

SENATE BILL NO. 212

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(Patron Prior to Substitute--Senator Rouse)

A BILL to amend and reenact §§ 18.2-325 and 18.2-334 of the Code of Virginia, to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-617, and to repeal § 18.2-334.6 of the Code of Virginia, relating to Virginia Small Business Economic Development Act established; regulation of skill games; registration; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-325 and 18.2-334 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-617, as follows:

§ 18.2-325. Definitions.

As used in this article, unless the context requires a different meaning:

~~1.~~ "Gambling device" includes:

1. Any device, machine, paraphernalia, equipment, or other thing, including books, records, and other papers, that are actually used in an illegal gambling operation or activity; and

2. Any machine, apparatus, implement, instrument, contrivance, board, or other thing, or electronic or video versions thereof, including but not limited to those dependent upon the insertion of a coin or other object for their operation, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled, provided, however, that the return to the user of nothing more than additional chances or the right to use such machine is not deemed something of value within the meaning of this definition and, provided further,

27 that machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ
28 from each other in composition, size, shape, or color shall not be deemed gambling devices within the
29 meaning of this definition.

30 Such devices are no less gambling devices if they indicate beforehand the definite result of one or
31 more operations but not all the operations. Nor are they any less a gambling device because, apart from
32 their use or adaptability as such, they may also sell or deliver something of value on a basis other than
33 chance.

34 "Illegal gambling" means the making, placing, or receipt of any bet or wager in the Commonwealth
35 of money or other consideration or thing of value, made in exchange for a chance to win a prize, stake, or
36 other consideration or thing of value, dependent upon the result of any game, contest, or any other event
37 the outcome of which is uncertain or a matter of chance, whether such game, contest, or event occurs or
38 is to occur inside or outside the limits of the Commonwealth.

39 For the purposes of this ~~subdivision~~ definition and notwithstanding any provision in this section
40 to the contrary, the making, placing, or receipt of any bet or wager of money or other consideration or
41 thing of value shall include the purchase of a product, Internet access, or other thing made in exchange for
42 a chance to win a prize, stake, or other consideration or thing of value by means of the operation of a
43 gambling device as described in ~~subdivision 3-b~~, 2 of the definition of "gambling device," regardless of
44 whether the chance to win such prize, stake, or other consideration or thing of value may be offered in the
45 absence of a purchase.

46 ~~"Illegal gambling" also means the playing or offering for play of any skill game.~~

47 ~~2.~~ "Interstate gambling" means the conduct of an enterprise for profit that engages in the purchase
48 or sale within the Commonwealth of any interest in a lottery of another state or country whether or not
49 such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other
50 record of such interest.

51 ~~3.~~ "Gambling device" includes:

52 ~~a. Any device, machine, paraphernalia, equipment, or other thing, including books, records, and~~
53 ~~other papers, which are actually used in an illegal gambling operation or activity;~~

54 b. Any machine, apparatus, implement, instrument, contrivance, board, or other thing, or electronic
55 or video versions thereof, including but not limited to those dependent upon the insertion of a coin or other
56 object for their operation, which operates, either completely automatically or with the aid of some physical
57 act by the player or operator, in such a manner that, depending upon elements of chance, it may eject
58 something of value or determine the prize or other thing of value to which the player is entitled, provided,
59 however, that the return to the user of nothing more than additional chances or the right to use such
60 machine is not deemed something of value within the meaning of this subsection; and provided further,
61 that machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ
62 from each other in composition, size, shape, or color, shall not be deemed gambling devices within the
63 meaning of this subsection; and

64 c. Skill games.

65 Such devices are no less gambling devices if they indicate beforehand the definite result of one or
66 more operations but not all the operations. Nor are they any less a gambling device because, apart from
67 their use or adaptability as such, they may also sell or deliver something of value on a basis other than
68 chance.

69 4. "Operator" includes any person, or firm, or association of persons, who conducts, finances,
70 manages, supervises, directs, or owns all or part of an illegal gambling enterprise, activity, or operation.

