IDEA Growth through regulated online gaming

iDevelopment and Economic Association

Comments of the iDevelopment and Economic Association on the Illinois Sports Wagering Act, Article 25 of Public Act No. 101-0031

September 27, 2019

Introduction

The members of the iDevelopment and Economic Association ("iDEA"), by and through its counsel, submit these comments on the Illinois Sports Wagering Act (the "Act"), set forth in Article 25 of Public Act No. 101-0031, which Illinois Governor J.B. Pritzker signed into law on June 28, 2019. On August 27, 2019, the Illinois Gaming Board (the "Board") announced that it was seeking input from the public, the sports wagering industry, and other stakeholders regarding the proposed rules and any other comments relevant to the Act. The Board requested that all such comments be submitted by September 27, 2019.

iDEA is a trade association organized exclusively to support and conduct research, education, advocacy, and informational activities to increase public awareness of the online gaming industry and the economic benefits. iDEA seeks to "grow jobs and expand online interactive entertainment business in the United States through advocacy and education."[1] iDEA's members represent all sectors of internet gaming and entertainment, including operations, development, technology, marketing, payment processing, and law. Members share the common goal of expanding American consumers' access to secure and regulated online gaming.

As of the date of this submission, iDEA is comprised of twenty-four members: Bet365, Continent 8 Technologies, DraftKings, EML Payments, Gamesys, Global Payments, Golden Nugget, GVC Holdings, Kambi, Kindred Group/Unibet, Net Entertainment, Pala Interactive, Paysafe, Catena Media, Resorts Interactive, SB Tech, SG Digital, Sightline Payments, Sportradar, The Stars Group, Worldpay, 888.com, Ifrah Law, and Saiber.

[1] *Who We Are - Members*, https://ideagrowth.org/our-members/ (last visited Sept. 22, 2019).

iDEA appreciates the opportunity to submit these comments on the Sports Wagering Act. As a preliminary matter, iDEA applauds the General Assembly's decision to legalize sports betting in Illinois following the United States Supreme Court's decision in *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461 (2018) (striking down the federal Professional and Amateur Sports Protection Act ("PASPA") on grounds that it violated the anti-commandeering doctrine). iDEA supports the legislature's efforts to provide for the licensure of online-only sports betting operators as well as land-based providers, such as race tracks, riverboat gambling establishments, brick-and-mortar casinos, and sports facilities. iDEA also supports the legislature's efforts to ensure that residents of Illinois gain access to high-quality sports betting opportunities without sacrificing any of the consumer protections to which they are entitled under Illinois law.

Nonetheless, iDEA submits that the Act can be improved, either through amendments that the legislature may pass in the form of trailer bills during its upcoming veto session, or through implementing regulations promulgated by the Board. Both industry stakeholders and consumers in Illinois will benefit from the removal of unnecessary restrictions on online-only providers—including, for example, the strict cap on licenses that may be issued to online-only operators and the elevated fees prescribed for those licenses. iDEA also supports implementing regulations that permit licensed land-based operators to provide online and mobile games under multiple skins or as products marketed under a combination of the licensee's and operator's brands.

Moreover, among other requests, iDEA urges the legislature to (i) do away with the in-person registration requirement, which is temporary in any event; (ii) legalize and regulate bets on college sports teams and other types of disfavored gambling, which would otherwise be

channeled to offshore providers in the black market; (iii) eliminate the possibility for sports governing bodies to mandate the use of tier 2 official league data; and (iv) establish fees for a supplier license that are commensurate with fees the Act prescribes for other licenses.

Executive Summary

❖ **The Sports Wagering Act places online-only providers at a disadvantage relative to land-based operators.**

- Section 25-45 requires the Board to issue three online-only licenses, which is fewer than the number of licenses available to horse-racing organizations, riverboat and casino establishments and sports facilities.

- The initial licensing fee of $20 million is at least double the initial fee chargeable to land-based operators for the same license.

- Section 25-45 delays the online-only licensees' entry to market by nearly two years or more compared to land-based licensees.

- Together, these provisions in section 25-45 impose significant burdens on online-only operators who want to do business in Illinois. The legislature should ameliorate the burdens by amending the Sports Wagering Act so that it increases or eliminates the cap on licensees, reducing the initial licensing fees and reducing or eliminating the licensees' entry to market.

❖ **The Board should promulgate regulations authorizing the use of multiple skins under one master sports wagering license**.

- iDEA requests that the Board's implementing regulations make clear that land-based licensees may use multiple skins under a single master sports wagering license.

- A multiple-skins approach will promote the growth of online and mobile gaming, encourage innovation and product development, and maximize revenues.

❖ **The Board's implementing regulations should expressly provide for co-branding of online and mobile sports wagering products.**

- The Act expressly provides for co-branding of mobile and online products offered by a sports facility or its designee.

- Co-branding is consistent with the Act and critical to the success of sports wagering in Illinois. Customers seek out sports betting operators they like and trust. When successful online and mobile operators team up with land-based licensees, the licensee and operator should be permitted to trade on the operator's good will.

❖ **The General Assembly should amend the Sections 25-30(f), 25-35(f), and 25-40(f) of the Act by eliminating the temporary requirement for in-person registration and providing for remote registration instead.**

- Customers who play online or mobile games offered under a land-based entity's master sports wagering license should not be required to register for play at the licensee's brick-and-mortar location.

- In-person registration is not essential to a well-regulated market as evidenced by the requirement's limited duration. Requiring in-person registration will make it more difficult for Illinois customers to participate in the State's online and mobile gaming markets. As a result, licensed operators will have more difficulty attracting new players, and the State will be less likely to meet its revenue goals.

