

VIRGINIA SPORTS BETTING STAKEHOLDER INPUT
for consideration in connection with initial draft regulations
▶ SUBMISSION OF THIS FORM IS OPTIONAL ◀

To ensure timely consideration, this optional form can be submitted by email attachment to gaming@valottery.com.

Please note: Your submission will be considered a public record and may be disclosed in accordance with the Virginia Freedom of Information Act (Va. Code § 2.2-3700, *et seq.*).

Purpose: In view of the limited timeframe provided for Virginia’s sports betting regulatory process, the Virginia Lottery invites similarly situated stakeholders to work together to compile a shared set of stakeholder regulatory concerns for use as it assembles draft regulations in advance of the mid-July Board meeting. Not intended to take the place of the public comment period, this informal measure will serve to enhance efficiencies during the short regulatory timeframe. Like all members of the public, stakeholders will have an opportunity to comment on the proposed regulations during the 30-day public comment period following the Lottery Board’s mid-July meeting.

COMMENTS/CONCERNS:

The iDevelopment and Economic Association (iDEA Growth) is grateful for the opportunity to provide comments to the Virginia Lottery Board (“the Board”) as it works to develop draft regulations pursuant to recently enacted legislation to allow for sports betting in the state of Virginia.

iDEA Growth is an association which seeks to grow jobs and expand the online interactive gaming business in the United States. The organization represents all sectors of the growing industry of internet gaming, sports betting and entertainment, including operations, development, technology, marketing, payment processing, and law. iDEA Growth’s members share the goal of expanding American consumers’ access to secure and regulated online gaming and sports wagering.

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

Our comments will be divided into two sections. The first, entitled “General Comments” will be broad thematic points that we hope the Board will keep in mind as it prepares draft regulations. The second section, entitled “Specific Policy Comments” will address certain more specific issues that we believe the Board will confront.

General Comments

The Board has the opportunity to learn from the experience of other states. Virginia is a relatively early adopter of sports betting, but the Board can learn from experience of other states that acted earlier. We believe that the state with the most successful regulatory model is New Jersey, which has the largest on-line sports betting market by revenue, and which produces the most revenue for its state treasury. New Jersey is similar to Virginia in terms of population and demography. Also, as prescribed in the

legislation, Virginia could have more than a dozen online sportsbooks available to consumers and today New Jersey boasts 14 online brands with that number expected to grow. The New Jersey on-line sports betting market generated \$32 million in tax revenues (based on a 13% tax rate); it had \$3.88 billion in handle and generated \$244 million in gross gaming revenue. We believe that a successful Virginia sports betting market would likely resemble today's market in New Jersey. iDEA Growth has worked closely with the New Jersey Division of Gaming Enforcement (NJDE), and most of our members are licensed operators or suppliers in that state. The NJDE team is a valuable resource and they welcome the opportunity to engage with other state regulators to share their expertise in establishing regulations, launching a market successfully and effective ongoing enforcement of the rules.

In terms of process, we believe that the Colorado Division of Gaming Enforcement did an excellent job of engaging the public and gaming stakeholders to provide input on the regulations and share best practices from other regulated sports betting jurisdictions. Through a series of formalized meetings, both in-person and virtually, and continued engagement with stakeholders throughout the process, Colorado crafted some of the strongest regulations in the country designed for a competitive market that is poised for success once the sporting schedule returns. We applaud the Virginia Lottery for soliciting this stakeholder input and we look forward to continued engagement as you develop your rules and regulations.

The legal sports betting market in Virginia will have to compete with a robust illegal market. Prior to the Supreme Court's decision in *Murphy v. NCAA*, the American Gaming Association estimated that the handle of the U.S. sports betting market was \$150 billion, with 97% of that being illegal. Operators like 5Dimes, BetOnline, Bookmaker and MyBookie will have significant advantages over legal Virginia operators, including not paying taxes; not reporting winnings for tax purposes, and taking customers from all 50 states, among others. One policy goal of legalizing sports betting is to give Virginians safe and legitimate options to engage in sports betting. Establishing a regulatory framework that allows for Virginia-regulated operators to effectively compete with the offshore competition that doesn't pay taxes or provide appropriate consumer protections will be essential for a successful market that maximizes revenue for the Commonwealth. We urge the Board to view every policy issue that they confront at least partially through the prism of competition with the illegal market.

The regulation of sports betting is different from the regulation of casino-style gaming. In sports betting, players bet on external events outside the control of the operator. Casino-style gaming involves players betting (usually against "the house") on events created by the operator. The latter requires more in-depth scrutiny of the product to ensure, for example, that slot machines have appropriate payouts and that random number generators are truly random. This level of scrutiny is not necessary for sports betting. Obviously, sports betting regulation should ensure (as per Virginia's statute) that appropriate safeguards are in place to protect against betting affecting the integrity of the game.

The Board should seek to maximize the revenue the state will receive from sports betting. We urge the Board to consider each policy decision in the context of its effect on the amount of revenue the state will receive from sports betting. The statute requires this with respect to the question of how many licenses to issue, but we would also encourage the Board to keep this in mind with respect to catalogue (the scope of events on which bets can be accepted), and other policy decisions that may affect the operations of permit holders. As we discuss below, certain policies such as mandated "hold"

percentages and excessive licensing fees can hobble the legal market as it seeks to compete with the illegal market.

