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SENATE BILL NO. 799

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 5, 2018)

(Patron Prior to Substitute—Senator Cosgrove)

A BILL to amend and reenact § 2.2-2456 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-581, relating to the Department of Agriculture and Consumer Services; Charitable Gaming Board; electronic gaming devices; registration required; conditions of registration; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2456 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-581, as follows:

§ 2.2-2456. Duties of the Charitable Gaming Board.

The Board shall:

1. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of this chapter and, the provisions of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, and the provisions of Chapter 52 (§ 59.1-571 et seq.) of Title 59.1. Such regulations may include penalties for violations;

2. Advise the Department of Agriculture and Consumer Services on the conduct of charitable gaming in Virginia and recommend changes to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2; and

3. Keep a complete and accurate record of its proceedings. A copy of such record and any other public records not exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.) shall be available for public inspection and copying during regular office hours at the Department of Agriculture and Consumer Services.

CHAPTER 52.

ELECTRONIC GAMING DEVICES ACT.

§ 59.1-571. Definitions.

As used in this chapter:

"Approved electronic gaming device" means an electronic gaming device that has been approved by the Board.

"Board" means the Charitable Gaming Board.

"Charitable organization" means any nonstock corporate or other entity that has been granted tax-exempt status under § 509(a) of the Internal Revenue Code.

"Club" means any private nonprofit corporation or association that is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members.

"Department" means the Department of Agriculture and Consumer Services

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Gambling device" means the same as that term is defined in § 18.2-325.

"Game of skill" means a game in which the skill of the player, rather than chance, is the dominant factor in affecting the outcome of the game as determined over a period of continuous play.

"Electronic gaming device" means an electronic or mechanical device that is used to play a game of skill.

"Place of play" means the club, establishment, restaurant, social quarters, or bingo hall in which the approved electronic gaming device is made available for the entertainment of members or patrons.

"Restaurant" means any establishment provided with special space and accommodation where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

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

§ 59.1-572. Applicability.

The provisions of this chapter shall not apply to any electronic games of chance systems regulated by the Department pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2.

§ 59.1-573. Regulations of the Board.

The Board shall adopt regulations that:

1. Establish a process for the approval or disapproval of electronic gaming devices and the individual games offered on such devices as games of skill.

2. Establish a program of periodic testing and inspection for all approved electronic gaming devices.

60 3. Require, as a condition of being granted a registration for the placement of an approved
61 electronic gaming device in a club, establishment, or restaurant, that the applicant designate a
62 charitable organization that has been registered by the Department to receive a predetermined
63 percentage of the gross receipts generated by the electronic gaming device.

64 4. Prescribe fees for processing applications for the registration of electronic gaming devices,
65 charitable organizations, and suppliers and manufacturers of electronic gaming devices.

66 5. Require that electronic gaming devices include the capacity to provide full automatic daubing as
67 numbers are called.

68 **§ 59.1-574. Approval of electronic gaming devices and games by Board; registration of electronic**
69 **gaming devices required.**

70 A. No electronic gaming device or game shall be offered for play in the Commonwealth unless such
71 electronic gaming device or game has first been approved by the Board as a game of skill. Nothing
72 herein shall be construed to authorize the Board to approve the play of video poker or keno.

73 B. No operator of a place of play shall make available or offer to make available for play by
74 patrons or customers any approved electronic gaming devices without first registering the device with
75 the Board.

76 C. For purposes of this chapter, electronic or mechanical equipment for instant bingo, pull tabs, or
77 seal cards electronic gaming devices as defined in subdivision A 1 of § 18.2-340.19 shall be deemed
78 approved electronic gaming devices.

79 **§ 59.1-575. Registration of charitable organizations.**

80 A. Every charitable organization that intends to be a charitable sponsor to receive qualified proceeds
81 from approved electronic gaming devices shall first register with the Department. Only properly
82 registered charitable organizations shall be eligible to receive proceeds from approved electronic
83 gaming devices.

84 B. The Department may develop a roster of all registered charitable organizations.

85 **§ 59.1-576. Suppliers and manufacturers of electronic gaming devices; permit; qualification;**
86 **suspension, revocation or refusal to renew certificate; maintenance, production, and release of**
87 **records.**

88 A. No person shall offer to sell, sell, or otherwise provide electronic gaming devices to any operator
89 of a place of play, and no manufacturer shall distribute electronic gaming devices in the Commonwealth
90 unless and until such person has made application for and has been issued a permit by the Department.
91 An application for a permit shall be made on forms prescribed by the Department and shall be
92 accompanied by a fee in the amount of \$1,000. Each permit shall remain valid for a period of one year
93 from the date of issuance. An application for renewal of a permit shall be accompanied by a fee in the
94 amount of \$1,000 and shall be made on forms prescribed by the Department.

