

Sports Wagering Application Review Commission (SWARC)

Larry Hogan, Governor



Tel: 410-946-5400
TTY users call Maryland Relay
swarc@mlis.state.md.us

90 State Circle
Annapolis, Maryland 21401

August 26, 2022

SENT VIA U.S. Mail & EMAIL :

Senator Sarah K. Elfreth, *Co-Chair* (sarah.elfreth@senate.state.md.us)

Joint Committee on Administrative, Executive,
and Legislative Review (AELR)

103 James Senate Office Building

11 Bladen Street

Annapolis, MD 21401

Delegate Samuel I. Rosenberg, *Co-Chair* (samuel.rosenberg@house.state.md.us)

Joint Committee on Administrative, Executive,
and Legislative Review (AELR)

365 Taylor House Office Building

6 Bladen Street

Annapolis, MD 21401

RE: Emergency Regulations DLS Control No. 22-374 Maryland State Lottery and Gaming Control Agency: Sports Wagering Application Review Commission: General Provisions: COMAR 36.11.01.01 and .02, All Applicants and Awardees: COMAR 36.11.02.01 through .19

Dear Sen. Elfreth and Del. Rosenberg:

As Chairman of the Sports Wagering Application Review Commission (SWARC), I am respectfully requesting that AELR promptly approve our proposed emergency regulations, which will allow us to begin the application process for competitive sports wagering licenses.

Over the past year, SWARC members have diligently explored ways to carry out our mandate within the constraints explained to us by attorneys. As we have come to understand the industry, it is apparent that the licenses for mobile wagering will be the most significant to achieving the Sports Wagering Law's goal of creating a diverse and inclusive market, so we have set forth a plan to best achieve the law's intent with a focus on mobile licenses, as I will explain below.

SWARC approved its proposed regulations last month and submitted them for consideration by AELR on July 22, 2022. Without AELR's approval, SWARC is not able to fully and properly build Maryland's sports wagering program, including mobile wagering, which is central to the program's success. We have been advised that SWARC must wait for AELR's approval of our emergency regulations before we can begin accepting applications. SWARC has also been advised that it had to await the results of the sports wagering industry analysis and a review of the results by the Office of the Attorney General. These two action items must be completed before SWARC can begin accepting applications, evaluating applicants and awarding licenses.

Thomas M. Brandt, Jr., Chair

Rosie Allen-Herring, Laura Gamble, Bert J. Hash, Jr., E. Randolph Marriner, Cassandra Stevenson, Frank Turner
swarc.org

Senator Sarah K. Elfreth
Delegate Samuel I. Rosenberg
Page Two
August 26, 2022

Set forth below is the status of these two gating items:

Review of Regulations and Applications

SWARC's proposed regulations will be published in the August 26, 2022 edition of the *Maryland Register*, marking the beginning of a 30-day public comment period on these proposed regulations. In addition, a public meeting is scheduled for September 9, 2022, at Maryland Lottery and Gaming Headquarters to receive comments from the public. We also recently approved drafts of the applications for the mobile and Class B facility licenses that we are authorized to award so that prospective applicants can use these documents as a guide to begin preparing their applications.

Industry Analysis

SWARC must receive the sports wagering industry analysis and the Office of the Attorney General (OAG) must conduct the necessary legal review of this analysis. We understand that AELR is interested in seeing the outcome of the industry analysis, and I am pleased to provide you with a preview of its determinations based on information I have very recently received.

On August 19, 2022, the Maryland Department of Transportation informed SWARC that the sports wagering industry analysis has been completed. The Consulting Economist and author of the analysis, Dr. Jon Wainwright, concluded that he could not "opine on whether the 2017 Disparity Study is sufficient to support any other type of race- and/or gender-conscious remedy in the SWEW Industry in Maryland." This means that based on the analysis, SWARC is not able to apply any race- and/or gender-conscious criteria in its evaluation of applicants.

In a separate but related matter, Dr. Wainwright concluded that the State's "2017 Disparity Study does provide an evidentiary basis for applying the State's MBE Program to the Sports Wagering and Event Wagering (SWEW) Industry in Maryland." This means that the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) can now begin its work with sports wagering licensees to set MBE participation goals for their ongoing operations.