❖ **The General Assembly should legalize and regulate bets on collegiate sports teams.**

- iDEA opposes the prohibition against bets on sports events involving an Illinois collegiate team. The ban will not prevent Illinois residents from placing such bets in jurisdictions like Iowa and Indiana, which permit such bets, or with offshore operators who operate without transparency or meaningful regulatory oversight.

- Due to bets placed in other jurisdictions or with providers located offshore, college sports teams and players will still be susceptible to fraud, corruption, and game-fixing.

❖ **The Board should delineate the extraordinary circumstances under which certain sports betting products may be banned at the request of a licensee.**

- For many of same reasons iDEA opposes the ban against bets on college sports, iDEA opposes the section 25-15(g), which authorizes the Board to ban a type or form of gambling at the request of a licensee.

- iDEA urges the legislature to remove section 25-15(g) from the Act. Bans on disfavored types of gambling drive betting activity to neighboring states that permit such betting or jurisdictions that do nothing to enforce laws against it. The losses are felt in Illinois: licensees lose profits, the State loses tax revenue, and Illinois residents lose the benefit of regulatory oversight.

- Alternatively, iDEA requests the Board to promulgate regulations that clarify the relevant substance and procedure. The implementing regulations should define what constitutes "good cause" and flesh out the standards by which it will dispose of requests to prohibit.

❖ **Master sports wagering licensees should not be required to use tier 2 official league data as published by the relevant governing sports body.**

- iDEA supports robust sports-betting markets, and sports betting businesses do better in environments characterized by lower taxes, modest licensing

fees, and deference to private commercial arrangements in lieu of government mandates.

- iDEA opposes the mandated use of tier 2 official league data because it purports to give sports governing bodies a property interest in factual information, which is not copyrightable under federal law.

- Section 25-25(g) interferes with the supply of, and demand for, tier 2 official league data. It then calls on the Board to decide whether agreements formed in that environment are commercially reasonable—a dubious proposition given that the Board must pass on the reasonableness of an agreement that charges fees for information in the public domain.

❖ **Any rules that require licensees to share data in real time must take account of competing interests in the data.**

- Section 25-15(f) of the Act authorizes the Board to require that licensees share, in real time, sports wagering information specific to certain accounts. The statute provides that such information may be provided to a sports governing body in certain cases.

- The information contemplated under section 25-15(f) constitutes proprietary and confidential business information to the licensee and personal sensitive information to the customer. In promulgating rules under section 25-15(f), the Board should carefully weigh these competing interests.

- The Board should also consider a requirement that data provided to sports governing bodies be first provided to the Board in the absence of an agreement for data-sharing between the licensee and sports governing body. In such cases, the licensee could provide the data to the Board, which would then be responsible transmit all or part of the data subject to applicable federal, State, and local laws.

❖ **The Board should delimit the circumstances under which a licensee must report a potential breach of a sports governing body's rules or codes of conduct.**

- iDEA generally supports the reporting obligations imposed under section 25-15(i), but submits that Paragraph 25-15(i)(3) is problematic because it requires licensees to report "potential" breaches of rules and codes of conduct but provides no mechanism by which licensees would learn of such breaches. Accordingly, iDEA urges that the reporting requirement be enforced only in cases where the relevant sports governing body has given the Board a list of prohibited bettors to be excluded from play.

- In the absence of information necessary for identifying and reporting potential breaches—data the sports governing bodies possess—operators will

be hard pressed to identify and communicate potential breaches of the internal rules or codes of conduct to either the Board or the sports governing body.

❖ **Fees for a supplier license should be commensurate with the fees chargeable to other licensees.**

- Under the Act, the renewal fees prescribed for a supplier license are substantially higher than the renewal fees for other licenses.

- The General Assembly should amend the Act to correct this anomaly and put suppliers on the same licensing cycle as the operators they are supplying, such that the supplier license is renewed on a four-year term. Similarly, the renewal cost for a supplier license should, like the operators' licenses, be a percentage of the initial license cost.

- Additionally, the legislature should eliminate the separate licensing fees chargeable to the providers of tier 2 official league data, which are additive to fees the providers already must pay for a supplier license.

- Requiring this type of double licensure overly burdens a single link in the supply chain, threatening the stability and potential offerings of the entire industry.

A. The Sports Wagering Act Places Online-Only Providers at a Disadvantage Relative to Land-Based Operators.

iDEA supports the legislature's decision to provide for the licensure of online sports betting operators that are not affiliated with land-based establishments. However, iDEA opposes a statutory cap on the number of such licenses and other unnecessary burdens the Act imposes on online operators.

Section 25-45 of the Act requires the Board to issue three master sports wagering licenses to online sports wagering operators that are not otherwise authorized to conduct pari-mutuel, riverboat or casino gambling in Illinois.[2] The Board is to issue the license pursuant to an "open and competitive selection process" that concludes within 21 months of the date on which the first license is issued under the Act, a deadline that the Board may extend at its discretion.[3] Awardees must pay an initial licensing fee of $20 million, which is renewable every four years upon payment of a $1 million renewal fee.[4]

While iDEA supports the express provision for licensure of online-only sports wagering operators, iDEA opposes the three-license cap as an arbitrary limit that will restrain competition and disadvantage gaming participants in Illinois. Indeed, iDEA can discern no sound justification for limiting the number of online-only platforms to three, especially given that the Act authorizes up to seven master sports wagering licenses to sports facilities[5] and imposes no limit on the number of master sports wagering licenses awarded to organization licensees (*i.e.*, horse racing tracks)[6] and owner licensees (*i.e.*, riverboat and casino gambling).[7]

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[2] Sports Wagering Act § 25-45(a).
[3] *Id.* § 25-45(a)–(b).
[4] *Id.* § 25-45(a).
[5] *Id.* § 25-40(c).
[6] *Id.* § 25-30.
[7] *Id.* § 25-35.

