



January 29, 2024

Via Email to sean.ford@maryland.gov

Sean Ford, Director of Legislation and Policy Development
Maryland Lottery and Gaming Control Agency
1800 Washington Boulevard
Baltimore, MD 21230

RE: Proposed Regulations for Gaming, Sports Wagering, Video Lottery Terminals and Instant Bingo Machines

Dear Director Ford:

In response to the regulations for Gaming, Sports Wagering, Video Lottery Terminals and Instant Bingo Machines proposed by the Maryland Lottery and Gaming Control Agency (“MLGCA”), DraftKings Inc. (“DraftKings”) submits the following comments and questions for consideration. As a leading sports wagering operator in the United States, DraftKings has first-hand experience with regulatory frameworks that address sports wagering and submits these comments based on its operational knowledge in multiple regulated jurisdictions. The following comments are organized in the order in which they appear within the rules.

36.10.10.03 Requirements.

Comment: DraftKings respectfully requests the MLGCA amend the following provision that prohibits sports wagering advertisements from including language that suggests an outcome is guaranteed or without risk. The use of the term “risk” in this context is overly broad and confusing given the construction of the provision. As currently drafted, the provision could be interpreted to require each sports wagering advertisement to plainly state “there is risk” when an individual is participating in sports wagering. Furthermore, given the provision also prohibits operators from suggesting in their advertisements an outcome is guaranteed the prohibition against the use of “without risk” is duplicative. For these reasons, DraftKings respectfully requests the MLGCA amend this provision in the manner outlined below.

MLGCA-proposed Language:

B. A sports wagering licensee shall:

**...
(11) Ensure that an advertisement for sports wagering, video lottery terminal, or table game play does not include language that suggests an outcome is guaranteed or without risk.**

DraftKings-proposed Language:

B. A sports wagering licensee shall:



...

(11) Ensure that an advertisement for sports wagering, video lottery terminal, or table game play does not include language that suggests an outcome is guaranteed ~~or without risk.~~

36.10.13.41 Consumer Protection.

Comment: DraftKings respectfully requests the MLGCA amend the language in provision (1)(c), (d), and (e) as noted below, or alternatively maintaining said language as-is so long as an accompanying definition for “restricted sports wagering credits” is added in the definitions section that details the impact to any credits and/or funds comporting with industry standards. The use of the term “restricted sports wagering credits” without said clarifying language in this context may create inadvertent industry confusion in interpretation and application. Given MLGCA drafter intent to use terminology consistently throughout the regulations, we respectfully note that the terms “un/restricted funds” may have inadvertently been used interchangeably with the term “credits.”

We respectfully point to competitive market jurisdictions such as Michigan and North Carolina which have identical provisions for model language guidance. Michigan Rule 432.749 provides: “A sports betting operator or internet sports betting platform provider must provide a clear and conspicuous method for an authorized participant to cancel his or her participation in a bonus or promotional wagering offer that utilizes restricted gaming credits that cannot be cashed out until a wagering requirement or other restrictions associated with the credits is met. If an authorized participant elects to proceed with cancellation, unrestricted funds remaining in an authorized participant’s internet sports betting account must be returned according to the terms and conditions.”¹ Similarly, North Carolina provides, “An Operator shall provide a clear and conspicuous method for a Player to cancel their participation in a promotion or bonus that uses restricted Wagering credits that cannot be cashed out until a Wagering requirement or other restrictions associated with the credits is met. The Operator’s cancelation method shall include the following: (1) On a request for cancellation, the Operator shall inform the Player of the amount of unrestricted funds that will be returned after cancellation and the value of restricted Wagering credits that will be removed from the Wagering Account.”² For the aforementioned reasons, DraftKings respectfully requests the MLGCA amend this provision in the manner outlined below.

MLGCA-proposed Language:

(1) A sports wagering licensee is responsible for the terms, conditions, and conduct, of promotions it offers, and those that are offered on behalf of the licensee, directly or indirectly, by a sports wagering contractor or marketing affiliate vendor, including:

...

¹ [Section R. 432.749](#) - Tournaments/contests, bonus and promotional wagering, advertising, and player loyalty programs.

² [Rule 1E-003\(e\)\(1\)](#) - Promotional or Bonus Wagering.



(c) Providing a clear and conspicuous method for a bettor to cancel the bettor's participation in a promotion that utilizes restricted sports wagering credits.

