

**Testimony in Opposition to Senate Bill 884**

Internet Poker Authorization and Regulation Act of 2026  
*Before the Senate Budget and Taxation Committee: March 11, 2026*

The Public Health Law Clinic submits this testimony in opposition to Senate Bill (SB) 884, which aims to authorize and regulate internet poker and other “skill-based” games in Maryland without the requisite direct voter approval. Under Maryland laws and practices, poker that is played for money generally satisfies the definition of gambling because it involves wagering something of value on an uncertain event for the possibility of a prize. The Maryland Constitution requires voter approval before such gambling may be expanded to online platforms. Nonetheless, SB 884 attempts to avoid this requirement by labeling poker as a “skill-based” game and granting the State Lottery and Gaming Control Commission authority to determine which additional games qualify for this classification of “skill-based” games.

This testimony explains that SB 884 conflicts with Maryland’s legal framework governing gambling. First, Maryland statutes define gambling without any categorical exception for games that are labeled “skill-based.” Next, poker properly satisfies Maryland’s three-element test for gambling and has already been recognized as gambling by the Maryland Attorney General. Finally, authorizing online poker without voter approval would conflict with the Maryland Constitution.

**I. Maryland Statutory Law Definition of Gambling**

Maryland law defines gambling primarily through the act of wagering money or something of value on an uncertain event. The statute does not require comparing skill and chance.

Under Maryland Criminal Law §12-101, a “gaming device” is defined as “a game or device at which money or any other thing of value is bet, wagered, or gambled.”<sup>1</sup> This statute contains no language that establishes an exception for games that involve strategy or player skill. Instead, the statute primarily focuses on the act of wagering some value, not on whether skill or chance predominates in the game.

Similarly, Maryland Criminal Law § 12-102 prohibits a person from betting, wagering, or gambling “on the result of a race, contest, or contingency.”<sup>2</sup> A contingency is simply understood as an uncertain event. The random distribution of cards when playing poker is an uncertain event. Therefore, even if a player’s skill has some influence on the long-term outcome of the game, there is a wager on the uncertain distribution of the cards, which falls within this prohibition.

These statutes contain no exception for games that involve skill or strategy. The statutory framework focuses on whether participants risk something of value on an uncertainty. As

---

<sup>1</sup> MD. CODE, Crim. Law § 12-101(d).

<sup>2</sup> MD. CODE, Crim. Law § 12-102(a).

described above, because poker requires players to wager money on the uncertain distribution of cards, it falls within the Maryland statutory definition of gambling.

## II. Maryland Three-Element Test

Maryland Courts analyze gambling through the existence of three elements: (1) consideration; (2) chance; and (3) a reward or prize.<sup>3</sup> Online poker legally satisfies each of these elements.

**First, consideration is clearly present.** Consideration is present when a participant must provide money or something else of value to participate in the activity. In *State v. 158 Gaming Devices*, this element is further recognized through the insertion of money, tokens, or other payment to participate in a game. For online poker, players must pay money to participate in a poker game. This entry fee or wager satisfies the consideration element.

**Second, poker involves the element of chance.** This is the main element at issue for this bill. In *State v. 158 Gaming Devices*, the court explained that something falls within the gambling statute when, “by reason of any element of chance or of other outcome of such operation unpredictable by [the player], the user may receive or become entitled to receive” a reward.<sup>4</sup> Even though skill may influence a player’s long-term success, the outcome of any given hand depends on the completely random distribution and order of the cards. Consequently, because hand outcomes depend on randomly dealt cards, the necessary element of chance is satisfied.

**Third, poker provides a reward or prize.** Courts recognize that money or items representing other reward value will satisfy this element.<sup>5</sup> In the case of online poker, players compete for money or other valuable rewards based on the outcome of the game. This properly satisfies the reward or prize element.

Poker involves providing payment to participate, chance through uncertainty created by randomly dealt cards, and a monetary reward for winners. Therefore, poker satisfies all three elements of gambling that are recognized under Maryland law; it should not be placed into a separate “skill-based” category to bypass the voter approval required for online gambling expansion.

## III. Maryland Attorney General Opinion Concludes Poker is Gambling

The Maryland Office of the Attorney General has already addressed a similar issue. Attorney General opinions provide written interpretations of Maryland law that clarify legal questions such as the one at issue in this bill. Although these opinions are not binding in the

---

<sup>3</sup> *State v. One Hundred & Fifty-Eight Gaming Devices*, 304 Md. 404 (1985); *Chesapeake Amusements, Inc. v. Riddle*, 363 Md. 16

<sup>4</sup> *State v. One Hundred & Fifty-Eight Gaming Devices*, 304 Md. 404 (1985).

<sup>5</sup> *State v. One Hundred & Fifty-Eight Gaming Devices*, 304 Md. 404 (1985).

same way as a court opinion, these Attorney General opinions have persuasive authority that helps government officials act within the bounds of the law.

In 91 Op. Att’y Gen. Md. 64 (2006), the Maryland Office of the Attorney General issued an opinion that addressed whether a particular type of poker tournament conducted at a local tavern would violate Maryland’s criminal gambling laws.<sup>6</sup> These tournaments allow players to participate without paying any fee to participate. While this opinion concluded that these types of tournaments do not qualify as gambling, the opinion relied upon the fact that no consideration was given because the players did not have to pay to participate. Nonetheless, the chance element at issue in SB 884 was properly satisfied by the game of poker. This opinion acknowledged the influence of skill on outcomes of poker games over time. However, the Attorney General concluded that the result of any given hand depends substantially on the cards that are dealt and the order in which these cards are dealt, which properly satisfies the element of chance. The Attorney General expressly rejected any argument that poker is purely a game of skill through this established element of chance. Additionally, the Attorney General made it clear that if consideration was given during these tavern tournaments, this type of poker tournament would absolutely constitute gambling.

