Expansion of Commercial Gaming - Referendum - Sports Wagering

This bill, which is subject to voter referendum, establishes that the General Assembly may authorize, by law, that the State Lottery and Gaming Control Commission may issue a license to offer sports wagering in the State to a video lottery operation licensee or a licensee for thoroughbred racing or harness racing. The bill also provides the General Assembly’s intent that, if the voter referendum is approved, State revenues generated by sports wagering be used for dedicated purposes, including public education. The bill takes effect July 1, 2020, contingent on passage of a referendum by voters in the next general election.

Fiscal Summary

**State Effect:** None. If the bill is approved at referendum, legislation would still be needed to implement sports wagering.

**Local Effect:** None.

**Small Business Effect:** None.

Analysis

**Current Law:** Chapter 5 of the 2007 special session amended the Maryland Constitution so that after November 15, 2008, the General Assembly may only authorize additional forms or expansion of commercial gaming if approved through a referendum by a majority of the voters in a general election.
Wagering on a contest, event, game, or match between individuals or teams sponsored by a professional league or association or hosted by a college or university is illegal in Maryland.

Chapter 346 of 2012 exempts a specified “fantasy competition” from prohibitions against betting, wagering, and gambling in State law. The law defines “fantasy competition” as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals.

Chapter 338 of 2019 authorizes an organization conducting an “eSports competition” to offer prize money or merchandise to winning participants in the eSports competition. An eSports competition is a competition involving video games, including first-person shooters, real-time strategy games, and multiplayer online battle arenas in which players compete against each other and the players’ skills generally determine the results.

**Education Trust Fund**

Established during the 2007 special session, the Education Trust Fund (ETF) is a nonlapsing, special fund supported by gaming revenues that has been used to provide funding for formulas and programs under the Bridge to Excellence in Public Schools Act. Chapter 357 of 2018, a constitutional amendment approved by the voters at the 2018 general election, requires the Governor to provide supplemental State funding for public education through the use of commercial gaming revenues that are dedicated to public education in the State budget beginning in fiscal 2020. Supplemental funding must total at least $250 million in fiscal 2021, growing to 100% of all gaming revenues dedicated to ETF by fiscal 2023. This funding must be dedicated to public education as supplemental education or school construction funding, in addition to the State funding provided through the Bridge to Excellence in Public Schools Act.

**Background:** The federal Professional Amateur Sports Protection Act of 1992 (PASPA) made betting on sports in most states illegal under federal law. New Jersey challenged the PASPA in the U.S. Supreme Court, arguing in *Murphy v. National Collegiate Athletic Association* that the federal ban violated the U.S. Constitution by commandeering the states into enforcing federal law. In May 2018, the U.S. Supreme Court ruled in *Murphy* that the PASPA was unconstitutional, leaving states free to authorize sports betting.

On June 5, 2018, less than one month after the PASPA was struck down by the U.S. Supreme Court, Delaware became the first state outside of Nevada to offer single-game sports betting. New Jersey launched single-game sports betting just nine days
later. Since then, there has been a rush of legislative activity in states hoping to capture a new source of gaming revenue. **Exhibit 1** shows the states that have enacted sports betting laws as of January 2020.

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**Exhibit 1**
**States with Enacted Sports Betting Laws**

![Map showing states with enacted sports betting laws](image)

Source: Department of Legislative Services

Along with Nevada, sports betting operations are now underway in 13 of those states as of January 2020. **Exhibit 2** shows how the states recent to sports betting have structured their operations and the revenues generated since going live. Additionally, six other states (Colorado, Illinois, Michigan, Montana, North Carolina, and Tennessee) and the District of Columbia are expected to launch sports betting operations in 2020. The majority of states with sports betting laws authorize online sports betting.
### Exhibit 2
#### Post-PASPA Sports Betting Active States and Revenues

