

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Maryland State Lottery and Gaming Control Agency
(DLS Control No. 21-083)**

Overview and Legal and Fiscal Impact

These regulations establish a regulatory framework for the oversight of sports wagering and the issuance of sports wagering licenses in the State.

The regulations present no legal issues of concern. However, additional comments have been included in the *Technical Corrections and Special Notes* section of the Legal Analysis below for the consideration of the Joint Committee on Administrative, Executive, and Legislative Review.

Special fund revenues for the Blueprint for Maryland's Future Fund increase by at least \$240,000 in fiscal 2022, though likely significantly more, and increase by an indeterminate significant amount in later years from fees related to sports betting.

Regulations of COMAR Affected

Maryland State Lottery and Gaming Control Agency:

General Provisions: General: COMAR 36.01.01.01 and .05
Administrative Procedures: COMAR 36.01.02.04 through .06
Sports Wagering Provisions: General: COMAR 36.10.01.01 and .02
All Applicants and Licensees – Applications and Investigations:
COMAR 36.10.02.01 through .14
Qualification Requirements: COMAR 36.10.03.01 through .06
Specific Requirements for Sports Wagering Facility Licensees:
COMAR 36.10.04.01 through .11
Specific Requirements for Mobile Sports Wagering Licenses:
COMAR 36.10.05.01 through .05
Specific Requirements for Other Licenses Required for Sports Wagering:
COMAR 36.10.06.01 through .11
License Denial Procedures: COMAR 36.10.07.01 through .06
Enforcement: COMAR 36.10.08.01 through .11
Unannounced Inspections: COMAR 36.10.09.01 through .03
Enforcement of Voluntary Exclusion Program: COMAR 36.10.10.01 through .03
Mandatory Exclusion: COMAR 36.10.11.01 through .09
Collection of Taxes, Fees, and Penalties: COMAR 36.10.12.01 through .04
Sports Wagering Licensee Minimum Internal Control Standards:
COMAR 36.10.13.01 through .44
Sports Wagering Requirements and Limitations: COMAR 36.10.14.01 through .07
Sports Wagering Licensee Facility Standards: COMAR 36.10.15.01 through .04

Wagering Using Online, Web-based, or Mobile Applications:
COMAR 36.10.16.01 through .06
Sports Wagering Equipment: COMAR 36.10.17.01 through .03
Sports Wagering Technical Standards: COMAR 36.10.18.01 through .06

Legal Analysis

Background

Chapter 492 of 2020 established, subject to voter referendum, that the General Assembly may authorize, by law, the State Lottery and Gaming Control Commission to issue a license to offer sports wagering in the State. Maryland voters approved the referendum in the November 2020 general election. Chapter 356 of 2021 implements in-person and mobile sports wagering in the State and provides for the regulation of sports wagering by the commission. The Act also establishes the Sports Wagering Application Review Commission (SWARC) to review applications for and award sports wagering licenses to applicants who meet specified requirements.

Summary of Regulations

The regulations amend existing regulations as follows:

- COMAR 36.01.01.01 – Adds defined terms, incorporates references to the new Subtitle 10 (Sports Wagering Provisions), makes clarifying changes to the definition of “final action on a sanction”, and incorporates sports wagering into the definition of “gaming activity”;
- COMAR 36.01.01.05 – Prohibits participation in sports wagering by or payment of sports wagering winnings to commission members, officers, employees, and certain related individuals; and
- COMAR 36.01.02 – Incorporates references to the new sports wagering subtitle in Regulations .04 and .05 and makes clarifying changes to Regulation .06, which authorizes the commission to delegate its hearing authority to the Office of Administrative Hearings (OAH).

Additionally, the regulations establish 18 new chapters within a new subtitle, 36.10 – *Sports Wagering Provisions*. Generally, these regulations mirror agency regulations for video lottery terminal (VLT) gaming in COMAR 36.03. This analysis will address in more detail those provisions that differ from the VLT regulations and that are unique to the subtitle.