The law also disadvantages online-only platforms in other ways. First, the initial licensing fee for an online-only master sports wagering license is at least double the initial fee chargeable to land-based operators for the same license. Section 25-45 provides that online operators must pay a nonrefundable fee of $20 million for the first four years.[8] By contrast, a horse racing organization that obtains a master sports wagering license must pay an initial fee equal to (i) 5% of its handle from the previous year, or (ii) the lowest initial fee payable by a riverboat or casino gambling operation—whichever amount is greater.[9] But in no case will a horse racing organization pay more than $10 million for the first four years.[10] Likewise, riverboat and casino gambling operators who acquire a master sports wagering license must pay an initial fee based on their adjusted gross receipts from the previous year, but the initial fee may not exceed $10 million for the first four years.[11] Sports facilities are subject to an initial fee of $10 million for the first four years.[12]

Section 25-45 also disadvantages online-only operators by delaying their entry to market by nearly two years or more compared to land-based licensees. Specifically, section 25-45(b) provides that applications for an online-only master sports wagering license must be submitted to the Board within 18 months of the date on which the first license (which will be issued to a land-based operation) is issued under the Act. The Board must award the online-only licenses within 90 days of the application deadline, which time period may be extended at the Board's discretion. *Id.* § 25-45(b). If the Board conducts the competition based on the deadlines prescribed by statute,[13] online-only licenses will be awarded at least 21 months after the first

[8] *Id.* § 25-45(a).
[9] *Id.* § 25-30(b).
[10] *Id.*
[11] *Id.* § 25-35(b).
[12] *Id.* § 25-40(d).
[13] The Act establishes the maximum amount of time the Board may take to accept applications and award the licenses; it does not preclude the Board from doing those things on a tighter schedule.

master sports wagering license is issued to a land-based operation. If the Board extends the 90-day period at its discretion, market entry for online-only licensees could be delayed by two years or more compared to the first land-based licensee.

Together, the limited number of online-only licenses, cost-prohibitive licensing fees, and delayed entry to market impose significant burdens on online-only operators who wish to do business in Illinois. The Illinois legislature can ameliorate these burdens by amending the Sports Wagering Act to allow for a greater number of online-only licenses—either by raising or eliminating the cap, reducing initial licensing fees so they are comparable with the fees chargeable to land-based operators, and reducing or eliminating delays in the selection of online-only licensees[14]

B. The Board Should Promulgate Regulations Authorizing the Use of Multiple Skins Under One Master Sports Wagering License.

Consistent with the Act, the Board should authorize the use of multiple skins under each master sports wagering license. The Act is completely silent as to the use of skins. In fact, before the General Assembly approved Senate Bill 690—the bill that became the Sports Wagering Act—it considered multiple amendments to the legislation. Some amendments introduced in the House authorized the Board to issue a "sports wagering skin" license, and all of them expressly

[14] Moreover, although section 25-45 requires an open, competitive and transparent selection process, *id.* § 25-45(a)–(b), (c), (e), the statute gives the Board broad discretion in its selection of licensees. For example, to be eligible for an online-only license, applicants must meet certain criteria, including the requirement that they demonstrate "a level of skill or knowledge that the Board determines to be necessary in order to operate sports wagering." *Id.* § 25-45(d). In addition, the Board is authorized to "establish additional qualifications and requirements to preserve the integrity and security of sports wagering in [Illinois] and to promote and maintain a competitive sports wagering market." *Id.* Finally, under the statute, the Board may, but need not, give qualified applicants favorable consideration for economic development, community engagement, and diversity initiatives. *Id.* These provisions, which vest the Board with discretion, also create uncertainty as to how license applicants will be assessed and selected for award. And the uncertainty could discourage would-be applicants from competing for a license, which could result in a less qualified pool of applicants. To prevent that outcome, the Board should minimize uncertainty by promulgating regulations that flesh out how the Board will exercise its discretion under section 25-45(d).

limited licensees to the use of one sports wagering skin per license for online games.[15] Notably, the General Assembly rejected the single-skins approach in the final legislation. The Sports Wagering Act does not even mention the word "skin" much less impose limits on the number that may be used. As such, the Act leaves open the possibility that land-based licensees may offer online sports betting using multiple skins.

iDEA supports the General Assembly's decision to allow for a multi-skins environment and urges the Board to promulgate regulations making clear that land-based licensees may use multiple skins under a single master sports wagering license. A multiple-skins approach, such as that adopted in New Jersey, will promote the growth of online and mobile gaming, encourage innovation and product development to consumers' benefit, and maximize revenues. By contrast, a limited-skins approach will hinder competition in Illinois' sports wagering market and limit the growth of online and mobile gaming and related tax revenues.

iDEA members' experience and the organization's empirical studies have shown that online gaming operators—including sports book operators—will self-regulate to an efficient market size that maximizes operator and state revenue. To achieve such results, operators must have the flexibility to partner with other game providers to operate multiple skins. iDEA therefore urges the Board to promulgate rules making clear that Internet and mobile games may be offered under multiple unique brands so long as the partnership between the online operator and land-based licensee is made explicit to consumers.

If it does so, Illinois can expect to see benefits comparable to those in New Jersey, another multiple-skins environment. Now in its fifth year, New Jersey's online gaming sector produces ten percent of casino revenue and has introduced new customers that were not

[15] *See* Amendment to House Bill 1260 § 5-55, at 41 (stating that all licensees other than online-only licensees shall be limited to one sports wagering skin to provide sports wagering online).

otherwise reachable through brick-and-mortar casinos.[16] During the initial rollout, New Jersey allowed operators to use only one platform provider "to facilitate the completion of all the required licensing and technical reviews." Later, the single-platform limit was expanded so that each licensee could operate up to five skins.[17] Notably, the multiple-skins model proved its worth, driving increases in revenue and innovation. New Jersey currently has five online gambling licensees operating through 17 skins, including casino and third-party brands.

