

# Maryland Lottery and Gaming Control Agency

Larry Hogan, Governor • Gordon Medenica, Director



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The Honorable Guy Guzzone  
Chair, Budget and Taxation Committee  
3 West, Miller Senate Office Building  
Annapolis, MD 21401-1991

## **Re: Letter of Information – House Bill 940 - Gaming - Regulation of Fantasy Gaming Competitions and Implementation of Sports Wagering**

Dear Chair Guzzone and Members of the Budget and Taxation Committee:

The Maryland Lottery and Gaming Control Agency (“MLGCA” or “Agency”) submits this letter of information to the Senate Budget and Taxation Committee (“Committee”) regarding House Bill 940, which creates the enabling law under a new subtitle of State Government Article (“SG”) §9-1E for the implementation of sports wagering in the State of Maryland, which was passed by Maryland voters through a referendum in the November 2020 election. Below are some sections listed in HB940 that the Agency wants to bring to the Committee’s attention. In addition, I have included an updated PowerPoint Presentation on sports betting trends and estimates of potential revenues for entities as defined in HB940.

### **Fantasy Competition.**

Under §9-1D-01(D)(2), the Agency suggests adding a provision that indicates “Participants must compete against other participants” to differentiate fantasy competitions from sports wagering. In addition, under §9-1D-04, the Agency suggests adding a provision that (C) “A fantasy competition operator shall report and transmit its gaming taxes to the Commission on a monthly basis”.

### **Definitions.**

Under §9-1E-01, the Agency suggests adding a definition for Gross Gaming Revenue (GGR) in the definition section, such as GGR means gross revenue defined as wagers less payouts.

### **Excise Taxes.**

Under §9-1E-01(H)(2), it is unclear if gaming taxes are considered excise taxes. The Agency suggests adding a provision to specifically exclude the 15% or 17.5% gaming tax from excise taxes.

### **Remote Surveillance.**

Under §9-1E-03(A)(2), it is unclear who is paying for the procurement and maintenance of remote surveillance and other similar technology measures required if the Maryland Lottery and Gaming Control Commission (“Commission” or “MLGCC”) determines that Agency staff will not be onsite 24/7 at certain sports wagering facilities. The Agency suggests adding a provision that states “A sports wagering licensee shall be financially responsible for procuring and maintaining such technology and other similar measures, the design of which must be approved by the Commission and operates under its control.”

**Background Investigation.**

Under §9-1E-05(C), the Agency suggests adding language to make it clear that “Any applicant that has not already undergone a comprehensive gaming background investigation performed by the Commission shall do so, unless the Commission determines that the background investigation performed by another State Gaming Regulatory body is equivalent. The Agency’s gaming background investigation process is recognized nationally by other investigative bodies and is relied upon by other similarly recognized entities when potential gaming applicants seek to do business in other jurisdictions. The Commission maintains that all sports wagering entities should undergo the same level of vetting to protect sports wagering bettors as well as the State.

**Awarding Licenses.**

Under §9-1E-06(A)(1)(II)-(III), the Agency suggests that the wording be changed to “Subject to paragraph (2) of this subsection, issue a Class B Sports Wagering Facility license to not more than 10 applicants who meet the requirements for licensure under this subtitle;” and issue not more than 15 mobile sports wagering licenses to applicants who meet the requirements for licensure under this subtitle.”

**Application Fees.**

Under §9-1E-06(B), it is unclear whether the application fee is refundable or non-refundable. Under §9-1A of the Gaming Law, the application fee is non-refundable and is due in full at the time the application is submitted. Additionally, as proposed under the bill, background investigation costs are deducted from the various fees deposited by the licensee, not the applicant. The Agency suggests adding a provision that clearly states that “All applicants shall pay an advance deposit as well as all additional costs of the Commission or its approved vendor in performing background investigations.” The Agency suggests clarifying this provision because it is concerned that the State might have to absorb the costs of background investigations for unsuccessful applicants.