Chapter .01 establishes the scope of the subtitle and provides definitions for the subtitle. Definitions for “applicant”, “associated equipment”, “award”, “institutional investor”, “licensee”, “mobile sports wagering licensee”, “online sports wagering”, “online sports wagering operator”, “sports wagering”, “sports wagering license”, and “video lottery employee” generally track

statutory definitions included in Title 9, Subtitles 1A and 1E of the State Government Article. The regulations also include additional terms, the definitions of which are not derived from statute.

Chapter .02 requires, generally, sports wagering applicants and licensees to meet the same application and licensing requirements for VLT applicants and licensees under COMAR 36.03.02. In addition, Regulation .03 provides that: (1) if background investigation costs exceed the commission's estimate, the applicant or licensee shall pay the difference before the investigation is finalized; (2) applicants or licensees may not discriminate against whistleblowers; and (3) an applicant or licensee is continually obligated to inform, cooperate, and provide assistance and information regarding MBE compliance and violations of the sports wagering law. Regulation .04 requires an application for a sports wagering license to include: (1) information on any person who controls or directs an interest of 5% or more in the applicant or is a "principal employee", holding company, or affiliate of the applicant and (2) if the applicant is an unincorporated business, evidence that the business is in good standing with the State Department of Assessments and Taxation. Regulation .05 mirrors COMAR 36.03.02.03, except that applicants or a person under investigation are required to submit only one set of fingerprints. The VLT gaming regulations require the submission of three sets of fingerprints only at the direction of the commission. Finally, Regulations .12 and .13 provide that a decision regarding an alternative licensing requirement or an exemption or waiver is final and not appealable.

Chapter .03 requires, generally, all sports wagering applicants and licensees to meet the same qualification requirements for VLT applicants and licensees. In addition, Regulation .02 mirrors COMAR 36.03.02.01E(2) and (3) and 36.03.03.04, except that the commission is: (1) required, rather than authorized, to disqualify an applicant or licensee for engaging in conduct that would bring the State into disrepute and (2) authorized to deny a license if the applicant was denied a similar license in another jurisdiction. Regulation .04 specifies: (1) ongoing requirements and continuing obligations for all licensees, including the secure maintenance of sports wagering data for at least 5 years; (2) prohibited conduct, including predatory advertising; (3) conditions for the assignment or transfer of an ownership interest in a license; and (4) grounds for forfeiture of a license. The remaining regulations in the chapter describe the process for the review and issuance of a license by commission staff, authorize the commission to stagger or merge license terms, require an application for renewal of a license to be submitted 6 months before the license expires, and specify the conditions for renewal.

Chapters .04 and .05 generally track statutory provisions in §§ 9-1E-03(d), 9-1E-06, 9-1E-09, 9-1E-10, 9-1E-11, 9-1E-14, and 9-1E-15(j) through (n) of the State Government Article concerning the issuance of and requirements for a license to offer in-person and mobile sports wagering and the applicable fees. Further, Chapters .04 and .05 provide that, if the SWARC awards a sports wagering facility license or mobile sports wagering license, the commission must determine whether the awardee meets certain technical and operational requirements before the license is issued. Chapters .04 and .05 also establish bond amounts for each category of in-person and mobile sports wagering licenses: \$6,000,000 for Class A-1 facilities; \$3,000,000 for Class A-2; \$750,000 for Class B-1; \$150,000 for Class B-2; and \$1,500,000 for mobile. Finally, Chapters .04 and .05 require in-person and mobile sports wagering licensees to report specified sports wagering operations data to the commission by September 1 of each year to enable the commission to report the information to the General Assembly by December 1.

Chapter .06 incorporates provisions of §§ 9-1E-05 and 9-1E-10 of the State Government Article and specifies licensing requirements for: (1) an “online sports wagering operator” and a “sports wagering facility operator” who operate sports wagering on behalf of a mobile and in-person sports wagering licensee, respectively; (2) a “sports wagering contractor” who provides sports wagering-related goods and services; and (3) a “sports wagering employee” who is employed by a sports wagering licensee as a principal employee, wagering employee, or non-wagering employee. Finally, requirements for sports wagering vendor registration and certification mirror the requirements for VLT vendors in COMAR 36.03.02.17.