<table>
<thead>
<tr>
<th>State</th>
<th>First Bet Placed</th>
<th>Tax Rate</th>
<th>Fees</th>
<th>Sportsbooks Type / #</th>
<th>Mobile Betting</th>
<th>Sportbook Data (Launch Date through December 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DE</td>
<td>6/5/18</td>
<td>59.8% (includes a 9.8% share for race purses)</td>
<td>No separate sportsbook licensing fee required</td>
<td>Racetracks (3)</td>
<td>No</td>
<td>Handle – $189,620,117 Revenue¹ – $21,407,621 State Share – $10,703,827</td>
</tr>
<tr>
<td>NJ</td>
<td>6/14/18</td>
<td>8.5% onsite betting</td>
<td>$100,000 application fee</td>
<td>Casinos and racetracks (10)</td>
<td>Yes</td>
<td>Handle – $5,837,241,986 Revenue – $393,503,018 State Share – $46,802,942</td>
</tr>
<tr>
<td>MS</td>
<td>8/1/18</td>
<td>12% (includes a 4% local share)</td>
<td>Not specified</td>
<td>Landbased and riverboat casinos (23)</td>
<td>No</td>
<td>Handle – $477,236,811 Revenue – $66,148,121 State Share – $6,737,774</td>
</tr>
<tr>
<td>WV</td>
<td>8/30/18</td>
<td>10%</td>
<td>$100,000 application fee</td>
<td>Racetracks (4) and the private club at Greenbriar</td>
<td>Yes</td>
<td>Handle – $282,110,247 Revenue – $26,265,588 State Share – $2,626,559</td>
</tr>
<tr>
<td>NM²</td>
<td>10/16/18</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Tribal casinos (2)</td>
<td>No</td>
<td>Not currently available</td>
</tr>
<tr>
<td>PA</td>
<td>11/17/18</td>
<td>36% (includes a 2% local share)</td>
<td>$10,000,000 application fee</td>
<td>Casinos and racetracks (12)</td>
<td>Yes</td>
<td>Handle – $1,506,982,035 Revenue – $86,664,503 State Share – $31,199,221</td>
</tr>
<tr>
<td>RI</td>
<td>11/26/18</td>
<td>51%</td>
<td>No separate sportsbook licensing fee required</td>
<td>Casinos (2)</td>
<td>Yes</td>
<td>Handle – $221,911,697 Revenue – $16,265,850 State Share – $8,749,801</td>
</tr>
<tr>
<td>AR</td>
<td>7/1/19</td>
<td>First $150,000,000 at 13%, any additional revenues at 20%</td>
<td>Application fee not to exceed $250,000</td>
<td>Racetracks (2) and proposed casinos (2)</td>
<td>No</td>
<td>Not currently available</td>
</tr>
<tr>
<td>NY</td>
<td>7/6/19</td>
<td>10%</td>
<td>No separate sportsbook licensing fee required</td>
<td>Casinos (4)</td>
<td>No</td>
<td>Handle – Not currently available Revenue – $7,783,424 State Share – $778,342</td>
</tr>
</tbody>
</table>

¹ Revenue includes a 9.8% share for race purses

² NM is New Mexico.
<table>
<thead>
<tr>
<th>State</th>
<th>First Bet Placed</th>
<th>Tax Rate</th>
<th>Fees</th>
<th>Retail Sportsbooks Type / #</th>
<th>Mobile Betting</th>
<th>Sportsbook Data (Launch Date through December 2019)</th>
</tr>
</thead>
<tbody>
<tr>
<td>IA</td>
<td>8/15/19</td>
<td>6.75%</td>
<td>$45,000 application fee</td>
<td>Casinos and racetracks (18)</td>
<td>Yes</td>
<td>Handle – $212,225,573 Revenue – $19,283,573 State Share – $1,301,641</td>
</tr>
<tr>
<td>OR</td>
<td>8/27/19</td>
<td>Not available</td>
<td>Not specified</td>
<td>Tribal casinos³</td>
<td>Yes</td>
<td>Not currently available</td>
</tr>
<tr>
<td>IN</td>
<td>9/1/19</td>
<td>9.5%</td>
<td>$100,000 application fee</td>
<td>Casinos and racetracks (16)</td>
<td>Yes</td>
<td>Handle – $435,998,649 Revenue – $41,385,968 State Share – $3,931,665</td>
</tr>
<tr>
<td>NH</td>
<td>12/30/19</td>
<td>Negotiable</td>
<td>Not specified</td>
<td>Lottery (5)</td>
<td>Yes</td>
<td>Not currently available</td>
</tr>
</tbody>
</table>

AR: Arkansas  
DE: Delaware  
IA: Iowa  
IN: Indiana  
MS: Mississippi  
NH: New Hampshire  
NJ: New Jersey  
NM: New Mexico  
NY: New York  
PA: Pennsylvania  
PASPA: Professional Amateur Sports Protection Act  
RI: Rhode Island  
WV: West Virginia

¹ Vendor fees are subtracted from the handle before the distribution of the revenue.  
² In New Mexico, two of that state’s nine tribal casinos offer sports betting under the existing tribal gaming compact, although the activity remains unsanctioned under state law.  
³ Currently, only 1 of Oregon’s 10 tribal casinos offers sports betting. Oregon has a lottery-operated online app.

Note: Handle is the total amount of all wagers. Revenue (or gross gaming revenue) is the handle minus total win.

Source: Department of Legislative Services

The Department of Legislative Services (DLS) notes that retail sports betting revenues in Delaware, New Jersey, Pennsylvania, and West Virginia average approximately 2% of those states’ total gaming revenues from video lottery terminals and table games. Thus, if sports betting revenues in Maryland total 2% of Maryland’s gaming revenues, gross revenues after payouts to bettors could increase by $36.5 million in fiscal 2022. Assuming that the current table games tax rate of 20% is applied, the State share of gross revenues in fiscal 2022 would be $7.3 million. However, authorizing mobile sports betting could significantly increase revenues. Based on mobile sports betting revenues in surrounding states, DLS estimates that gross revenues could increase by $91.1 million in fiscal 2022, totaling 5% of Maryland’s gaming revenues, if sports betting is authorized both online and
at Maryland casinos and racetracks. Assuming a 20% tax rate, the State share of revenues in fiscal 2022 would be $18.2 million.

Additional Information

**Prior Introductions:** SB 470 of 2019 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, HB 739, and a similar bill, HB 963 of 2019, received a hearing in the House Ways and Means Committee, but no further action was taken. HB 1014 of 2018, a similar bill as amended by the House Ways and Means Committee, passed the House and received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Maryland State Board of Elections; Maryland State Lottery and Gaming Control Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - January 22, 2020
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