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SENATE BILL NO. 1254

Offered January 13, 2021

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A *BILL to amend and reenact §§ 58.1-4030, 58.1-4031, 58.1-4032, 58.1-4039, and 58.1-4100 of the Code of Virginia, relating to sports betting; technical amendments.*

Patron—McPike

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-4030, 58.1-4031, 58.1-4032, 58.1-4039, and 58.1-4100 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-4030. Definitions.

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

"Adjusted gross revenue" means gross revenue minus:

1. All cash and the cash value of merchandise paid out as winnings to bettors, and the value of all bonuses or promotions provided to patrons as an incentive to place or as a result of their having placed Internet sports betting wagers;

2. Uncollectible gaming receivables, which shall not exceed two percent, or a different percentage as determined by the Board pursuant to subsection F of § 58.1-4007, of gross revenue minus all cash paid out as winnings to bettors;

3. If the permit holder is a significant infrastructure limited licensee, as defined in § 59.1-365, any funds paid into the horsemen's purse account pursuant to the provisions of subdivision 14 of § 59.1-369; and

4. All excise taxes on sports betting paid pursuant to federal law.

"Amateur sports" means any sports or athletic event that is not professional sports, college sports, Virginia college sports, or youth sports. "Amateur sports" includes domestic, international, and Olympic sports or athletic events. "Amateur sports" does not include charitable gaming, as defined in § 18.2-340.16; fantasy contests, as defined in § 59.1-556; or horse racing, as defined in § 59.1-365.

"College sports" means an athletic event (i) in which at least one participant is a team from a public or private institution of higher education, regardless of where such institution is located, and (ii) that does not include a team from a Virginia public or private institution of higher education.

"Covered persons" means athletes; umpires, referees, and officials; personnel associated with clubs, teams, leagues, and athletic associations; medical professionals and athletic trainers who provide services to athletes and players; and the immediate family members and associates of such persons.

"Gross revenue" means the total of all cash, property, or any other form of remuneration, whether collected or not, received by a permittee from its sports betting operations.

"Major league sports franchise" means a professional baseball, basketball, football, hockey, or soccer team that is at the highest-level league of play for its respective sport.

"Motor sports facility" means an outdoor motor sports facility that hosts a National Association for Stock Car Auto Racing (NASCAR) national touring race.

"Official league data" means statistics, results, outcomes, and other data relating to a professional sports event obtained by a permit holder under an agreement with a sports governing body or with an entity expressly authorized by a sports governing body for determining the outcome of tier 2 bets.

"Permit holder" means a person to which the Director issues a permit pursuant to §§ 58.1-4032 and 58.1-4033.

"Personal biometric data" means any information about an athlete that is derived from his DNA, heart rate, blood pressure, perspiration rate, internal or external body temperature, hormone levels, glucose levels, hydration levels, vitamin levels, bone density, muscle density, or sleep patterns, or other information as may be prescribed by the Board by regulation.

"Principal" means any individual who solely or together with his immediate family members (i) owns or controls, directly or indirectly, five percent or more of the pecuniary interest in any entity that is a permit holder or (ii) has the power to vote or cause the vote of five percent or more of the voting securities or other ownership interests of such entity. "Principal" includes any individual who is employed in a managerial capacity for a sports betting platform or sports betting facility on behalf of a permit holder.

"Professional sports" means an athletic event involving at least two human competitors who receive compensation, in excess of their expenses, for participating in such event. "Professional sports" does not

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59 include charitable gaming, as defined in § 18.2-340.16; fantasy contests, as defined in § 59.1-556; or
60 horse racing, as defined in § 59.1-365.

61 "Prohibited conduct" means any statement, action, or other communication intended to influence,
62 manipulate, or control a betting outcome of a sports event or of any individual occurrence or
63 performance in a sports event in exchange for financial gain or to avoid financial or physical harm.
64 "Prohibited conduct" includes statements, actions, and communications made to a covered person by a
65 third party. "Prohibited conduct" does not include statements, actions, or communications made or
66 sanctioned by a sports team or sports governing body.

67 "Proposition bet" means a bet on an individual action, statistic, occurrence, or non-occurrence to be
68 determined during an athletic event and includes any such action, statistic, occurrence, or non-occurrence
69 that does not directly affect the final outcome of the athletic event to which it relates.