A study commissioned by iDEA proves that a multi-skin environment is better than a single-skin environment.[18] Specifically, analysts reviewed the growth of online gaming in New Jersey and found year-over-year growth after the state introduced the multiple skins model. In particular, the study found:

- An estimated boost of 50% in revenue for the industry and corresponding increase in tax revenue going to the State;[19]
- An estimated $82.5 million in additional local marketing expenditures driven by the adoption of the multiple-skins model,[20]
- Approximately 86,000 new customers that would not have participated in New Jersey's gambling market in the absence of a multiple-skins approach;[21]
- Additional revenue to the state in the form of licensing fees for additional skins;[22]
- Better platform pricing for land-based operators due to increased competition among the platform suppliers;[23] and

[16] *See* David Danzis, *Atlantic City casino revenue up 13% in August*, The Press of Atlantic City (Sept. 13, 2019), https://www.pressofatlanticcity.com/news/casinos_tourism/casino-revenue-up-in-august/article_e9e77fab-cbae-5f29-9d58-85a44289b676.html#1; Steve Ruddock, *New Jersey Online Gambling Revenue Tops $60 Million in August*, Betting USA (Sept. 13, 2019), https://www.bettingusa.com/nj-revenue-august-2019/.
[17] *See* David Rebuck, Letter Re: New Jersey Internet Gaming One Year Anniversary, Jan. 2, 2015 (attached hereto as Exhibit 1).
[18] *See generally* Eilers & Krejcik Gaming, LLC, *Analysis: How the Multiple-Brand Model Impacts State-Regulated Online Gambling Markets* (May 2019) (attached hereto as Exhibit 2).
[19] *See id.* at 2, 22.
[20] *Id.* at 2.
[21] *Id.*
[22] *Id.* at 22.
[23] *Id.* at 24.

- Overall growth of New Jersey's gaming industry as shown by continual annual growth in gaming revenue as more brands entered the market.[24]

For sports betting, New Jersey allows three skins per land-based sports book, including both retail operations at casinos and sports books operated at the State's race tracks. In total, there are 42 skins potentially available in the New Jersey market, increasing market access, consumer choice, industry competition and tax revenue opportunities for the State. Land-based casinos and racetrack license holders also benefit: the multiple-skins approach has given them leverage for partnerships with online operators.[25]

In sum, the Sports Wagering Act's legislative history shows that the General Assembly intended to leave open the possibility for multiple skins to be used under a single land-based license. Consistent with the Act, the Board should authorize the use of multiple skins under one master sports wagering license. A multiple-skins environment will promote a vibrant, free market for online and internet sports wagering and will help to recapture business lost to offshore providers: if operators are allowed to provide games under brands that players recognize, the players will have no need to seek out those same brands for play on the black market. Moreover, a multiple-skins environment will allow for a greater number of online and mobile providers in Illinois, which will help drive competition, innovation and product development to the benefit of consumers in Illinois. The resulting growth will deliver increased revenues to the gaming industry and increased tax revenues to the State.

[24] *Id.* at 13 (Fig. 2.2) (showing annual growth between 20% and 36% after New Jersey implemented five-skins model).
[25] *See, e.g.*, John Brennan, *Monmouth Park Operator After Partnering With TheScore: "I Didn't Ask for Three Skins,"* NJ GamblingOnline.com, Dec. 19, 2018, available at https://www.njonlinegambling.com/monmouth-park-third-skin-thescore/

C. The Board's Implementing Regulations Should Expressly Provide for Co-Branding of Online and Mobile Sports Wagering Products.

iDEA requests the Board to address co-branding in its regulations for the Act. In particular, iDEA requests that the Board authorize co-branding of sports wagering products offered by online and mobile operators under a land-based partner's master sports wagering license. The Act expressly provides for co-branding of mobile and online products offered by a sports facility or its designee,[26] and even allows for such products to be offered solely under the operator's brand. The analogous provisions applicable to horse racing organizations and riverboat and casino operations expressly require that such products be offered under the licensee's brand, but are silent as to co-branding.[27] Although the provisions do not allow the licensee or its mobile or online partner to offer sports betting products exclusively under the operator's brand, they do not preclude the licensee and operator from offering a co-branded product.

Not only is co-branding consistent with the Act, it is critical to the success of Illinois' sports wagering market. As the U.S. sports-betting industry expands in the wake of *Murphy*, sports bettors will continue to seek out products they like from operators they trust. Not surprisingly, customers looking for a regulated sportsbook often seek out operators with a national profile and well-known products. When those operators partner with land-based licensees to offer mobile and online gaming under the latter's master sports wagering license, neither the licensee nor the operator should be prohibited from leveraging the operator's good will. To the contrary, they should be permitted to inform customers that the operator is providing

[26] Sports Wagering Act § 25-40(h) ("The sports wagering offered by a sports facility or its designee over the Internet or through a mobile application shall be offered under the same brand as the sports facility is operating under, the brand the designee is operating under, or a combination thereof.").
[27] *Id.* §§ 25-30(e) (horse racing organizations), § 25-35(e) (riverboat and casino operators).

the services in partnership with the land-based entity. Rules expressly allowing for co-branding in such cases will give customers more complete information about the sports betting products offered. Additionally, broad co-branding rules will help to bring customers of offshore providers to the regulated market in Illinois.

D. The General Assembly Should Eliminate the Temporary Requirement for In-Person Registration.

iDEA opposes the legislature's decision to require players to register in-person for online and mobile sports wagering that occurs pursuant to a master sports wagering license held by a land-based enterprise, *i.e.*, a horse racing organization, a riverboat or casino gambling establishment or sports facility. However, iDEA is pleased that, at a minimum, the in-person requirement will discontinue when the Board issues a master sports wagering license to the first online-only sports betting operator. This planned termination proves what the legislature already knows: in-person registration is not necessary to a well-regulated sports betting market. iDEA therefore urges the legislature to repeal the requirement altogether. By amending the Act to allow for remote registration, the legislature will eliminate an unnecessary barrier to the growth of online sports betting without compromising the integrity of the games or putting players at risk.