Thoughtful Deliberations

In preparation for the possibility that race- and/or gender-conscious criteria may not be used in evaluating applicants, SWARC has, over many months, thoroughly discussed and considered race- and/or gender-neutral remedies. SWARC's proposed regulations include a race- and/or gender-neutral remedy to achieve the Sports Wagering Law's intent of maximizing the participation by minorities and women. SWARC's consultant, Taft Stettinius & Hollister LLP, conducted and documented extensive research on a variety of race- and/or gender-neutral remedies that SWARC considered. Ultimately, SWARC decided to use a Personal Net Worth (PNW) provision (proposed COMAR 36.11.02.19). Under this provision, every applicant for a competitive mobile or Class B facility sports wagering license will be required to

Senator Sarah K. Elfreth
Delegate Samuel I. Rosenberg
Page Three
August 26, 2022

demonstrate that at least 5% of its direct or indirect ownership is by individuals with a PNW no more than \$1.847 million. This PNW provision meets the definition of “disadvantaged business enterprises” that is used elsewhere in Maryland MBE programs. SWARC has posted frequently asked questions concerning this ownership requirement on [the Applications page at swarc.org](https://www.swarc.org/the-applications-page-at-swarc.org) to ensure this requirement is understood by prospective applicants.

SWARC believes this requirement will present a meaningful wealth-building opportunity, particularly for mobile licensees. It is noteworthy that the nature of the mobile sports wagering business does not entail significant numbers of employees, subcontractors or physical facilities, as with other industries, so the ownership opportunity is SWARC’s best way to achieve the legislation’s objectives. Further delay and study would not realistically lead to a different conclusion. As Chairman, I have taken particular interest in this aspect of SWARC’s role, having worked as Chief Financial Officer of one of Maryland’s largest MBEs for 19 years.

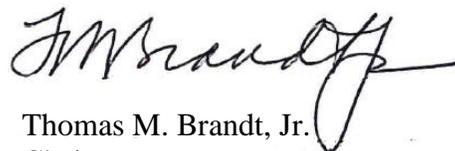
Timeliness

SWARC has received many inquiries from prospective sports wagering applicants and the public, asking when the process will move forward. Our staff has answered these inquiries by explaining the extensive due diligence and evidence of responsible controls necessary to comply with Maryland’s Sports Wagering Law. After much work, we are nearly at the finish line, but we need your help. The sports wagering industry is “seasonal,” and the football season (September through the Super Bowl in February) annually generates much more activity than other times of the year. Thus, unless we move quickly, Marylanders will miss access to mobile wagering on the 2022 football season, and the state will miss out on the related revenue.

SWARC is eager to move forward and complete this process. Marylanders have been waiting for mobile sports wagering for more than a year since the Sports Wagering Law was passed. The Blueprint for Maryland’s Future Fund is awaiting the revenue that sports wagering will contribute to public schools. But none of this can happen until AELR acts on our proposed emergency regulations. Again, on behalf of SWARC, I respectfully request that AELR render its decision promptly.

If you would like additional information, please feel free to contact either SWARC Staff – James Butler at 410-230-8781 jbutler@maryland.gov, or George Butler 410-946-5350/ George.Butler@mlis.state.md.us – who can connect you with me personally.

Sincerely,



Thomas M. Brandt, Jr.
Chair

Senator Sarah K. Elfreth
Delegate Samuel I. Rosenberg
Page Four
August 26, 2022

cc: The Honorable Larry J. Hogan, Jr., Governor of Maryland
The Honorable Bill Ferguson, President, Senate of Maryland
The Honorable Adrienne A. Jones, Speaker, Maryland House of Delegates
VIA EMAIL:
AELR Committee Members
SWARC Commissioners
Stephen E. Schatz, Deputy Chief of Staff, Governor's Office
Andrew P. Cassilly, Chief Legislative Officer, Governor's Office
John Martin, Director, MLGCA
James R. Nielsen, Deputy Director, Chief Operating Officer, MLGCA
James B. Butler, Assistant Deputy Director, Chief of Staff, MLGCA
George H. Butler, Jr., Principal Policy Analyst, Department of Legislative Services, OPA
David W. Stamper, Assistant Attorney General, Office of Counsel to the General Assembly