70 "Sports betting" means placing wagers on professional sports, college sports, *amateur sports*, sporting
71 events, *or any other event approved by the Director*, and any portion thereof, and includes placing
72 wagers related to the individual performance statistics of athletes in such sports and events. "Sports
73 betting" includes any system or method of wagering approved by the Director, including single-game
74 bets, teaser bets, parlays, over-under, moneyline, pools, exchange wagering, in-game wagering, in-play
75 bets, proposition bets, and straight bets. "Sports betting" does not include participating in charitable
76 gaming authorized by Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2; participating in
77 any lottery game authorized under Article 1 (§ 58.1-4000 et seq.); wagering on horse racing authorized
78 by Chapter 29 (§ 59.1-364 et seq.) of Title 59.1; or participating in fantasy contests authorized by
79 Chapter 51 (§ 59.1-556 et seq.) of Title 59.1. "Sports betting" does not include placing a wager on a
80 college sports event in which a Virginia public or private institution of higher education is a participant.

81 "*Sports betting facility*" means an area, kiosk, or device located inside a casino gaming
82 establishment licensed pursuant to Chapter 41 (§ 58.1-4100 et seq.) that is designated for sports betting.

83 "Sports betting permit" means a permit to operate a sports betting platform *or sports betting facility*
84 issued pursuant to the provisions of §§ 58.1-4032, 58.1-4033, and 58.1-4034.

85 "Sports betting platform" means a website, app, or other platform accessible via the Internet or
86 mobile, wireless, or similar communications technology that sports bettors use to participate in sports
87 betting.

88 "Sports betting program" means the program established by the Board to allow sports betting as
89 described in this article.

90 "Sports bettor" means a person physically located in Virginia who participates in sports betting.

91 "Sports event" or "sporting event" means professional sports, college sports, *amateur sports*, and any
92 athletic event, motor race event, electronic sports event, ~~or~~ competitive video game event, *or any other*
93 *event approved by the Director*.

94 "Sports governing body" means an organization, headquartered in the United States, that prescribes
95 rules and enforces codes of conduct with respect to a professional sports or college sports event and the
96 participants therein. "Sports governing body" includes a designee of the sports governing body.

97 "Stadium" means the physical facility that is the primary location at which a major league sports
98 franchise hosts athletic events and any appurtenant facilities.

99 "Tier 1 bet" means a bet that is placed using the Internet and that is not a tier 2 bet.

100 "Tier 2 bet" means a bet that is placed using the Internet and that is placed after the event it
101 concerns has started.

102 "Virginia college sports" means an athletic event in which at least one participant is a team from a
103 Virginia public or private institution of higher education.

104 "Youth sports" means an athletic event (i) involving a majority of participants under age 18 or (ii) in
105 which at least one participant is a team from a public or private elementary, middle, or secondary
106 school, regardless of where such school is located. However, if an athletic event meets the definition of
107 college sports or professional sports, such event shall not be considered youth sports regardless of the
108 age of the participants.

109 **§ 58.1-4031. Powers and duties of the Director related to sports betting; reporting.**

110 A. The Department shall operate a sports betting program under the direction of the Director, who
111 shall allow applicants to apply for permits to engage in sports betting operations in the Commonwealth.
112 The Board shall regulate such operations. The Department shall not operate a sports betting platform *or*
113 *a sports betting facility*.

114 B. The Director may:

115 1. Require bond or other surety satisfactory to the Director from permit holders in such amount as
116 provided in the rules and regulations of the Board adopted under this article;

117 2. Suspend, revoke, or refuse to renew any permit issued pursuant to this article or the rules and
118 regulations adopted under this article; and

119 3. Enter into contracts for the operation of the sports betting program, and enter into contracts with
120 other states related to sports betting, provided that a contract awarded or entered into by the Director

shall not be assigned by the holder thereof except by specific approval of the Director.

C. The Director shall:

1. Certify monthly to the State Comptroller and the Board a full and complete statement of sports betting revenues and expenses for the previous month;

2. Report monthly to the Governor, the Secretary of Finance, and the Chairmen of the Senate Committee on Finance and Appropriations, House Committee on Finance, and House Committee on Appropriations the total sports betting revenues and expenses for the previous month and make an annual report, which shall include a full and complete statement of sports betting revenues and expenses, to the Governor and the General Assembly, including recommendations for changes in this article as the Director and Board deem prudent; and

3. Report immediately to the Governor and the General Assembly any matters that require immediate changes in the laws of the Commonwealth in order to prevent abuses and evasions of this article or the rules and regulations adopted under this article or to rectify undesirable conditions in connection with the administration or operation of the sports betting program.

D. In accordance with sports betting program regulations, the Director shall approve methods for sports bettors to fund sports betting accounts, including automated clearing house payments, credit cards, debit cards, wire transfers, and any other method that the Board determines is appropriate for sports betting.