It is no secret that online and mobile betting drives the U.S. and global sports betting markets. Both Nevada and New Jersey have seen the impacts in their states. When Nevada legalized mobile betting, consumer interest spiked and the total amount wagered grew from $2.87 billion to $5 billion in the span of seven years. Similarly, ever since New Jersey legalized sports betting, eighty percent of all wagers in that State have been placed via mobile devices and the internet. Illinois could expect to see comparable growth in online and mobile gaming, but the Act's in-person registration requirement may prevent it.

Illinois' in-person registration requirement makes it more difficult for consumers to participate in the State's online and mobile gaming markets—*i.e.*, to participate, players have to travel to the nearest gaming establishment to register in person—which might make it more difficult for licensed operators to attract new customers. And if operators have more difficulty attracting new customers, the State will be less likely to meet its targets for sports betting revenue. Indeed, players who would engage in legal sports betting were there no in-person registration requirement will simply stay out of the market altogether or place their online or mobile bets with an offshore entity that operates in an illegal, unregulated market.

Legislators may have added the in-person registration requirement as a way to drive foot traffic to brick-and-mortar casinos; if so, it is unclear why the requirement survives only until the first sports wagering license is issued to an online-only operator. Brick-and-mortar establishments will always benefit from increased foot traffic, possibly more so after online-only operators enter the market. More importantly though, the in-person registration requirement overlooks that the sports wagering industry uses online channels to attract and service a specific type of customer—that is, a customer who is comfortable using the internet for purchases and entertainment and is, therefore, less likely to be introduced to gaming at a brick-and-mortar location. The Act's inclusion of an in-person registration requirement for online and mobile gaming makes it less likely that these potential customers will be reached online and converted to brick-and-mortar patrons.[28]

[28] *See* iDEA Growth, *Why Internet Sports Betting? Revenue, Consumer Protection, Today's Technology* (explaining that internet betting complements land-based casinos). According to Golden Nugget executives, 92% of the business's online customers are new to Golden Nugget. The other 8% increased their spending at land-based locations after signing up online. *See* Chris Grove, *Regulated Online Gambling: Building a Stronger New Jersey*, at 3 (Oct. 2017). Tropicana reports that 80% of its online customers are new or inactive. Active land-based customers who signed up online increased their spending at land-based casinos following online registration. *See id.*; *see also* Alan Meister & Gene Johnson, *Economic Impact of New Jersey Online Gaming: Lessons Learned* § 4.7 (June 2017) (summarizing evidence that iGaming does not cannibalize brick-and-mortar casino revenues, but complements offline gaming, partly because some new online players are inactive casino-goers who reactivate their involvement; Steve Ruddock, *Five*

To the extent the State of Illinois may contend that in-person registration is necessary to protect the integrity of sports betting and the people of Illinois, we note that the requirement is temporary under the Act. By design, the requirement is to be in force for roughly two years. That would not be the case if in-person registration were essential to a well-regulated market. Moreover, it is a requirement that other successful gaming markets have done without. For example, New Jersey has no such requirement and more than 80% of bets in that State are placed via the internet and mobile devices without any adverse impacts to market integrity or player safety.

In reality, the in-person registration requirement simply causes in-state casinos to compete with other in-state casinos for registrations. Amending the statute to permit remote registration will shift the competition to offshore providers, who will be at a great disadvantage compared to operators licensed in Illinois: if Illinois residents are able to register at home to play a regulated game by a reputable operator licensed in Illinois, they will be much less likely to go to an offshore gaming provider that is subject to little or no government oversight. Put differently, the elimination of Illinois' in-person registration requirement would make offshore gaming less attractive to players in Illinois, which will increase participation in Illinois' sports betting market and improve Illinois' chances of meeting its revenue goals for sports wagering. Eliminating the in-person registration requirement has the added benefit of anticipating the current trajectory in favor of online gaming. As the current population ages, they will be gradually replaced by a new generation of players until the vast majority of game participants are people accustomed to living life online. The sports betting industry must be positioned to provide

Out of Five New Jersey Casino Operators Agree: Regulated Online Gambling Is Good for Business, Online Poker Report (May 8, 2017) (stating that all New Jersey online gambling operators found that online gambling helped casinos to re-engage with lapsed customers who were inactive for at least a year).

an online option for the vast majority of future customers who will be used to shopping, scheduling doctor's appointments, ordering food, and booking transportation online.

E. The General Assembly Should Legalize and Regulate Bets on College Sports Teams.

iDEA members support a free market as the best framework for legalized sports betting, including in Illinois. History shows that unnecessary proscriptions against certain types of gambling do not prevent it; they simply drive participants to operators who offer such gambling in jurisdictions that permit it or do nothing to stop it. To the extent that occurs, Illinois' sports betting revenues will suffer while purportedly harmful types of gaming continue beyond the reach of Illinois regulators.

For these reasons, iDEA opposes the Act's restrictions on bets that involve in-state college teams. Section 25-25(d) provides in relevant part that a sports wagering licensee under the Act "may not accept a wager for a sports event involving an Illinois collegiate team."[29] Faced with the choice to ban or permit-and-regulate, Illinois opted to ban all bets involving in-state college sports teams. In doing so, Illinois has helped to push the college-sports sector and related revenues to states like Indiana and Iowa, which permit such bets, and to offshore providers who operate without transparency or meaningful regulatory oversight. Make no mistake: avid sports fans and bettors will still bet on events involving sports teams from Northwestern and University of Illinois, and those teams and players will still be susceptible to fraud and corruption, including game-altering bribes. From the shadows, black-market bets on college sports will continue to threaten competition, bet integrity, and law enforcement resources.