The opinion therefore rejected the argument that poker is purely a game of skill and concluded that poker falls within Maryland’s gambling framework when the element of consideration is present. If participants provide consideration, such as an entry fee in exchange for the opportunity to play and win prizes, the activity is classified as gambling under Maryland law. Therefore, the entry fee involved in online poker discussed in SB 884 would satisfy consideration and all other elements of gambling. No such “skill-based” classification would be allowed under Maryland law.

#### **IV. Other States’ Approaches**

Courts in many jurisdictions have discussed similar issues. For example, in *United States v. DiCristina*, the Second Circuit decided that when an activity already qualifies as gambling under state law, the debate over whether poker is primarily a game of skill or chance is not determinative.<sup>7</sup> Accordingly, the distinction of “skill-based” that this bill relies upon is improper because the game of poker satisfies Maryland’s definition of gambling.

Similarly, courts in multiple jurisdictions have concluded that poker contains a significant element of chance and held that chance predominates over skill for the purpose of constituting gambling.<sup>8</sup>

Likewise, in *Town of Mount Pleasant v. Chimento*, the South Carolina Supreme Court concluded that poker falls within the state’s gambling prohibition. The court in this case rejected the argument that poker should fall outside the statute because it is predominantly a game of

---

<sup>6</sup> 91 Op. Att’y Gen. Md. 68 (2006). <https://oag.maryland.gov/resources-info/Documents/pdfs/Opinions/2006/91oag64.pdf>

<sup>7</sup> *United States v. DiCristina*, 726 F.3d 92 (2d Cir. 2013).

<sup>8</sup> *Commonwealth v. Dent*, 992 A.2d 190 (Pa. Super. Ct. 2010).

skill, establishing that “gambling/gaming depends not on the skill/chance ratio, but on the wager.”<sup>9</sup>

Maryland’s gambling statutes do not rely on what is known as the “dominant factor” test, which asks whether skill predominates over chance in determining the outcome of a contest or contingency.<sup>10</sup> Instead, Maryland’s gambling statutes focus on whether a person wagers money or something of value on the outcome of a contest or contingency.<sup>11</sup> Poker inherently involves wagering on contingencies created by the random distribution of cards. Even if Maryland did apply such a test, there is still a significant question over whether or not poker skill predominates over chance. Each hand of poker is substantially affected by the random dealing of the cards, which introduces the requisite uncertainty into the outcome of the game. Therefore, the element of chance remains an essential element of poker and directly affects the result of the game, regardless of player skill.

Importantly, other states that have legalized online poker, such as New Jersey and Pennsylvania, have done so through explicit legislative authorization that treats and regulates poker as gambling.<sup>12</sup> These states did not create a separate gambling “skill-based” exception to bypass the proper gambling laws in their state, as SB 884 attempts to do.

## V. The Maryland Constitution Requires Voter Approval for Gambling Expansion

The Maryland Constitution requires that there be direct voter approval before any expansion of commercial gambling. Article XIX § 1(e) of the Maryland Constitution states that the General Assembly can authorize additional forms of commercial gambling only if the expansion is approved by Maryland voters through a statewide referendum.<sup>13</sup> Maryland has consistently followed this process for all of the recent major gambling expansions. This includes the recent legalization of sports betting in Maryland. SB 884 would authorize this new statewide online gambling market without this type of vote. Since poker played for money qualifies as gambling under Maryland law, moving it to internet platforms would represent an expansion of commercial gambling, which requires voter approval.

## Conclusion

SB 884 conflicts with Maryland’s statutory and constitutional framework governing gambling. Poker that is played for money clearly satisfies the elements of gambling under Maryland law, and no Maryland legal authority recognizes an exception for “skill-based” games. The Maryland Attorney General has already acknowledged that when poker has consideration, it is classified as gambling. Additionally, other states that allow online poker regulate it as gambling rather than a separate exception.

---

<sup>9</sup> *Town of Mount Pleasant v. Chimento*, 737 S.E.2d 830 (S.C. 2012).

<sup>10</sup> *State Gambling Law Summary*, Gambling-Law-US, <https://www.gambling-law-us.com/State-Law-Summary/> (last updated 2007).

<sup>11</sup> MD. CODE, Crim. Law § 12-101(d); MD. CODE, Crim. Law § 12-102(a).

<sup>12</sup> N.J. STAT. § 5:12-95.17; 4 PA. CONS. STAT. § 13B.

<sup>13</sup> MD. CONST. art. XIX, § 1(e).

Garrett Witte  
Public Health Law Clinic  
University of Maryland Carey School of Law

500 W. Baltimore St.  
Baltimore, MD 21301  
[publichealth@law.umaryland.edu](mailto:publichealth@law.umaryland.edu)

SB 884 attempts to create an exception for “skill-based” games to expand poker online without the voter approval that is required by the Maryland Constitution. Poker properly fits into the Maryland definition of gambling; there is no legal basis to create such an exception. This bill goes against the established Maryland legal practices and unfairly removes the Maryland citizens’ input from the decision-making process.

For these reasons, we request an unfavorable report on Senate Bill 884.

*This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law; the University of Maryland, Baltimore; or the University of Maryland System.*