Online sports wagering and sports wagering facility operator licensees must pay an application fee of \$25,000, show evidence of a performance bond, and meet certain technical and operational requirements before the license is issued. The license may be renewed under certain conditions, including submission of an application for renewal at least 1 year before the license expires and payment of a \$25,000 fee.

In addition to the licensing requirements under Chapters .02 and .03, sports wagering contractor licensees must meet the license requirements specified for VLT contractors under Title 9, Subtitle 1A of the State Government Article and COMAR 36.03.02.14. A “Tier 1 contractor” must pay an application fee of \$1,500, a license fee of \$2,500, and a background investigation deposit of \$2,000. A “Tier 2 contractor” must pay an application fee of \$750, a license fee of \$800, and a background investigation deposit of \$2,000. Sports wagering contractors must provide evidence of a performance bond and, if seeking license renewal, submit the application at least 1 year before the license expires. For sports wagering employees, the application, licensing, and license renewal fee amounts vary depending on the category of employee. Employees are prohibited from engaging in sports wagering or receiving sports wagering winnings under certain circumstances. The commission may issue temporary sports wagering employee licenses provided certain conditions are met. The commission may terminate, on certain grounds, a temporary license without a hearing and without following the denial process. Finally, identification card requirements for sports wagering employees mirror requirements for VLT facility employees under COMAR 36.03.02.18.

Chapter .07 describes the grounds for denial of a sports wagering license and the due process afforded the applicant in the event of a denial. The provisions mirror COMAR 36.03.02.16, except that if the applicant fails to timely request a reconsideration meeting, a decision to deny the license is final.

Chapter .08 establishes the procedures for: (1) taking enforcement action against a licensee that results in a reprimand, fine, condition placed on a licensee, or suspension or revocation of a license and (2) hearings held under COMAR 36.01.02.06. Chapter .08 mirrors the enforcement procedures for VLT licensees in COMAR 36.03.04, except that the licensee has up to 7 days to revise an unacceptable corrective action plan, rather than “immediately”.

Chapter .09 describes the manner in which the commission may conduct unannounced inspections of the premises and records of licensees and related entities. Chapter .09 mirrors unannounced inspection rules for VLT licensees under COMAR 36.03.05, except that inspections

may be conducted at any time as determined by the commission, rather than only during reasonable business hours.

Chapter .10 concerns the sports wagering voluntary exclusion program and mirrors the voluntary exclusion program for VLT gaming under COMAR 36.03.06, except that a sports wagering licensee must include additional elements in its responsible gaming plan, including procedures for notifying the commission of an unauthorized access to the list within 12 hours of the breach and returning to the bettor funds in the bettor's account that were deposited prior to the bettor's application for voluntary exclusion. Finally, an individual on any other voluntary exclusion list may engage in sports wagering unless otherwise excluded by another directive or order outside the commission.

Chapter .11 concerns the sports wagering mandatory exclusion program and mirrors the mandatory exclusion program for VLT gaming under COMAR 36.03.07. An individual on any other mandatory exclusion list may engage in sports wagering unless otherwise excluded by another directive or order outside the commission.

Chapter .12 establishes the guidelines for payment and collection of taxes, fees, and penalties and mirrors the provisions of COMAR 36.03.08 as they relate to VLT gaming, except that sports wagering licensees may not subtract losses for more than 90 consecutive wagering days. Section 9-1E-12 of the State Government Article was amended to read "three months" rather than 90 days; the agency has agreed to correct this. Finally, the commission is required to deposit payment of: (1) expired sports wagering winnings into the Problem Gambling Fund as required under § 9-1E-12(c) of the State Government Article and (2) funds surrendered under the sports wagering voluntary and mandatory exclusion programs.