The most efficient way to avoid these negative impacts is for the legislature to legalize and regulate bets on college sports. Only then will Illinois be able to truly protect college athletes

[29] Sports Wagering Act § 25-25

and consumers in Illinois and recapture money flows to the black market and neighboring states that allow bets on college sports.

F. The Board Should Delineate the Extraordinary Circumstances Under Which Sports Betting Products May Be Banned at the Request of a Licensee.

For many of the reasons set forth in Section E, above, iDEA opposes the Act's provision for future bans at the request of industry stakeholders. Although section 25-15(g) does not prohibit a specific type or form of gaming; it provides a process by which industry stakeholders can petition the Board to ban certain types of wagering:

> A master sports wagering licensee, professional sports team, league, or association, sports governing body, or institution of higher education [the "Stakeholder"] may submit to the Board in writing a request to prohibit a type of form of wagering if the [Stakeholder] believes that such wagering by type or form is contrary to public policy, unfair to consumers, or affects the integrity of a particular sport or the sports betting industry.[30]

By statute, the Board must grant the request on a showing of good cause and "consultation with licensees."[31]

iDEA urges the legislature to support an open and free sports-betting market in Illinois by removing the above-quoted provision from the statute. Restrictions on popular types and forms of betting inevitably drive such betting activity and associated revenues to jurisdictions that allow such betting or do nothing to enforce laws against it. The losses are incurred in Illinois: licensees lose profits associated with the banned activity, the State loses associated tax revenue, and consumers lose the benefit of the Board's regulatory oversight for that type of betting. To recapture that business, Illinois' gambling laws must allow for a well-regulated market that

[30] *Id.* § 25-15(g).
[31] *Id.*

includes land-based gaming, mobile and online gaming, bets on college sports, and wagering on game play while the game is in progress, otherwise known as in-play wagering.

Alternatively, the Board should promulgate regulations clarifying the circumstances under which it would take the extraordinary step of banning a type or form of wagering. The statute requires "[t]he Board [to] grant the request upon a demonstration of good cause from the requester and consultation with licensees."[32] The Board should promulgate regulations that define what constitutes "good cause" for purposes of section 25-15(g). In that regard, the Board should consider language from an analogous provision in Michigan House Bill No. 4916: "For the purpose of this subsection, 'good cause' means the operator has identified suspicious betting activity or the division has begun an investigation regarding suspicious betting activity that, if confirmed, would directly impact the integrity of the sporting event on which the bets are being placed."[33] Similarly, the Board should use the rulemaking process to flesh out the standards by which it will dispose of requests to prohibit, including without limitation (i) how the Board will fulfill its duty "to consult with licensees"—especially those with a direct and/or significant stake in the outcome; (ii) what evidence the Board will consider; (iii) whether "good cause" requires a finding that the gambling activity "is contrary to public policy, [is] unfair to consumers, or affects the integrity of a particular sport or the sports betting industry," as the requestor must implicitly claim when making a request; and (iv) what recourse will be available to stakeholders aggrieved by the Board's disposition of the request.

[32] *Id.*
[33] Mich. H.B. 4916 § 10(8), *available at* http://www.legislature.mi.gov/documents/2019-2020/billintroduced/House/pdf/2019-HIB-4916.pdf.

G. Master Sports Wagering Licensees Should Not Be Required to Use Tier 2 Official League Data as Published by the Relevant Governing Sports Body.

Broadly speaking, iDEA supports robust sports-betting markets and, for that reason, advocates for sports-betting legislation that promotes transparency, fosters competition, and encourages innovation. On balance, sports betting businesses do better in environments characterized by lower taxes, modest licensing fees, and deference to private contractual arrangements in lieu of government mandates.

iDEA is therefore leery of the legislature's decision to include Section 25-25(g), which authorizes a sports governing body headquartered in the United States to notify the Board unilaterally that it wants to supply official league data for tier 2 wagers on events within the governing body's jurisdiction.[34] If the governing body provides such notice in the form and manner required by the Board, all master sports wagering licensees must begin using tier 2 official league data within thirty days unless (i) the governing body cannot provide the data, or (ii) a master sports wagering licensee can demonstrate that the governing body or its designee cannot provide the data on commercially reasonably terms.[35] Although it does not expressly mandate the use of tier 2 official league data, Section 25-25(g) empowers sports governing bodies in the United States to decide unilaterally that tier 2 official league data should be used to determine the results of tier 2 wagers. With proper notice to the Board, a sports governing body potentially can force master sports wagering licensee to pay millions of dollars for factual data that will determine the winners and losers of tier 2 wagers.

iDEA opposes the mandated use of official league data for several reasons. First, Section 25-25(g) purports to give sports governing bodies a property interest in factual information,

[34] Sports Wagering Act § 25-25(g).
[35] *Id.*

which is not copyrightable under federal law. Indeed, the United States Supreme Court has explained that the "'fact/expression dichotomy' is a bedrock principle of copyright law that 'limits severely the scope of protection in fact-based works.'"[36] "No author may copyright facts or ideas. The copyright is limited to those aspects of the work—termed 'expression'—that display the stamp of the author's originality."[37] The data necessary for resolving tier 2 wagers consists of factual information regarding players, teams, and the game itself (other than the final score or final outcome). As a matter of federal law, sports governing bodies can have no property interest in such facts.

