using a telephone or other electronic means) that originate from or are placed in Connecticut. It was enacted in the 2019 budget implementer ([PA 19-117](#), § 359).

In each of the three subsequent sessions, the legislature considered, but did not enact, bills to repeal this statute. Generally, testimony from the proponents and opponents of these bills differed on three main points: (1) whether the statute is the sole basis for the state to grant exclusive OTB rights to one provider (i.e., Sportech Venues, Inc.), (2) whether the statute conflicts with federal law, and (3) policy considerations for and against exclusivity. We summarize these arguments below.

Legislative History

Enactment

The prohibition in [CGS § 12-572b](#) appears to have originated in [SB 276](#) (2018), which was introduced and heard in the Public Safety and Security Committee. The committee reported the bill favorably, but the Senate did not take it up.

During the 2019 session, a similar concept was added as substitute language to the bill setting out the governor's recommendations to implement the budget ([sSB 877](#), § 46). The Finance, Revenue and Bonding Committee reported the bill favorably, but the Senate took no further action. However, the concept was included in the 2019 budget implementer, which was emergency certified and ultimately enacted as [PA 19-117](#), § 359, and then codified as [CGS § 12-572b](#).

As noted above, the statute explicitly prohibits any unauthorized person or business from (1) conducting OTB in the state or (2) accepting OTB wagers or advance deposit wagers that originate from or are placed in the state. A violation of this law is an unfair trade practice under the Connecticut Unfair Trade Practices Act. The law also subjects violators to penalties for professional gambling and transmitting gambling information, both of which are class A misdemeanors (punishable by up to 364 days of imprisonment, up to a \$2,000 fine, or both).

Proposed Repeals

In each of the three succeeding sessions (2020-2022), bills to repeal the statute were introduced and heard in the Public Safety and Security Committee: [HB 5395](#) (2020), [SB 573](#) (2021), and [SB 134](#) (2022). The committee took no further action on the 2020 or 2021 bills (the COVID-19 pandemic suspended the 2020 session before the committee's reporting deadline). It reported the 2022 bill favorably, but the Senate did not take it up.

Arguments For and Against Repeal

Two companies involved in OTB wagering outside of Connecticut, Xpressbet, LLC and Churchill Downs, Inc., submitted testimony in favor of repealing [CGS § 12-572b](#), while Sportech and the Department of Consumer Protection (DCP) testified against the repeal.

Written testimony from the parties on the above repeal bills was substantially similar across the past three years. The following table provides links to them for reference.

Written Testimony on 2020-2022 Bills Repealing CGS § 12-572b

<i>Party</i>	<i>Testimony</i>
Churchill Downs	2020 and 2022
DCP	2020 , 2021 , and 2022
Sportech	2020 , 2021 , 2022-1 , and 2022-2
Xpressbet	2020 , 2021 , and 2022

Additionally, the following are links to transcripts of the oral testimony provided on the days in which the bills were heard by the Public Safety and Security Committee: [2020](#), [2021](#), and [2022](#).

OTB Exclusivity

Both Xpressbet and Churchill Downs argued that Sportech’s exclusive OTB rights in Connecticut are based solely on [CGS § 12-572b](#) (i.e., they did not exist before the statute was enacted in 2019).

DCP disagreed, arguing that a 1993 agreement with the state and other law in [CGS Chapter 226](#) already provided exclusivity to the company before [CGS § 12-572b](#) was enacted. Relatedly, Sportech testified that the state attorney general took various enforcement actions against different gambling operators in years prior to the statute’s enactment, including issuing 28 cease-and-desist letters jointly with the DCP commissioner in 2014. Sportech included as attachments to its 2020 and 2021 written testimony copies of the letters sent to Churchill Downs and Xpressbet respectively, which state that these companies were operating in violation of Connecticut law, citing [CGS Chapter 226](#).

With respect to [CGS § 12-572b](#), DCP and Sportech argued that it provides technical or clarifying language, including addressing advances in technology and enforcement penalties.

Federal Law

The companies favoring repeal argued that the statute conflicts with or violates federal law in two ways. First, both Xpressbet and Churchill Downs argued that the exclusivity afforded to Sportech violates the U.S. Constitution’s Interstate Commerce Clause ([U.S. Const., Art. 1, § 8, cl. 3](#)). Churchill Downs specifically argued that Connecticut’s grant of exclusivity to Sportech, at the expense of out-of-state competitors, is unconstitutionally discriminatory.

While not specifically addressing the commerce clause claim, DCP noted that since [CGS § 12-572b](#) went into effect, the department has worked with Sportech to allow out-of-state business entities to solicit, collect, and route wagers originating from Connecticut to Sportech for acceptance and processing. The department argued that this activity is consistent with state and federal law and

allows the state to collect tax revenue from the out-of-state operators that legally enter into advance deposit wager agreements with Sportech. According to DCP's 2022 testimony, Sportech has entered into agreements with two operators. (Xpressbet included as attachments to its testimony letters from Sportech offering to come to an arrangement with the company. Based on oral testimony from Xpressbet at the public hearings, the company has rejected these offers because it feels they would require paying a fee to one of its competitors. This fee is discussed in a letter Sportech attached to its 2021 written testimony.)

The other federal law at issue is the [Interstate Horseracing Act](#) (IHA), which Xpressbet contended controls OTB and interstate horseracing and provides no role for the state in interstate transactions between private entities in this industry. Therefore, according to Xpressbet, [CGS § 12-572b](#) violates this federal law.

DCP rejected Xpressbet's interpretation of IHA, contending that Connecticut's law is consistent with the act because, under [15 USC § 3004](#), "off-track racing commissions" must consent to interstate off-track wagers and, under IHA, DCP is the state's commission.

Policy Considerations

Xpressbet and Churchill Downs both argued that repealing [CGS § 12-572b](#) would increase competition, which would benefit Connecticut consumers. The latter also contended that having a single operator risks consumers being unable to participate in OTB if Sportech experiences outages or other issues.

As mentioned above, Sportech and DCP asserted that a framework exists for other OTB operators besides Sportech to participate in Connecticut. They also made several other arguments against repeal, including that the statute reinforces other state law and the state's contract with Sportech and helps enforcement efforts to prevent illegal gambling operations that reduce OTB state tax revenue.

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