



June 16, 2021

Dear House Chair Parisella and Senate Chair Lesser:

On behalf of the Massachusetts Gaming Commission (MGC), thank you for the opportunity to present written comments on proposed sports wagering legislation. Along with these comments, the MGC has also provided two white papers which we hope will be helpful for your work. The first pertains to responsible gaming and the second gives an overview of US policies and practices related to sports wagering.

Should Massachusetts allow sports wagering, the MGC does not presume that it will become the regulator of that industry. However, in the event the legislature sees fit to assign oversight to the MGC, we are preparing as much as we can prior to the implementation of specific statutory language. We offer comments in the context of having been the state agency that implemented casino gaming. G.L. c. 23K provided an excellent roadmap for that implementation and, based upon our experience, we offer suggestions on certain areas of potential legislation for your consideration.

### Regulatory Authority

Licensing, regulating, and ensuring the integrity of and public confidence in sports wagering will be critical tasks for the entity chosen to regulate the industry. As such, it is important that the regulator's authority to enact necessary regulations is clear and unequivocal. If not expressly stated in the implementing legislation, there may be difficulties in implementing and enforcing the law down the road. Further, the regulator's authority in the arena of sports wagering should be as broad and extensive as it is for casino gaming under G.L. c. 23K.

The following bills are examples of those that include strong proposed language regarding regulatory authority:

House Bill 506/ Senate Bill 269 / Senate Bill 257

The commission shall have the authority to promulgate rules and regulations necessary for the implementation, administration and enforcement of this chapter.

Senate Bill 269

The commission may promulgate rules and regulations including, but not limited to, those governing licensees, the acceptance of wagers on a sports event, other event or a series of sports events; types of live sports wagering; types of wagering



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receipts which may be used; methods of issuing receipts; methods of accounting to be used by operators; types of records to be kept; types of systems for wagering; data and other pertinent standards and requirements for data suppliers; athlete protections; protections for patrons placing wagers; and promotion of social responsibility and responsible gambling.

### Availability of Resources to Implement Sports Wagering Legislation

The entity implementing sports wagering legislation and regulating the industry will be tasked with a variety of responsibilities. Such responsibilities include, but are not limited to, investigating and licensing entities engaged in sports wagering, drafting and implementing regulations, testing and monitoring sports wagering technology, working to ensure consumers are protected, and most importantly, ensuring the integrity of and confidence in sports wagering in the Commonwealth. As such, a funding mechanism for the regulator will be necessary.

Currently, G.L. c. 23K, § 56 provides the MGC with specific sources of funding that flow directly from the *gaming licensees* for its operations and oversight of *casino gaming*. The MGC does not receive any money via the state budget.

We suggest that the legislature consider adopting a similar funding mechanism for sports wagering, whereby the sports wagering licensees pay for the operational activities of the regulator pertaining to sports wagering. Senate Bill 257 includes proposed language that would provide such a funding mechanism:

(a) There shall be established and set up on the books of the Commonwealth a separate fund to be known as the Sports Wagering Control Fund. The Commission shall be the trustee of the fund and shall expend monies to finance operational activities of the Commission pertaining to sports wagering. Funds from subsections b through d shall be deposited in this Fund. The fund shall be credited any appropriations, bond proceeds or other monies authorized by the general court and specifically designated to be credited thereto, the proceeds of the assessments levied under this section unless otherwise specified, initial application fees for licenses issued under sections 8 and 9 and such additional funds as are subject to the direction and control of the commission. All available monies in the fund that are unexpended at the end of each fiscal year shall not revert to the General Fund and shall be available for expenditure in the subsequent fiscal year.

(b) The Commission shall establish fees for any investigation into a violation of this chapter or regulation promulgated hereunder by a sports wagering licensee to be paid by the sports wagering licensee including, but not limited to, billable



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hours by commission staff involved in the investigation and the costs of services, equipment or other expenses that are incurred by the commission during the investigation.

(c) Any remaining costs of the Commission necessary to maintain regulatory control over sports wagering licensees that are not covered by: (i) the fees set forth in subsection (a); (ii) any other fees assessed under this chapter; or (iii) any other designated sources of funding, shall be assessed annually on sports wagering licensees under this chapter in proportion to its share of the Commonwealth's total adjusted gross sports wagering receipts. Each sports wagering licensee shall pay the amount assessed against it within 30 days after the date of the notice of assessment from the commission.

(d) If the fees collected in subsections (b) and (c) exceed the cost required to maintain regulatory control, the surplus funds shall be credited in proportional shares against each sports wagering licensee's next assessment.