Chapter .13 details the minimum internal control standards for sports wagering licensees and operators and generally mirrors applicable standards for VLT facility licensees under COMAR 36.03.10, except that a sports wagering licensee must submit for approval its internal control standards at least 60 days prior to commencing operations or making a change to its standards. In addition, licensees must, prior to commencing operations: (1) submit to the commission an organizational chart depicting the functions and responsibilities of its employees and a description of safeguards designed to prevent underage or out-of-state mobile bettors from participating in sports wagering and (2) comply with other operational standards. Surveillance system design and operational standards, internal audit department standards, and cashier cage design standards for VLT facility operators apply only to Class A sports wagering facility licensees and, at the discretion of the commission, Class B-1 licensees. Regulation .11 specifies additional surveillance system requirements for Class A licensees. Regulations .13 through .15 and .19 specify surveillance and security standards for Class B and mobile sports wagering licensees. Further, a sports wagering licensee may not accept a check or multiple checks from a bettor that exceeds \$30,000 in a single day. Sports wagering licensees must also maintain certain data identifying bettors that place wagers or receive winnings in excess of \$3,000. Finally, Regulations .40 and .41 establish certain requirements for the security of data and protection of consumers.

Chapter .14 concerns authorized and prohibited wagers, permissible types of bets (including layoff wagers), limits on accepting wagers, authorized funding of bettors' accounts, and the procedures for an "interested party" to request that the commission prohibit specific wagers or certain individuals from placing wagers. Regulation .01 authorizes the commission to consider a request from a sports governing entity that its official league data be used to settle bets. If the commission approves the request, sports wagering licensees must use the official league data unless the governing entity is unable to supply the data on commercially reasonable terms. In addition, a single wager on a sporting event may not exceed \$5,000,000. Regulation .04 requires a licensee to allow a bettor to place self-imposed limits on the bettor's wagering activity. Regulation .06 requires licensees to maintain a minimum reserve account balance of \$500,000.

Chapter .15 specifies requirements for commission approval of sports wagering facility designs and floor plans.

Chapter .16 establishes mobile and web-based wagering requirements and safeguards, including requirements for geolocation and age verification technology, data security, and periodic review of technology systems and networks.

Chapter .17 governs the registration, testing, and operation of sports wagering equipment and kiosks. The commission must preapprove, in writing, the use of sports wagering equipment and kiosks by a sports wagering licensee.

Chapter .18 establishes technical standards for mobile and web-based sports wagering platforms, geolocation systems, and online bettor accounts. Additionally, Chapter .18 requires a mobile sports wagering licensee or operator to implement a comprehensive information security system that takes reasonable steps to protect the confidentiality, integrity, and availability of a bettor's personally identifiable information.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The agency cites §§ 11-101, 11-524, and 11-815 through 11-832 of the Business Regulation Article, §§ 12-301.1 and 12-308 of the Criminal Law Article, §§ 4-101 through 4-601 of the General Provisions Article, §§ 9-101 through 9-111, 9-116, 9-123, 9-1A-01 through 9-1A-05, 9-1A-07, 9-1A-08, 9-1A-11, 9-1A-14, 9-1A-18 through 9-1A-20, 9-1A-24, 9-1A-25, 9-1A-33, 9-1E-01 through 9-1E-15, 10-201, 10-205, 10-226, 10-301 through 10-305, 10-501 through 10-512, and 10-611 through 10-630 of the State Government Article, § 6 of Chapter 603 of 2012, and § 23 of Chapter 10 of 2018 as statutory authority for the regulations.

Section 12-301.1 of the Criminal Law Article requires the commission to certify and regulate the operation, ownership, and manufacture of an electronic gaming device.

Sections §§ 4-101 through 4-601 of the General Provisions Article (formerly §§ 10-611 through 10-630 of the State Government Article) generally govern the actions and responsibilities of the agency, as a public body, under the Public Information Act.