**License Renewal Fees.**

Under §9-1E-06(D)(3), there is an annual license renewal fee of 1% of the average annual gross sports wagering revenue. It is not clear if the intent of this provision means 1% of the annual amount of wagers accepted by the licensee, or 1% of funds after winnings are paid; therefore, the term should be defined. HB940 must clearly distinguish between total bets placed, known as "handle," and Gross Gaming Revenue (“GGR”), which is the amount remaining after winnings are paid. Because sports wagering typically involves small margins, with 92% to 95% of wagers being returned to players, if the 1% is calculated based on GGR, then the annual license renewal fee would be de minimis. Conversely, if the intent of the bill is to charge 1% of “handle,” then the amount could be substantial, perhaps higher than the tax rate itself. The Agency suggests clarifying the legislative intent of this provision. Also, as currently drafted, it appears that a licensee could deduct gaming taxes paid in the normal course of business from the licensee’s renewal fee, meaning the actual renewal fee paid could be zero.

**Fiscal Year.**

Under §9-1E-12(B)(1)(III)(1)-(2), with respect to the mobile sports wagering licensee’s deposit of proceeds, the Agency suggests changing “calendar year” to “fiscal year” for consistency with other provisions.

**SWARC Evaluation Criteria.**

Under §9-1E-14, the proposed legislation would create a Sports Wagering Application Review Commission (“SWARC”). The Agency is concerned that there are no evaluation criteria noted for the

SWARC to review the applications of a sports wagering licensee. Because HB940 uses the same Agency-Commission structure that was used for the Gaming Law, the Agency suggests adopting similar provisions noted in SG §9-1A-36(k) for inclusion in HB940.

**The SWARC and MLGCC Awarding and Licensing Process.**

The Agency has identified several steps that must occur before the SWARC may begin accepting and reviewing sports wagering license applications. The Agency believes that this awarding and licensing process will add at least an additional 12 months, or until fall of 2022, to the time needed to implement sports wagering from the date the bill is enacted, which will ultimately delay the time until the first wagers are accepted.

To at least partially minimize this delay, the Agency suggests that the SWARC should award Class A casino licenses immediately since the licensees and employees have already been vetted according to the Commission's gaming license standards, and award horse racing licenses after the MLGCC conducts the same level of background investigation it performs for casino license applicants. Since the casinos have already gone through this process, they could be awarded a license very quickly, and then issued a license as soon as the MLGCC establishes necessary regulations and grants approval of the licensee's sports wagering operations plan and licensing of any sports wagering system providers. Although the horse racetracks would undergo the same level of background investigation as the casino license applicants, the MLGCC could perform these investigations relatively quickly.

**License Limitation.**

The Agency submits that limiting the number of mobile wagering licenses to fifteen (15) may cause some issues. Under HB940, there are thirteen (13) Class A Licenses available, and these would go to the established casino gaming and horse racing operations in the state and other specifically identified candidates. Therefore, it would seem likely that these 13 licensees would be primary candidates for mobile sports wagering licenses, leaving only two mobile sports wagering licenses available for the ten (10) Class B licensees. Since most betting will take place through the internet, there is very little market share left for which small - perhaps even minority-owned - retail operators can compete. Given this fact, the Agency contends that Class B licensees could very well struggle to be profitable.

Thank you for your consideration of this letter of information to HB940. If you should have any questions or need more information about this subject, please do not hesitate to contact James B. Butler, MLGCA's Managing Director, Organizational Compliance, at (410) 230-8781 or [jbutler@maryland.gov](mailto:jbutler@maryland.gov).