The General Assembly is on shaky ground with respect to Section 25-25(g). Not only does that provision purport to create a property interest in tier 2 data, it gives the sports governing body a monopoly over the data. The tension between federal law and Section 25-25(g) creates other problems. For example, Section 25-25(g) provides that the Board must suspend the requirement for master sports wagering licensees to use tier 2 official league data if a licensee demonstrates that the sports governing body or its designee cannot provide a feed of the data on commercially reasonable terms.[38] Given federal copyright law, it is difficult to imagine how the Board would find "commercially reasonable" any arrangement that requires licensees to pay for information in the public domain.

Not only does Section 25-25(g) contravene federal law, it puts the Board in the middle of private commercial arrangements between sports governing bodies and their designees, on the one hand, and master sports wagering licensees, on the other. The Act establishes the framework by which sports governing bodies may trigger their monopoly interest in tier 2 official league

[36] *Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 847 (2d Cir. 1997) (quoting *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 350 (1991)).
[37] *Id.* (quoting *Feist Publ'ns, Inc.*, 499 U.S. at 350) (internal quotation marks omitted).
[38] Sports Wagering Act § 25-25(g).

data and tasks the Board with resolving disputes over whether the data can be provided on "commercially reasonable" terms.

In a free market, private actors make the choice to enter private agreements that will confer a net benefit on both parties. The parties to the contract decide for themselves what terms are acceptable. By contrast, Section 25-25(g) gives sports governing bodies the power to determine whether licensees must contract for the use of tier 2 official league data within the relevant body's jurisdiction. Moreover, under the Act, the sports governing body has monopoly power with regard to its data; as a result, there is little reason to expect that a licensee under a mandate to use tier 2 data will have sufficient bargaining power to contract for the data on terms as favorable as the licensee would get in the absence of a mandate.

The statutory framework creates the above-described problems by interfering with the free-market supply of, and demand for, tier 2 official league data. It then tasks the Board with deciding whether the resulting agreements between industry stakeholders are "commercially reasonable." iDEA opposes the statutory framework as inefficient and ineffective. Decisions regarding the use of official league data—*i.e.*, whether to purchase it, from whom and on what terms—are better left to the private sector. Despite the absence of a legal mandate requiring the use official league data, casinos and sports leagues have executed numerous deals concerning such data, and they have done so on terms the parties deem to be acceptable. For example, Major League Baseball ("MLB"), the National Basketball Association ("NBA") and the National Hockey League ("NHL") have all contracted to provide official league data for their respective sports to MGM Resorts and various sports books. These deals and others like them suggest that Section 25-25(g) is a solution in search of a problem: the statute does not solve an issue the free market is not already solving.

Finally, it is important to note that, among industry stakeholders, questions persist about the utility and reliability of tier 2 official league data. A law that provides for mandatory use of the data will simply ensure that sports books use the same dataset to determine the results of tier 2 wagers. The law will do nothing to ensure that such data is accurate and, therefore, cannot give the sports betting industry the aura of legitimacy that lawmakers hope it will give.

For all of these reasons, the General Assembly should amend the Act so that no sports governing body or designee has the unilateral power to require that other stakeholders use tier 2 official league data to determine the results of proposition and in-play wagers.

H. Any Rules That Require Licensees to Share Data in Real Time Must Take Account of Competing Interests in the Data.

If the Board promulgates rules requiring data sharing in accordance with section 25-15, the Board should carefully weigh the various interests affected by those rules. Section 25-15 of the Act sets forth Board's duties and powers. Under section 25-15(f),

> The Board may require that licensees share, in real time,[39] and at the sports wagering account level, information regarding a wagerer, amount and type of the wager, including the Internet protocol address, if applicable, the outcome of the wager, and records of abnormal wagering activity.

The statute provides further that licensees "may" (but need not) share the same information with the sports governing body or its designee. In such cases, the information "may" be provided in anonymized form and "may" be used by the sports governing body solely for integrity purposes.[40]

As an initial matter, iDEA notes that the issue of integrity is paramount for all stakeholders. That said, the information contemplated under section 25-15(f) is important to

[39] The statute defines "real time" to mean "a commercially reasonable periodic interval." *Id.*
[40] *Id.* § 25-15(f).

different stakeholders for different reasons. To licensees, the data constitute proprietary and confidential business information. To customers, the data constitute sensitive personal information. When establishing a framework for data sharing under section 25-15(f), the Board should carefully consider (i) the privacy interests held by each customer, (ii) the stakeholders' reasonable commercial expectations as reflected in the privacy policies that govern the licensees' end user agreements, (iii) the licensees' proprietary concerns and legitimate business interests in protecting such data, and (iv) the sports governing bodies' need for the data. For the fourth item listed, the Board should consider that sports governing bodies apparently have been able to ensure the integrity of their sport for years without access to licensees' granular, real-time betting data. The Board should also consider a requirement that certain real-time wagering data be channeled through the Board. Under such a rule, the licensee could be required to provide real-time data to the Board in the absence of a data-sharing agreement between the relevant sports governing body and licensee(s). The Board would then be responsible to transmit all or part of the data subject to applicable federal, State and local laws and regulations.

I. The Board Should Delimit the Circumstances Under Which a Licensee Must Report a Potential Breach of a Sports Governing Body's Rules or Codes of Conduct

The Act imposes certain obligations on master sports wagering licensees. Section 25-15(i) requires licensees to make commercially reasonable efforts to promptly notify the Board of information relating to (i) criminal or disciplinary proceedings against the licensee, (ii) abnormal wagering activity or patterns suggesting improper interference with a sporting event, (iii) potential breaches of a sports governing body's internal rules or codes of conduct (iv) game-

fixing, and (v) suspicious or illegal sports betting.[41] The licensee must also report the information described in Paragraphs 2, 3, and 4 to the relevant sports governing body.

iDEA generally supports the reporting obligations imposed under section 25-15(i), but submits that Paragraph 25-15(i)(3) is problematic because it requires licensees to report "potential" breaches of rules and codes of conduct but provides no mechanism by which licensees would learn of such breaches. Accordingly, iDEA urges that the reporting requirement be enforced only in cases where the relevant sports governing body has given the Board a list of prohibited bettors to be excluded from play.