Section 9-110 of the State Government Article broadly authorizes the Director of the agency to adopt regulations with the approval of the commission. Section 9-1A-02 requires the commission to regulate the operation of VLTs and table games. Section 9-1A-04 requires the commission to adopt specified regulations necessary to regulate VLT operations. Section 9-1A-24 requires, in relevant part, the commission to adopt standards for the exclusion or ejection of individuals from a video lottery facility and measures that are intended to reduce or mitigate the effects of problem gambling. Sections 10-201, 10-226, and 10-301 through 10-305 govern contested cases and declaratory rulings under the Administrative Procedure Act. Section 10-205 authorizes heads of an agency to delegate a contested case to OAH. Finally, §§ 10-501 through 10-512 (recodified as Title 3 of the General Provisions Article) generally govern the actions and responsibilities of the agency under the Open Meetings Act.

Chapter 356 of 2021, codified in §§ 9-1E-01 through 9-1E-15 of the State Government Article, implements the State's sports wagering program. More specifically, § 9-1E-03 provides that specified provisions of Title 9, Subtitle 1A of the State Government Article apply to the authority, duties, and responsibilities of the commission under the sports wagering subtitle and requires the commission to consider the use of technology, remote surveillance, and similar measures to carry out its duties. Section 9-1E-04 provides that the commission must regulate sports wagering to the same extent that it regulates the operation of VLTs and table games in the State and requires the commission to adopt specified regulations, including regulations that concern the license application process, obtaining personal and background information on an applicant or licensee, the method of collection of fees, taxes, and penalties, and rules that govern the conduct of sports wagering. Section 9-1E-05, in relevant part, authorizes the commission to require a person that contracts with a licensee and the person's employees to be licensed and to grant an exemption or a waiver of licensing requirements under specified circumstances. Section 9-1E-07(c) requires the commission to establish application or license renewal fees for licenses other than Class A or Class B sports wagering licenses, subject to certain limitations. Section 9-1E-11, in relevant part, authorizes the commission to share certain information with a law enforcement agency, sports team, sports governing entity, or regulatory agency and to conduct public hearings on the propriety of certain wagers at the request of an interested party. Finally, § 9-1E-15(m) requires the commission to issue a sports wagering license awarded by the SWARC and be responsible for all matters relating to regulation of the licensee.

Section 6 of Chapter 603 of 2012 authorizes the commission to adopt regulations for the repair and replacement of electronic bingo machines and requires the commission to adopt regulations for the legal operation of amusement games licensed by Baltimore City and Baltimore County.

The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. Except as noted in the *Technical Corrections and Special Notes* section below, the regulations comply with the legislative intent of the law.

Emergency Status

The agency requests emergency status beginning July 30, 2021 and expiring January 25, 2022. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The agency indicates the emergency status is necessary to expedite the implementation of Chapter 356 of 2021, an emergency measure that took effect May 18, 2021, and to enable applicants to use the agency's eLicensing system to process requests for sports wagering licenses.

Technical Corrections and Special Notes

Sections 10-501 through 10-512 and 10-611 through 10-630 of the State Government Article, cited as statutory authority for the regulations, were recodified by Chapter 94 of 2014 as Title 3 and Title 4, respectively, of the General Provisions Article. The agency has agreed to correct these references in the final publication of the regulations. The agency has also agreed to make several technical corrections to the regulations.

The agency's original submission contained one legal issue of concern, but the agency has agreed to resolve this issue. Proposed COMAR 36.10.14.03A(2) prohibits wagers on an amateur athletic event that is not specifically approved by the commission. Section 9-1E-09(a) of the State Government Article, however, expressly authorizes sports wagering licensees to accept in-person or mobile wagers on a "sporting event", which is defined in § 9-1E-01(i), in relevant part, as a "collegiate sport" or an "Olympic or international sport" athletic event. College and Olympic sports are generally understood to be a subset of "amateur" sports. The agency has agreed to clarify that amateur sporting events that require commission approval for wagering do not include college or Olympic sporting events."