Sincerely,



Gordon Medenica  
Director

cc: Speaker Adrienne A. Jones  
All Committee Members



# **Sports Betting Trends & Insights**

# Surrounding Jurisdictions: Casino & Gaming Trends

## Pennsylvania

- 13 casinos operating
- 5 additional casinos planned
- Online lottery games
- Online casino games
- Sports betting at casinos and online
- Regulated daily fantasy sports
- Truck-stop gaming terminals

## West Virginia

- 5 casinos operating
- Online casino games
- Sports betting at casinos and online
- Gaming terminals at bars and taverns



## Delaware

- 3 casinos operating
- Online casino games
- Sports betting at casinos, but not online
- Sports parlay betting at lottery retailers
- Regulated daily fantasy sports

## Washington, D.C.

- Lottery operates sports betting mobile app
- At least 4 land-based sports betting locations permitted, 1 currently operating, another planning to open during 2021

## Virginia

- 5 casino locations chosen, host cities to hold referendums
- Online casino games to be permitted only at casino locations
- Sports betting launch in early February, online only, no land-based locations
- Online lottery games
- Regulated daily fantasy sports
- Historical horse racing terminals

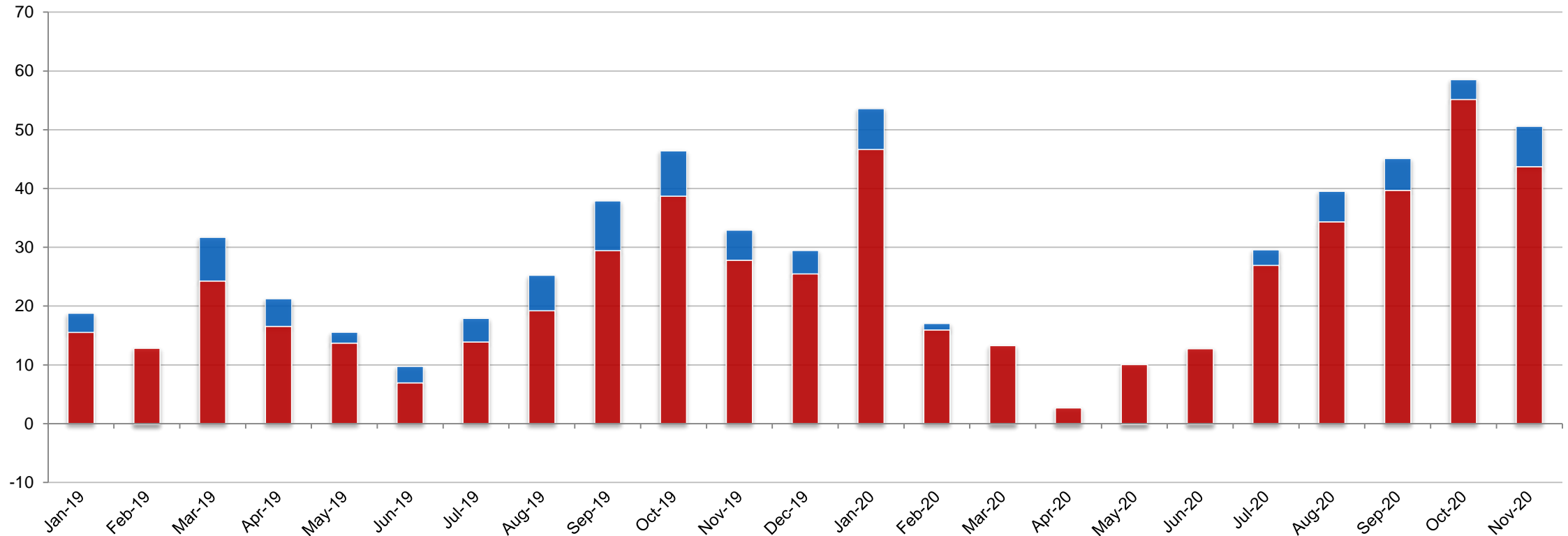


# Sports Betting Gross Revenue: Online vs. Land-Based

New Jersey Sports Betting Gross Revenue by Channel

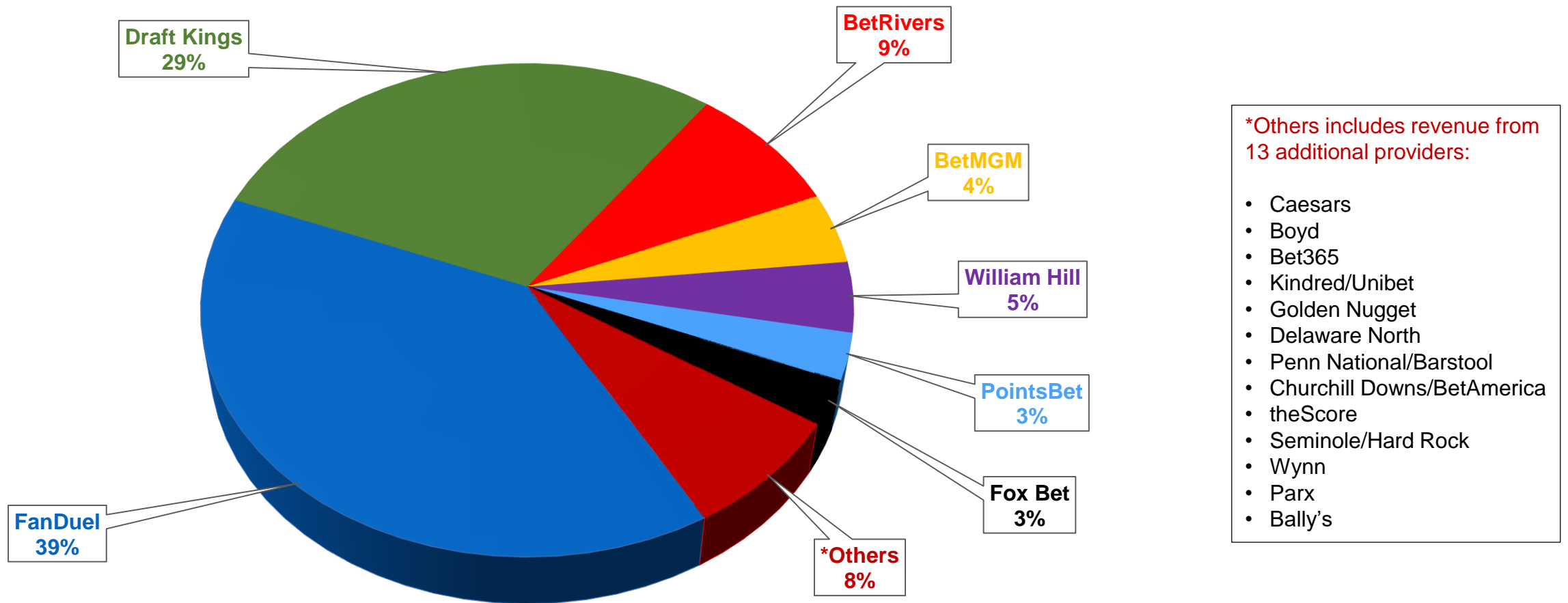
GGR in millions

■ Online    ■ Land-Based

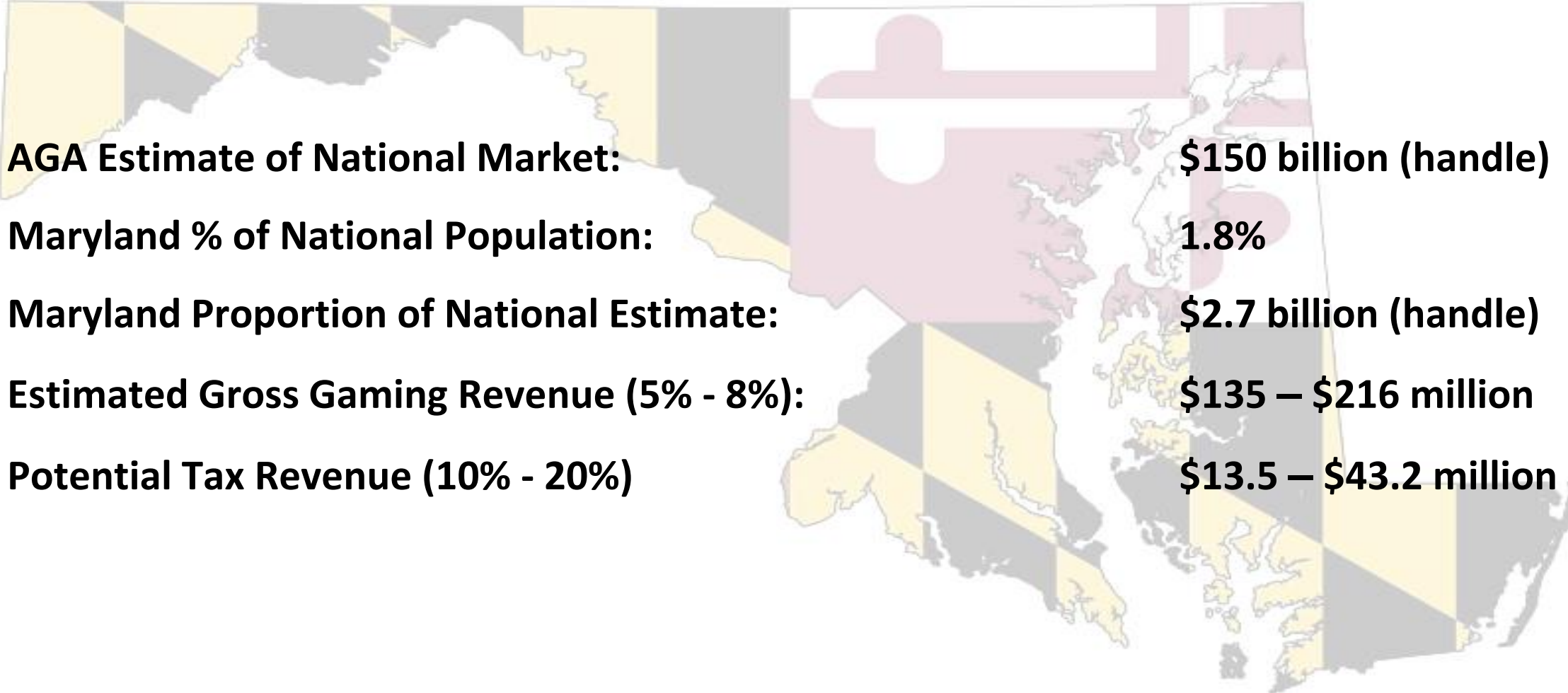


Online accounted for 86.4% of gross sports betting revenue in New Jersey from January 2019 through November 2020.

# Online Sports Betting Providers: Gross Revenue Market Share



# Estimated Size of Maryland's Illegal Sports Betting Market

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- **AGA Estimate of National Market:** **\$150 billion (handle)**
  - **Maryland % of National Population:** **1.8%**
  - **Maryland Proportion of National Estimate:** **\$2.7 billion (handle)**
  - **Estimated Gross Gaming Revenue (5% - 8%):** **\$135 – \$216 million**
  - **Potential Tax Revenue (10% - 20%)** **\$13.5 – \$43.2 million**



# Estimated Sports Betting Market Share Split: Online vs. Bricks & Mortar Retail

- **Estimated Gross Gaming Revenue Potential (from earlier page):** \$135 – \$216 million
- **Market Share Split (assuming similar to other states' experience):**
  - **Online (85%)** \$115 – \$184 million
  - **Bricks & Mortar Retail (15%)** \$20 – \$32 million
- **Per Retailer for 23 Bricks & Mortar facilities\*:**
  - **If revenue divides equally (unlikely):** \$0.87 – \$1.39 million
  - **If casinos average 3 times the volume of others:**
    - **Per casino** \$1.71 – \$2.74 million
    - **Per Other Class A and Class B** \$0.57 – \$0.91 million

\* 6 casinos, 3 horse tracks, 1 Riverboat, 3 sports teams, 10 Class B = 23.

# Sports Betting Characteristics

## The sports betting market:

- Is highly competitive, low margin, and extremely volatile
- Requires vast expertise in systems, back-end operations, odds-setting, marketing and more
- Demands high integrity and access to significant capital

## Remaining competitive with the illegal sports betting market requires:

- Low tax rate
- Competitive pricing (e.g. odds)
- Marketing investment