For example, many sports governing bodies prohibit players within their jurisdiction from wagering. Indeed, the NCAA prohibits all of its 400,000 student athletes from any sports wagering whatsoever. Were any of those students to place a wager or attempt to place with an operator in Illinois, the operator would have knowledge of the attempted or potential breach of the NCAA's internal rules. However, in the absence of information necessary for identifying and reporting potential breaches—data the sports governing body's possess—operators will be hard pressed to identify and communicate potential breaches of the sports governing body's internal rules or codes of conduct to either the Board or the sports governing body.

J. Fees for a Supplier License Should Be Commensurate With the Fees Chargeable to Other Licensees

Under the Act, the renewal fees prescribed for a supplier license are substantially higher than the renewal fees for other licenses. In relevant part, Section 25-50 states that the Board may issue a supplier license to a person to sell or lease sports wagering equipment, systems, or other items or to "offer services related to the equipment or other items and data to a master sports

[41] *Id.* § 25-15(i)(3).

wagering licensee."[42] To obtain the license, suppliers must pay an initial fee of $150,000 for the first four years, followed by an annual renewal fee of $150,000.[43] In other words, a supplier must pay an average licensing fee of $37,500 for Years 1–4, and four times that amount ($150,000) every year thereafter.

Compared to the other licensing fees prescribed in the Act, renewal fees for a supplier license are so extraordinarily high, they appear to be an error. For context, a race track that obtains a master sports wagering license must pay an initial licensing fee equal of no more than $10 million and then a renewal fee of $1 million every four years. Thus, at most, a race track would pay an average of $2.5 million for each year of the initial period and $250,000 per year thereafter or 10% of the initial fee.

Similarly, a riverboat or casino establishment that obtains an owner's license must pay an initial fee equal to its adjusted gross receipts from the previous year. As with the organization license, the initial fee for an owner's license is capped at $10 million,[44] and the license is renewable for a term of four years at a cost $1,000,000. Therefore, at most, a riverboat or casino gambling establishment would pay an average of $2.5 million for each year of the initial period and $250,000 per year thereafter or 10% of the initial fee.

Sports facilities that obtain a master sports wagering license must pay an initial fee of $10,000,000 for the first four years and $1,000,000 per year thereafter.[45] Thus, on average, a sports facility will pay $2.5 million for each year of the initial period followed by $250,000 per year or 10% of the initial fee.

[42] *Id.* § 25-50(a).
[43] *Id.* § 25-50(d).
[44] *Id.* § 25-35(b).
[45] *Id.* § 25-40(d), (e).

Finally, online-only licensees must pay an initial fee of $20,000,000 for the first four years, *i.e.*, an average of $5 million per year, and a renewal fee of $1,000,000 for each four-year term thereafter.[46] On average, online-only operators must pay $5 million per year for the first four years, and $250,000 per year thereafter or 5% of the initial fee.

In contrast to these operator licenses, the holder of a supplier license must pay $150,000for the first four years and renew the license every year thereafter at the same price of. Thus, unlike all other renewal fees, which represent 5–10% of the initial licensing fee, the renewal fee for a supplier license is identical to the initial fee, yet lasts one-fourth as long as long. To correct this anomaly and put suppliers on the same licensing cycle as the operators they are supplying, the General Assembly should amend the Act such that the supplier license is renewed on a four-year term. Similarly, the renewal cost for a supplier license should, like the operators' licenses, be a percentage of the initial license cost. To create consistency and fairness across the Illinois licensing regime, the Act should be amended to change the supplier license renewal fee such that it is equal to 5–10% of the initial fee of $150,000, between $15,000–$30,000 every four years.

Moreover, the legislature should eliminate the separate licensing fees for chargeable to the providers of tier 2 official league data,[47] which are additive to fees the providers already must pay for a supplier license. Section 25-60 provides that no industry stakeholder may provide tier 2 data (*i.e.*, data other than the final score or outcome of a sporting event) to a master sports wagering licensee without a "tier 2 official league data provider" license.[48] Under the Act, fees for the initial three-year period run from $30,000 to $500,000 depending on the provider's data

[46] *Id.* § 25-45(a).
[47] *See id.* § 25-60(c).
[48] *Id.* § 25-60(b).

sales during the first year. The renewal fee for each three-year period thereafter is to be based on the provider's sales of tier 2 official league data during the previous year.[49]

The fees prescribed under Section 25-60(c) should be eliminated. No other U.S. gambling jurisdiction requires suppliers of sports data to pay duplicate licensing fees as both a supplier and provider of the same official data. Requiring this type of double licensure overly burdens a single link in the supply chain, threatening the stability and potential offerings of the entire industry. If suppliers of tier 2 official league data are subjected to multiple—and extraordinary—licensing fees for providing the official data necessary for in-play and prop bets, the providers will be discouraged from seeking licensure and doing business in Illinois. If data suppliers avoid doing business in Illinois, sports books in Illinois will lose access to services that are vital for tier 2 wagers, *i.e.*, in-play and prop bets. Without tier 2 wagering, Illinois sports books become less competitive, and bettors in Illinois will take their bets to neighboring jurisdictions with robust markets or to illegal operators located offshore. In either case, the net result will be a loss of gambling opportunities and related tax revenues in Illinois. Illinois will avoid these losses by eliminating the licensing fees for tier 2 official data providers.

[49] *Id.* § 25-60(d).

Conclusion

iDEA thanks the Board and General Assembly for considering its comments concerning improvements to the Illinois Sports Wagering Act. Please do not hesitate to contact the undersigned for additional information or clarification on the issues raised herein.

Respectfully submitted,

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