71 5. "Skill" means the knowledge, dexterity, or any other ability or expertise of a natural person.

72 6. "Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine,
73 or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate,
74 activate, or play a game, the outcome of which is determined by any element of skill of the player and that
75 may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift
76 cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or cash equivalents
77 whether the payoff is made automatically from the device or manually. "Skill game" includes (i) a device
78 that contains a meter or measurement device that records the number of free games or portions of games
79 that are rewarded and (ii) a device designed or adapted to enable a person using the device to increase the
80 chances of winning free games or portions of games by paying more than the amount that is ordinarily

81 required to play the game. "Skill game" does not include any amusement device, as defined in § 18.2-
82 334.6.

83 7. "Unregulated location" means any location that is not regulated or operated by the Virginia
84 Lottery or the Virginia Lottery Board, the Department of Agriculture and Consumer Services, the Virginia
85 Alcoholic Beverage Control Authority, or the Virginia Racing Commission.

86 **§ 18.2-334. Exception to article; private residences.**

87 Nothing in this article shall be construed to make it illegal to participate in a game of chance
88 conducted in a private residence, provided such private residence is not commonly used for such games
89 of chance and there is no operator as defined in subsection 4 of § 18.2-325.

90 CHAPTER 57.

91 VIRGINIA SMALL BUSINESS ECONOMIC DEVELOPMENT ACT.

92 **§ 59.1-603. Definitions.**

93 As used in this chapter, unless the context requires otherwise:

94 "ABC retail licensee" means a person who possesses a valid retail license issued by the Board of
95 Directors of the Virginia Alcoholic Beverage Control Authority and who is in good standing.

96 "Authority" means the Virginia Alcoholic Beverage Control Authority.

97 "Board" means the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

98 "Department" means the Virginia Department of Taxation.

99 "Distributor" means a person registered with the Authority that sells, leases, offers, or provides
100 and distributes skill game machines to an operator for use or play in the Commonwealth.

101 "Establishment" means a person registered with the Authority that permits an operator to place and
102 operate skill game machines on the establishment's premises pursuant to this chapter.

103 "Gross revenue" means all revenue generated from the play of skill game machines minus prizes
104 paid out to players.

105 "Inducement" means (i) consideration paid, directly or indirectly, from a distributor or operator,
106 or another person on behalf of a distributor or operator, to an establishment, or an employee of the
107 establishment, directly or indirectly, as an enticement to solicit or maintain the establishment's business

108 or (ii) cash, incentive, marketing and advertising cost, gift, food, beverage, loan, prepayment of skill game
109 revenue, or other contribution or payment that offsets an establishment's operational costs, or as otherwise
110 determined by the Authority.

111 "Operator" means a person registered with the Authority to operate skill game machines by (i)
112 purchasing or leasing skill game machines from a registered distributor, (ii) providing skill game machines
113 to registered establishments, (iii) ensuring payment of prizes to players and collection of skill game
114 machine revenue, and (iv) providing onsite collection of skill game machine data reporting as required by
115 this chapter.

116 "Person" means an individual, partnership, joint venture, association, limited liability company,
117 stock corporation, or nonstock corporation and includes any person that directly or indirectly controls or
118 is under common control with another person.

119 "Single play" means the period beginning when a player activates and pays for the interactive
120 gameplay function of a skill game and ending at the time when the gameplay function or series of free
121 subgames thereunder will not continue without payment by the player of additional consideration.

122 "Skill game" or "skill game machine" means an electronic, computerized, or mechanical
123 contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token,
124 or similar object to operate, activate, or play a game, the outcome of which is determined by the
125 predominant skill of the player and that may deliver or entitle the person playing or operating the device
126 to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be
127 exchanged for cash or cash equivalents whether the payoff is made automatically from the device or
128 manually. "Skill game" includes (i) any device that contains a meter or measurement device that records
129 the number of free games or portions of games that are rewarded and (ii) any device designed or adapted
130 to enable a person using the device to increase the chances of winning free games or portions of games by
131 paying more than the amount that is ordinarily required to play the game. Skill games shall be programmed
132 so that the maximum consideration to play is \$5 and the maximum winnings per a single play does not
133 exceed \$5,000.