(e) In addition to the fees collected under this section and any additional costs of the commission, the Commission shall also assess an annual fee of \$1,000,000 in shares to be determined by the Commission against each sports wagering licensee that is not a category 1 or category 2 gaming licensee as defined by MGL Chapter 23K for the costs of service and public health programs dedicated to addressing problems associated with compulsive gambling or other addiction services. Such assessed fees shall be deposited into the Public Health Trust Fund established in section 58 of Chapter 23K.<sup>1</sup>

### Consumer Protection

Sports wagering and the technology supporting it are rapidly emerging and changing. There are challenges accompanying this evolution, such as increased availability, accessibility, and advertising of gambling. Yet, there are also benefits in harnessing the technology to support safer gambling, such as offering player-management systems to monitor real-life gambling and allowing players to set personalized limits.

Chapter 23K serves as an international model for its focus on consumer protections, including robust problem gambling prevention and intervention programs and an annual research agenda focused on mitigating gambling-related harm. To prevent and

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<sup>1</sup> It is important that there is dedicated funding for public health initiatives. While section (e) identifies a specific funding amount for the Public Health Trust Fund and a way of apportioning the costs to licensees, there are a variety of ways to obtain the necessary additional funding and other options for apportioning the costs to the licensees.



mitigate harms associated with sports wagering, it is important that the regulator have the authority to promulgate regulations that also support responsible gaming in the context of sports wagering.

Based on research findings as well as our extensive experience, we recommend multiple strategies and measures to promote and support safer levels of sports wagering targeted to different player segments. These are outlined in the MGC's white paper titled "*Applying Principles of the Massachusetts Responsible Gaming Framework to Sports Wagering Policy and Practice.*"

The MGC also makes available to the legislature our Director of Research and Responsible Gaming, Mark Vander Linden, for his expertise on these issues.

### Integrity Through Suitability and Enforcement

Ensuring the integrity of and public confidence in sports wagering in the Commonwealth will be a critical task of the regulator overseeing the industry. Two key mechanisms for ensuring integrity are the regulator's ability to make suitability determinations and its ability to enforce the sports wagering legislation and related regulations through the imposition of penalties.

The proposed sports wagering bills differ when it comes to the criteria to be applied by the regulator in determining the suitability of sports wagering applicants. Chapter 23K, § 12 specifies the criteria to be applied by the MGC in determining suitability for gaming licensees, including the well-known "integrity, honesty, and good character" standard. In line with c. 23K, we suggest that the legislature consider setting out the criteria to be applied by the regulator in determining suitability for sports wagering licensees. An example of such criteria can be found in Senate Bill 269:

Upon receipt of an application for a category 1 license, the commission shall commence an investigation into the suitability of the applicant. The commission may use information obtained from the applicant pursuant to chapter 23K to relieve the applicant of duplicate requirements of this chapter. In evaluating the suitability of the applicant, the commission shall consider the overall reputation of the applicant including, without limitation:

- (1) The integrity, honesty, good character and reputation of the applicant;
- (2) The financial stability, integrity and background of the applicant;
- (3) The business practices and the business ability of the applicant to establish and maintain a successful sports wagering operation;



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- (4) Whether the applicant has a history of compliance with gaming or sports wagering licensing requirements in other jurisdictions;
- (5) Whether the applicant, at the time of application, is a defendant in litigation involving its business practices; and
- (6) The suitability of all parties in interest to the license, including affiliates and close associates and the financial resources of the applicant.

It is also important that the regulator possesses the ability to impose penalties on licensees as part of its oversight responsibilities. Further, the ability to tailor the penalty to the infraction is important, including the ability to condition, suspend, reprimand, assess a fine, or revoke a license when necessary.

A number of bills include strong proposed language regarding conditioning, suspending, reprimanding, or revoking a license:

Senate Bill 257

(a) For both operator and occupational licenses, the commission shall deny a license to any applicant, reprimand any licensee or suspend or revoke a license, if the applicant or licensee:

- (1) has knowingly made a false statement of a material fact to the commission;
- (2) has had a license revoked by any governmental authority responsible for regulation of gaming activities;
- (3) has been convicted of a crime of moral turpitude, a gambling-related offense or a theft or fraud offense;
- (4) has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise; or
- (5) is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business.

(b) The commission may deny, suspend or revoke an operator license or reprimand any licensee if the applicant or licensee has not met the requirements of this chapter.



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### Senate Bill 269

The commission may condition, suspend, reprimand or revoke a category 1, category 2, category 3 or data supplier license upon a finding that a licensee: (i) has committed a criminal or civil offense under this chapter or under any other laws of the commonwealth; (ii) is not in compliance with sports wagering regulations or is under criminal investigation in another jurisdiction; (iii) has breached a condition of licensure; (iv) has affiliates, close associates or employees that are not qualified or licensed under this chapter with whom the licensee continues to conduct business or employ; (v) is no longer capable of maintaining operations as a sports wagering operator or data supplier; or (vi) whose business practice, upon a determination by the commission, is injurious to the policy objectives of this chapter.