Fiscal Analysis

Special fund revenues for the Blueprint for Maryland's Future Fund increase by at least \$240,000 in fiscal 2022, though likely significantly more, and increase by an indeterminate significant amount in later years from fees related to sports betting.

Agency Estimate of Projected Fiscal Impact

The regulations implement provisions of Chapter 356 of 2021 (House Bill 940), which establishes sports wagering in the State. The agency advises that the regulations have a positive, yet indeterminable, impact to the State. The Department of Legislative Services concurs that there is a positive indeterminable impact to the State beyond that which was accounted for in the fiscal and policy note for House Bill 940.

The fiscal and policy note for House Bill 940 assumed that special fund revenues increase by approximately \$31.8 million in fiscal 2022 from sports wagering license fees and sports wagering and fantasy competition revenues, and expenditures for the State Lottery and Gaming Control Agency increase by \$2.7 million in fiscal 2022 to implement and oversee sports wagering. The estimate assumed that the online sports wagering operator license application fee was \$5,000, the minimum fee required by statute, and that 12 mobile operators would pay the fee; however, the regulations establish an online sports wagering operator license application fee of \$25,000. Thus, if 12 mobile operators pay the \$25,000 application fee, special funds for the Blueprint for Maryland's Future Fund increase by \$240,000 in fiscal 2022 above what was accounted for in the fiscal and policy note.

Additionally, special funds for the Blueprint for Maryland's Future Fund increase significantly beginning in fiscal 2022 from fees for sports wagering facility operators, sports wagering contractors, principal employees, wagering employees, nonwagering employees, and sports wagering vendors, which were not accounted for in the fiscal and policy note. These fees are as follows:

- Sports wagering facility operator: \$25,000 application fee (\$25,000 license renewal);
- Tier 1 sports wagering contractor: \$1,500 application fee, \$2,500 license fee, \$2,000 background investigation deposit.
- Tier 2 sports wagering contractor: \$750 application fee, \$800 license fee, \$2,000 background investigation deposit;
- Principal employee: \$2,500 application fee, \$750 license fee, \$2,000 background investigation deposit, \$37.25 criminal history records check (\$2,787.25 license renewal);
- Wagering employee: \$250 application fee, \$150 license fee, \$37.25 criminal history records check (\$187.25 license renewal);
- Nonwagering employee: \$50 application fee, \$100 license fee, \$37.25 criminal history records check (\$97.25 license renewal);
- Registered sports wagering vendor: \$100 registration fee (\$100 renewal fee); and
- Certified sports wagering vendor: \$1,000 certification fee (\$500 renewal fee).

Licenses, registrations, and certifications generally must be renewed every five years; so special fund revenues increase further in later years for these renewals and for new applications, registrations, and certifications.

Impact on Budget

Special funds for the Blueprint for Maryland's Future Fund increase by at least \$240,000 in fiscal 2022, though likely significantly more, and increase by an indeterminate significant amount in later years from fees related to sports betting.

Agency Estimate of Projected Small Business Impact

The agency advises that the regulations have a meaningful economic impact on small businesses in the State. The Department of Legislative Services disagrees, as there is no meaningful economic impact beyond that which was accounted for in the fiscal and policy note for House Bill 940. The fiscal and policy note accounted for the potential meaningful small business effect, stating some small businesses, including minority and women-owned businesses, may benefit from the advent of legalized sports wagering, including the Small, Minority-Owned, and Women-Owned Business Sports Wagering Assistance Fund. However, the fiscal and policy note did not account for sports wagering vendor registration and certification. To the extent that small businesses are sports wagering vendors, they may need to register with the State Lottery and Gaming Control Commission or be certified and pay a \$100 registration fee or \$1,000 certification fee.

Contact Information

Legal Analysis: Charity L. Scott – (410) 946/(301) 970-5350

Fiscal Analysis: Heather N. MacDonagh – (410) 946/(301) 970-5510