134 "Truck stop" means an establishment (i) that is equipped with diesel islands used for fueling
135 commercial motor vehicles; (ii) has sold, on average, at least 50,000 gallons of diesel or biodiesel fuel
136 each month for the previous 12 months, or is projected to sell an average of at least 50,000 gallons of
137 diesel or biodiesel fuel each month for the next 12 months; (iii) has parking spaces dedicated to
138 commercial motor vehicles; (iv) has a convenience store; and (v) is situated on not less than three acres of
139 land that the establishment owns or leases.

140 **§ 59.1-604. Powers and duties of the Board and the Authority.**

141 A. The Board shall promulgate regulations governing the ownership, placement, use, and operation
142 of skill game machines and any associated equipment.

143 B. The Board shall designate three nationally recognized and accredited laboratories to conduct
144 the requisite skill game machine equipment and software evaluation and approval pursuant to the
145 requirements in § 59.1-610.

146 C. The Authority shall require that each distributor submit a monthly report detailing the following:

147 1. The total number of skill game machines provided for play in Virginia by the operator;
148 2. The address of each location where skill game machines are provided for play by the operator;
149 3. The total number of skill game machines provided for play by the operator at each respective
150 location;

151 4. The total amount wagered during the previous month on each skill game machine provided for
152 play by the operator at each establishment where the skill game machine was provided;

153 5. The total amount of prizes or winnings awarded during the previous month on each skill game
154 machine provided for play by the operator at each establishment where the skill game machine was
155 provided.

156 D. The Authority shall issue decals bearing the Commonwealth seal that include the words
157 "Certified Skill Game Machine" and bear the effective dates of registration. Such decals shall be affixed
158 by the operator on each skill game machine provided to each establishment for play.

159 E. Whenever it appears to the Authority that any person has violated any provision of this chapter,
160 the Authority may apply to the appropriate circuit court for an injunction against such person. Any order
161 granting or refusing such injunction shall be subject to appeal as in other cases in equity.

162 F. Whenever the Authority has reasonable cause to believe that a violation of this chapter may
163 have occurred, the Authority, upon its own motion or upon complaint of any person, may investigate any
164 distributor, operator, or establishment to determine whether such operator has violated the provisions of
165 this chapter.

166 **§ 59.1-605. Registration of skill game machines required; application; application fees.**

167 A. No operator shall place any skill game machine in the Commonwealth without first being
168 registered with the Authority. No distributor shall sell, lease, offer, or provide any skill game machine to
169 an operator for use or play in the Commonwealth without first being registered with the Authority. No
170 establishment shall offer any skill game machine for play without first being registered with the Authority.
171 Applications for registration shall be on forms prescribed by the Authority. The Authority shall require
172 each distributor that submits an application pursuant to this section to certify that any skill game machine
173 such distributor seeks to sell, lease, offer, or provide for use or play in the Commonwealth has received
174 proper certification from an independent testing laboratory certifying that such skill game machine and
175 any associated equipment aligns with the definition of "skill game" in § 59.1-603.

176 B. Every registration filed under this chapter shall be accompanied by a nonrefundable fee as
177 follows:

- 178 1. For initial registration:
 - 179 a. Distributor: \$500,000;
 - 180 b. Operator: \$100,000; and
 - 181 c. Establishment: \$250.
- 182 2. For registration renewal:
 - 183 a. Distributor: \$250,000;
 - 184 b. Operator: \$10,000; and
 - 185 c. Establishment: \$100.

186 C. No person registered as a distributor shall be eligible to register as an operator or an
187 establishment or have any interest in any person registered as an operator or an establishment pursuant to
188 the provisions of this chapter.