Specific Policy Comments

The Board should issue the maximum number of permits allowed by the statute. Simply put, more permit holders will result in more revenue for the state, more choice for consumers and more robust competition among permit holders and with the illegal market. Attached to the e-mail by which these comments are transmitted is a study iDEA Growth commissioned through the respected gaming research firm Eilers & Krejcik showing that the multi-brand model increased revenue in New Jersey by 50%. The statute allows for a maximum of 12 permits (plus additional permits reserved for professional sports franchises) with as many as five offered preferentially to casinos authorized by a recently enacted statute. Virginia is viewed as a promising market by the sports betting industry, and we believe there will be numerous well-qualified companies applying for permits. Allowing for the maximum statutorily allowable number of permit holders to be licensed in the Commonwealth will create competition in the industry that fosters innovation and customer engagement. With this engagement from both the industry and players, Virginia will be best positioned to realize its tax revenue potential. We urge the Board to approve as many suitable applicants as possible.

As mentioned previously, New Jersey has already awarded 14 sports wagering licenses (with that number expected to grow), and while all these sportsbooks are tethered to a land-based casino they each have a separate and distinct brand that faces the consumer. This policy gives the consumer a transparent view of operator they choose, and their engagement with that operator is not masked by underlying casino partner. Independent branding of online sportsbooks is an important part of consumer acquisition and retention and the more unique brands in the market means more dollars spent in marketing and promotions, which increases the positive ancillary economic impact of sports wagering for the Commonwealth.

While a majority (up to seven) of Virginia's authorized online sportsbooks will be independent from a land-based casino, up to five licenses could potentially be tied to a retail casino. It is advisable that the online sportsbook that partner with these casinos be able to brand and market their platform directly to consumers without restriction that ties the brand to the underlying casino licensee.

The Board should NOT mandate a minimum "hold" of the sort adopted by Tennessee. Tennessee's regulations mandated that operators pay out no more than 90% of total bets placed to winning bettors. This was universally opposed by the operators whose revenue it seeks to raise for one simple reason – it renders them far less competitive with the illegal market. Moreover, consumers also oppose this mandate as it forces Tennessee legal operators to offer far less competitive odds for sports betting than what would be found in all other legal U.S. jurisdictions that do not have a "maximum payout" requirement. In sports betting "hold" serves the same function that "price" serves in other markets. While Tennessee mandates a hold of 10%, the industry standard is 7.5% or less. This requirement threatens to price Tennessee's licensed operators out of a market that includes illegal operators. This has the additional effect of reducing revenue for that state. Attached to the cover e-mail for these comments is a study that iDEA Growth commissioned through Eilers & Krejcik that examined the effects

of France's "minimum hold" requirement (which was the model for Tennessee, and was, prior to the Tennessee regulations, the only such mandate in the world). It found the following effects in France:

- SMALL NUMBER OF OPERATORS -- Only 13 active sports betting licenses for a population of 66m.
- LOW REVENUE PER CAPITA -- Gross gaming revenue per capita for online sports betting is €10.30 as of CY18, compared to €37-39 in the UK and Danish markets. In the first five years of the French market GGR per capita was below €4.
- LEAKAGE TO ILLEGAL MARKET -- The active illegal market is still around 15-20% of the regulated market, even with substantial blocking and ongoing enforcement from the French regulator and government.

In order to help legal operators compete with the illegal market, and to maximize revenue for the state, Virginia's regulations should allow market forces to determine the appropriate percentage of payouts.

Virginia Lottery should adopt robust rules governing responsible gaming. Successful gaming regulatory regimes include measures aimed at educating consumers about problem gambling; providing consumers with tools (such as customized time and loss limits) to protect themselves against irresponsible gaming; robust Know-Your-Customer and Geolocation protocols to prevent minors, excluded people, and individuals outside of Virginia from placing bets, among many other things. iDEA Growth has adopted a comprehensive framework for responsible gaming which is attached to the e-mail that transmitted these comments.

Virginia Lottery should adopt reasonable, risk-based standards for licensing permit holders. The statute requires that each applicant pay a non-refundable fee of \$50,000 for each "principal" with that term meaning anyone who has a 5% or greater ownership or voting share in an applicant or who is employed in a managerial capacity for a sports betting platform on behalf of a permit holder. This fee (in addition to the \$250,000 fee due at the time the permit is issued) is quite high compared to other jurisdictions. For example, in New Jersey, a "key employee" gaming license costs \$750 plus the cost of the investigation with a total cost not to exceed \$4,000. Pennsylvania charges \$2500 per key employee. Obviously, the Board will have to follow the statute.

The term "managerial" in the statute has a narrow meaning that should be reflected in the regulations. Rather than capturing anyone who manages anyone else in the company, it should be limited only to those individuals who oversee the sports betting platform itself as operated in Virginia. Given the very high application cost per-principal, we would urge the Board to implement an interpretation that does not capture a wide net of sportsbook managers, but only those managers up the reporting chain with ultimate accountability for the platform in Virginia.

The statute does not discuss licensing of suppliers and/or vendors to permit holders. The Board should consider the approach that Iowa has taken in not requiring supplier licensing as well as other lottery States, such as New Hampshire, Montana, Oregon and Washington DC who also do not require this and rely on the operators to select and vet appropriate vendors. However, if the Board does create a licensing regime for suppliers/vendors it should be based on the goal of protecting the integrity of the regulatory system according to the risk that is inherent in that type of supplier's operation. There is no

basis in the law for imposing the \$50,000 principal fee or \$250,000 permit fee on suppliers or vendors since those fees are strictly limited to permit holders by law.

In sum, the licensing standards should not unduly burden either permit holders or suppliers/vendors as they seek to compete with the illegal market and maximize tax revenue for the state.

Conclusion

iDEA Growth and its members believe that Virginia can have a successful, well-regulated sports betting market which successfully pulls players out of the illegal market; generates significant revenue for the state; includes strong regulations to protect players and promote responsible gaming, and provides Virginia consumers with access to safe and legal entertainment. We believe that all of our policy suggestions, if adopted, will help create such a market. We thank the Board for this opportunity to provide comments.

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