With regarding to assessing fines, many of the bills only allow the regulator to assess relatively small civil penalties of \$2,000 for each violation or \$5,000 for violations arising from the same series of events. These penalties seem aimed more at individuals than the licensees. The ability to assess a range of civil penalties has been extremely helpful in the gaming context and it would be helpful for the regulator to have similar authority with regard to sports wagering.

### Confidential Information

In order to effectively regulate the industry, it will be essential for the regulator to require submission of, and gain access to, commercially sensitive and confidential information and documentation from the licensees throughout the terms of their license. To ensure unbridled access by the regulator, it will be important to exempt such information and documents from required disclosure under the Public Records Law. Senate Bill 257 incorporates proposed language that effectively addresses this issue:

Any public records provided to the Commission by an applicant or licensee under this chapter that the Commission determines constitute a trade secret, or are competitively-sensitive or proprietary, and that the public disclosure of the record would be detrimental to or place said applicant or licensee at a competitive disadvantage, may be withheld from disclosure under section 10 of chapter 66.

### Licensing

The proposed sports wagering bills differ in significant respects with regard to which types of entities may apply for a sports wagering license and how many licenses/skins may be awarded.



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While the MGC does not take a position on these issues, it is essential that the law is clear regarding which entities may apply for a license. Specifically, it will be helpful to have clarity regarding whether the legislature intends to allow entities that hold purely simulcast racing licenses to be eligible for sports wagering licenses and whether it intends live racetracks that may open in the future to be eligible for such licenses. It will also be important to clarify whether a finite number of licenses/skins are allowed in the Commonwealth or if the regulator has discretion in that regard, pursuant to statutory criteria.

### Location of Sports Wagering Lounges

While the sports wagering bills contemplate the opening of brick and motor sports wagering lounges by existing gaming licensees, and potentially by racetracks/simulcast facilities, they largely do not specify where the lounges are to be located. The casinos would likely open their lounges within their established gaming facilities. However, it is unclear where the lounges of racetracks/simulcast facilities would be located.

Given the potential complexities of opening a sports wagering lounge outside of an established gaming facility or racetrack/simulcast facility, the legislature may want to consider specifying that lounges must be established at the same location where the entity is licensed to conduct racing or simulcast activities.

House Bill 70 includes a provision whereby casinos must open their sports wagering lounges within their gaming establishment, which could be tailored to include racetracks/simulcast facilities:

“Sports wagering lounge”, an area wherein a licensed sports pool is operated located in a gaming establishment. For the purposes of this chapter, the sports wagering lounge shall be considered part of the gaming area.

“No category 1 or category 2 licensee shall be permitted to operate a sports pool or accept wagers via an online sports pool unless a sports wagering lounge is established and has commenced operation in its facility; provided, however, that an applicant for a sports wagering license may petition the commission to commence operation of the sports pool at a temporary facility or an online sports pool during the pendency of construction of a sports wagering lounge in its facility. Such temporary facility may include, at the discretion of the commission, the utilization of designated windows and self-service wagering machines located in the gaming area or a cashless wagering system pursuant to the provisions of section 29; provided that the provisions of this clause shall not apply to an online sports pool operator.”



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### Location of Proposed Legislation in the General Laws

The proposed bills differ with regard to whether sports wagering will be incorporated into G.L. c. 23K or set out in a stand-alone chapter of the general laws. Given the complexity of both the gaming legislation and the sports wagering bills, it would likely enhance the clarity of the legislation if a new chapter is added for sports wagering.

### Diversity

Recognizing the importance of diversity in the sports wagering industry is currently a rising trend. For example, the [Vixio Regulatory Intelligence blog](#) indicates that “Maryland’s [sports wagering] law mandates a new state commission to ‘actively seek to achieve racial, ethnic and gender diversity’ through the awarding of standalone licenses for retail and mobile sports betting, while the Virginia Lottery must similarly give ‘substantial and preferred consideration’ to companies with minority investors or partners when it opens applications for five additional permits later this year.”

In enacting G.L. c. 23K, the legislature included provisions aimed at promoting diversity in the gaming industry. The legislature may also want to consider including provisions aimed at promoting diversity in the sports wagering industry. If so, the following two resources may be informative: [Sports Betting Becomes Legal in Maryland](#), and [Maryland Authorizes Retail and Online Sports Wagering](#).

We thank you for the opportunity to offer these comments and hope that the Joint Committee finds them helpful. We stand ready to answer any questions the members of the legislature may have as it moves forward in considering the implementation of sports wagering.

Sincerely,



Karen Wells  
Executive Director



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