189 No person registered as an operator shall be eligible to register as a distributor or an establishment
190 or have any interest in any person registered as a distributor or establishment pursuant to the provisions
191 of this chapter.

192 No person registered as an establishment shall be eligible to register as an operator or a distributor
193 or have any interest in any person registered as an operator or a distributor pursuant to the provisions of
194 this chapter.

195 **§ 59.1-606. Suspension or revocation of registration; civil penalty.**

196 A. After a hearing with 15 days' notice, the Authority may suspend or revoke any registration or
197 impose on such distributor, operator, or establishment a civil penalty of not more than \$25,000 for each
198 violation of this chapter, not to exceed \$100,000, in any case where a violation of this chapter has been
199 shown by a preponderance of the evidence.

200 B. If any such registration is suspended or revoked, the Authority shall state its reasons for doing
201 so, which shall be entered of record. Such action shall be final unless appealed in accordance with § 59.1-
202 607. Suspension or revocation of a registration issued by the Authority for any violation shall not preclude
203 civil liability for such violation.

204 **§ 59.1-607. Hearing and appeal.**

205 Any person aggrieved by a denial of the Authority to issue a registration, the suspension or
206 revocation of a registration, the imposition of a fine, or any other action of the Authority may seek review
207 of such action in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act in the
208 Circuit Court of the City of Richmond. Further appeals shall also be in accordance with Article 5 of the
209 Administrative Process Act.

210 **§ 59.1-608. Registration not endorsement.**

211 No registered operator shall use or exploit the fact of registration pursuant to this chapter so as to
212 lead the public to believe that such registration in any manner constitutes an endorsement or approval by
213 the Commonwealth.

214 **§ 59.1-609. Virginia Small Business Economic Development Fund.**

215 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia
216 Small Business Economic Development Fund, referred to in this section as "the Fund." The Fund shall be
217 established on the books of the Comptroller. All fees, charges, and civil penalties collected by the
218 Authority as provided in this chapter shall be paid into the state treasury and credited to the Fund. Interest
219 earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in
220 the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
221 shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of financing the
222 administration and operation of skill game machines pursuant to the provisions of this chapter.
223 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued
224 by the Comptroller upon written request signed by the Director of the Authority.

225 **§ 59.1-610. Software testing required; submission to Board.**

226 No skill game machine or associated equipment may be sold, leased, or used in the operation of
227 skill game machines until an identical machine containing identical software has been evaluated and
228 approved by a testing laboratory that has been formally recognized by the Board to uphold established
229 standards of integrity in accordance with subsection B of § 59.1-604.

230 **§ 59.1-611. Limit on number of skill game machines.**

231 No operator shall locate more than five skill game machines in any ABC retail licensee or more
232 than 10 skill game machines in any truck stop.

233 **§ 59.1-612. Restriction on age of player; attachment of notice to skill game machine.**

234 No person younger than 18 years of age shall be eligible to operate a skill game machine regulated
235 pursuant to this chapter. A distributor shall adhere to the front of all skill game machines a notice in 16-
236 point Times New Roman bold font the following notice: "It is unlawful for any person under the age of
237 18 to play this game."

238 **§ 59.1-613. Inducement prohibited.**

239 No distributor or operator shall offer to or otherwise provide any inducement to any establishment.

240 **§ 59.1-614. Tax on gross revenue; distribution of gross and net revenue.**

241 A. Distributors shall remit to the Department a monthly tax equal to 15 percent of the gross revenue
242 for each skill game machine that such distributor provided for play during the previous month.

243 B. The Department shall allocate the gross revenue tax collected pursuant to subsection A as
244 follows:

245 1. Two percent to the Problem Gambling Treatment and Support Fund, established pursuant to §
246 37.2-314.2;

247 2. Six percent to the Authority for the purposes of implementing this chapter;

248 3. Fifteen percent to the localities in which the skill game machines are located;

249 4. Two percent to the Department of State Police to be used by the Office of the Gaming
250 Enforcement Coordinator, established pursuant to § 52-54;

251 5. Ten percent to the School Construction Fund established, pursuant to § 22.1-140.1;

252 6. Ten percent appropriated to provide additional basic aid funding for public schools, which shall
253 be apportioned to local school boards pursuant to Article 1 (§ 22.1-88 et seq.) of Chapter 8 of Title 22.1;

254 and

255 7. Fifty-five percent to the general fund.