95 B. The Board shall have authority to prescribe by regulation reasonable criteria for the registration
96 of suppliers and manufacturers of electronic gaming devices. The Department may refuse to issue a
97 permit to any supplier or manufacturer that has, or that has any officer, director, partner, or owner
98 who has, (i) been convicted of or pleaded nolo contendere to a felony in any state or federal court or
99 has been convicted of any offense that, if committed in the Commonwealth, would be a felony; (ii) been
100 convicted of or pleaded nolo contendere to a crime involving gambling; (iii) had any license, permit,
101 certificate, or other authority related to activities defined as charitable gaming in the Commonwealth
102 suspended or revoked in the Commonwealth or in any other jurisdiction; (iv) failed to file or has been
103 delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the
104 Commonwealth; or (v) failed to establish a registered office or registered agent in the Commonwealth if
105 so required by § 13.1-634 or 13.1-763.

106 C. The Department may suspend, revoke, or refuse to renew the permit of any supplier or
107 manufacturer for any conduct described in subsection B or for any violation of a regulation of the
108 Department. Before taking any such action, the Department shall give the supplier or manufacturer a
109 written statement of the grounds upon which it proposes to take such action and an opportunity to be
110 heard. Every hearing in a contested case shall be conducted in accordance with the Administrative
111 Process Act (§ 2.2-4000 et seq.).

112 D. Each supplier shall document each sale, lease, or otherwise providing of an electronic gaming
113 device to an operator of a place of play on an invoice that clearly shows (i) the name and address of
114 the club, establishment, or restaurant to which such supplies or items were sold, leased, or otherwise
115 provided; (ii) the date of the transaction; and (iii) any other information with respect to electronic
116 gaming devices as the Department may prescribe by regulation.

117 **§ 59.1-577. Powers of the Department.**

118 A. Whenever it appears to the Department that any person has violated any provision of this chapter,
119 it may apply to the appropriate circuit court for an injunction against such person. The order granting
120 or refusing such injunction shall be subject to appeal as in other cases in equity.

121 B. Whenever the Department has reasonable cause to believe that a violation of this chapter may

have occurred, the Department, upon its own motion or upon complaint of any person, may investigate any operator of a place of play to determine whether such operator has violated the provisions of this chapter. In the conduct of such investigation, the Department may:

1. Require or permit any person to file a statement in writing, under oath or otherwise as the Department determines, as to all facts and circumstances concerning the matter to be investigated; and

2. Administer oaths or affirmations and, upon its own motion or upon request of any party, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceedings or hearings by the Department under this chapter, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the Department may apply to the Circuit Court of the City of Richmond for an order imposing punishment for contempt of the subpoena or compelling compliance.

§ 59.1-578. Suspension or revocation of registration or permit.

A. After a hearing with 15 days' notice, the Department may suspend or revoke any registration or permit or impose a monetary penalty of not more than \$1,000 for each violation of this chapter in any case where a violation of this chapter has been shown by a preponderance of the evidence. The Department may revoke a registration or permit if it finds that facts not known by it at the time it considered the application indicate that such registration should not have been issued.

B. If any such registration or permit is suspended or revoked, the Department shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless appealed in accordance with § 59.1-579. Suspension or revocation of a registration issued by the Department for any violation shall not preclude civil liability for such violation.

§ 59.1-579. Hearing and appeal.

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

§ 59.1-580. Fees and charges.

All fees, charges, and monetary penalties collected by the Department as provided in this chapter shall be paid into a special fund of the state treasury. Such funds shall be used to finance the administration and operation of this chapter.

§ 59.1-581. Department to adjust fees; certain transfer of money collected prohibited.

A. Nongeneral funds generated by fees collected in accordance with this chapter on behalf of the Department and accounted for and deposited into a special fund by the Commissioner of the Department of Agriculture and Consumer Services shall be held exclusively to cover the expenses of the Department in administering this chapter and shall not be transferred to any other agency.

B. Following the close of any biennium, when the account for the Department maintained under this chapter shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Department, it shall revise the fees levied by it for registration and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

2. That the Charitable Gaming Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.