(d) When a bettor requests cancellation, informing the bettor of the amount of unrestricted funds that will be returned upon cancellation, and the value of restricted funds that will be removed from the bettor's sports wagering account; and

(e) If a bettor elects to proceed with cancellation, returning unrestricted funds remaining in the bettor's sports wagering account in accordance with the terms and conditions.

DraftKings-proposed Language:

(1) A sports wagering licensee is responsible for the terms, conditions, and conduct, of promotions it offers, and those that are offered on behalf of the licensee, directly or indirectly, by a sports wagering contractor or marketing affiliate vendor, including:

(c) Providing a clear and conspicuous method for a bettor to cancel the bettor's participation in a promotion that utilizes restricted sports wagering credits ~~that cannot be cashed out until a wagering requirement or other restrictions associated with the credits are met.~~

(d) When a bettor requests cancellation, ~~the sports wagering licensee shall inform~~ the bettor of the amount of unrestricted funds that will be returned upon cancellation, and the value of restricted funds that will be removed from the bettor's sports wagering account; and

(e) If a bettor elects to proceed with cancellation, returning unrestricted funds remaining in the bettor's sports wagering account in accordance with the terms and conditions.

36.10.13.41 Consumer Protection.

Comment: Similar to the comment regarding 36.10.10.03(B)(11) above, DraftKings respectfully requests the MLGCA amend the following provision that prohibits sports wagering advertisements - either directly or through a contractor or vendor - from including language that suggests an outcome is guaranteed or without risk. The use of the term "risk" in this context is overly broad and confusing given the construction of the provision. As currently drafted, the provision could be interpreted to require each sports wagering advertisement to plainly state "there is risk" when an individual is participating in sports wagering. Furthermore, given the provision also prohibits operators from suggesting in their advertisements an outcome is guaranteed the prohibition



against the use of “without risk” is duplicative. For these reasons, DraftKings respectfully requests the MLGCA amend this provision in the manner outlined below.

MLGCA-proposed Language:

(2) A sports wagering licensee, directly or through a contractor or vendor on behalf of the licensee, may not:

**...
(c) Include in an advertisement language that suggests the outcome is guaranteed or without risk; or**

DraftKings-proposed Language:

(2) A sports wagering licensee, directly or through a contractor or vendor on behalf of the licensee, may not:

**...
(c) Include in an advertisement language that suggests the outcome is guaranteed ~~or without risk~~; or**

36.10.14.06 Reserve.

Comment: DraftKings respectfully requests the MLGCA amend the following provisions that use the term “winning wagers” with respect to the use of a surety bond to fund a sports wagering licensee’s reserve account. No jurisdiction DraftKings currently operates within limits surety bond coverage to just “winning wagers.” Rather, those jurisdictions that allow for surety bonds to supplement cash or some other means with respect to maintaining a reserve to cover outstanding player liability, allow for the surety bond to cover all reserve balances - including wallet balances and pending wagers. As currently drafted in the MLGCA’s proposed regulation, a surety bond is a far less feasible alternative to offset what would otherwise be an all cash reserve account. This is the case because once a wager is won, the winning amount gets transferred directly into the player’s wallet balance, where both winnings and deposits are housed. Thus, our reserve is covering the reserve categories more broadly as: 1) ending cash wagers - cash within player wallets, both winnings and deposits, 2) pending wagers, and 3) pending withdrawals from player wallets not yet paid out. For these reasons, DraftKings respectfully requests the MLGCA amend this provision in the manner outlined below.

MLGCA-proposed Language:

(2) A surety bond shall:

(a) Be in the form approved by the Agency and:

**...
(v) Requires the sports wagering licensee to provide an updated listing of winning wagers that form the basis of the reserve to the Agency within 72 hours;**



(vi) Includes a statement that within 24 hours of receiving the updated listing of winning wagers that form the basis of the Reserve that the Agency will commence review of the list of outstanding patron accounts;

DraftKings-proposed Language:

(2) A surety bond shall:

(a) Be in the form approved by the Agency and:

...

~~(v) Requires the sports wagering licensee to provide an updated listing of winning wagers that form the basis of the reserve to the Agency within 72 hours;~~

~~(vi) Includes a statement that within 24 hours of receiving the updated listing of winning wagers that form the basis of the Reserve that the Agency will commence review of the list of outstanding patron accounts;~~

* * * * *

Thank you for your consideration of DraftKings' comments regarding the MLGCA's proposed rulemaking for Gaming, Sports Wagering, Video Lottery Terminals and Instant Bingo Machines. Please feel free to reach out should you or anyone else at the MLGCA have any questions about our submission or our experience in other regulated jurisdictions.

Sincerely,

DraftKings Inc.