256 Allocation of funds by the Department pursuant this chapter shall occur no later than 60 days after
257 such funds are collected.

258 **§ 59.1-615. Limited disclosure of information permitted.**

259 Notwithstanding the provisions of § 58.1-3 of the Code of Virginia, the Department shall be
260 permitted to disclose information to the Authority regarding the tax remitted by any distributor pursuant
261 to this chapter.

262 **§ 59.1-616. Seizure of unlawful games; civil penalty.**

263 A. In addition to the penalties provided for in § 59.1-606, any person or employee of such person
264 who knowingly violates any provision of this chapter shall be liable for a civil penalty of not more than

265 \$25,000 for each such violation. Such amount shall be recovered in a civil action brought by the Authority
266 and paid into the Virginia Small Business Economic Development Fund, established pursuant to § 59.1-
267 609.

268 B. In the event that a law-enforcement agency or the Authority makes a determination that, other
269 than as expressly provided for in this chapter or otherwise allowed by law, any other electronic gaming
270 device is placed, exists, or is in operation in any establishment in violation of this chapter or the laws of
271 the Commonwealth, including the operation of more than the maximum number of skill game machines
272 authorized pursuant to § 59.1-611, the law-enforcement agency or the Authority may seize any such device
273 pursuant to § 18.2-331.1, and the distributor, operator, or establishment shall be subject to a civil penalty
274 of not less than \$25,000 nor more than \$100,000 per device.

275 **§ 59.1-617. Skill game machines operated pursuant to this chapter not illegal gambling.**

276 Nothing contained in Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2 shall be applicable
277 to a skill game machine operated in accordance with this chapter. The award of any prize money for the
278 operation of any skill game machine shall not be deemed to be part of any gaming contract within the
279 purview of § 11-14.

280 **2. That the Virginia Alcoholic Beverage Control Authority shall prescribe the forms for registration**
281 **of distributors, operators, and establishments, accept payment of the required registration fees, and**
282 **designate three nationally recognized laboratories as being authorized to conduct the requisite skill**
283 **game machine equipment and software evaluation pursuant to the provisions of the first enactment**
284 **of this act.**

285 **3. That the initial adoption by the Board of Directors of the Virginia Alcoholic Beverage Control**
286 **Authority (the Board) of regulations necessary to implement the provisions of this act shall be**
287 **exempt from the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia, except that**
288 **the Board shall provide an opportunity for public comment on the regulations prior to adoption.**

289 **4. That, notwithstanding the provisions of the first enactment of this act to the contrary, until the**
290 **Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) (the**
291 **Authority) adopts the regulations necessary to implement the provisions of this act pursuant to the**

292 third enactment of this act, the Authority may issue a provisional registration under the first
293 enactment of this act to any entity that is duly licensed or registered to engage in the distribution,
294 operation, or hosting of any skill game in another state on July 1, 2024. The Board shall establish
295 procedures for the issuance of any provisional registration. The granting of a provisional
296 registration pursuant to this enactment shall not entitle any such registered entity to the automatic
297 granting of a registration pursuant to the first enactment of this act. Distributing, operating, or
298 hosting any skill game at any time between July 1, 2024, and the date upon which the regulations
299 necessary to implement the provisions of this act are adopted without obtaining a provisional
300 registration pursuant to this enactment may permanently disqualify a person from obtaining a
301 registration pursuant to the first enactment of this act. Any such disqualifications shall be within
302 the sole discretion of the Authority.

303 5. That § 18.2-334.6 of the Code of Virginia is repealed.

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