§ 58.1-4032. Application for a sports betting permit; penalty.

A. An applicant for a sports betting permit shall:

1. Submit an application to the Director, on forms prescribed by the Director, containing the information prescribed in subsection B; and

2. Pay to the Department a nonrefundable fee of \$50,000 for each principal at the time of filing to defray the costs associated with the background investigations conducted by the Department. If the reasonable costs of the investigation exceed the application fee, the applicant shall pay the additional amount to the Department. The Board may establish regulations calculating the reasonable costs to the Department in performing its functions under this article and allocating such costs to the applicants for licensure at the time of filing.

B. An application for a sports betting permit shall include the following information:

1. The applicant's background in sports betting;

2. The applicant's experience in wagering activities in other jurisdictions, including the applicant's history and reputation of integrity and compliance;

3. The applicant's proposed internal controls, including controls to ensure that no prohibited or voluntarily excluded person will be able to participate in sports betting;

4. The applicant's history of working to prevent compulsive gambling, including training programs for its employees;

5. If applicable, any supporting documentation necessary to establish eligibility for substantial and preferred consideration pursuant to the provisions of this section;

6. The applicant's proposed procedures to detect and report suspicious or illegal betting activity; and

7. Any other information the Director deems necessary.

C. The Department shall conduct a background investigation on the applicant. The background investigation shall include a credit history check, a tax record check, and a criminal history records check.

D. 1. The Director shall not issue any permit pursuant to this article until the Board has established a consumer protection program and published a consumer protection bill of rights pursuant to the provisions of subdivision A 14 of § 58.1-4007.

2. ~~a.~~ The Director shall issue no fewer than four *and no more than 12* permits pursuant to this section; however, if an insufficient number of applicants apply for the Director to satisfy ~~such the~~ minimum, this provision shall not be interpreted to direct the Director to issue a permit to an unqualified applicant. A permit shall not count toward ~~this the~~ minimum *or maximum* if it (i) is issued pursuant to subdivision 4 or 5 to a major league sports franchise or to the operator of a facility; (ii) is issued pursuant to subdivision 6 to an applicant that operates or intends to operate a casino gaming establishment; or (iii) is revoked, expires, or otherwise becomes not effective.

~~b. The Director shall issue no more than 12 permits pursuant to this section. A permit shall not count toward this maximum if it (i) is issued pursuant to subdivision 4 or 5 to a major league sports franchise or to the operator of a facility or (ii) is revoked, expires, or otherwise becomes not effective.~~

3. In issuing permits to operate sports betting platforms *and sports betting facilities*, the Director shall consider the following factors:

a. The contents of the applicant's application as required by subsection B;

b. The extent to which the applicant demonstrates past experience, financial viability, compliance with applicable laws and regulations, and success with sports betting operations in other states;

182 c. The extent to which the applicant will be able to meet the duties of a permit holder, as specified
183 in § 58.1-4034;

184 d. Whether the applicant has demonstrated to the Department that it has made serious, good-faith
185 efforts to solicit and interview a reasonable number of investors that are minority individuals, as defined
186 in § 2.2-1604;

187 e. The amount of adjusted gross revenue and associated tax revenue that an applicant is expected to
188 generate;

189 f. The effect of issuing an additional permit on the amount of gross revenue and associated tax
190 revenue generated by all existing permit holders, considered in the aggregate; and

191 g. Any other factor the Director considers relevant.

192 4. In issuing permits to operate sports betting platforms prior to July 1, 2025, the Director shall give
193 substantial and preferred consideration to any applicant that is a major league sports franchise
194 headquartered in the Commonwealth that remitted personal state income tax withholdings based on
195 taxable wages in the Commonwealth in excess of \$200 million for the 2019 taxable year. Any permit
196 holder granted a permit pursuant to this subdivision shall receive substantial and preferred consideration
197 of its first, second, and third applications for renewal pursuant to the provisions of § 58.1-4033;
198 however, such permit holder shall not receive substantial and preferred consideration of its fourth and
199 subsequent applications for renewal. Any permit granted pursuant to this subdivision shall expire if the
200 permit holder ceases to maintain its headquarters in the Commonwealth.

201 5. In issuing permits to operate sports betting platforms prior to July 1, 2025, the Director shall give
202 substantial and preferred consideration to any applicant that is a major league sports franchise that plays
203 five or more regular season games per year at a facility in the Commonwealth or that is the operator of
204 a facility in the Commonwealth where a major league sports franchise plays five or more regular season
205 games per year; however, the Director shall give such substantial and preferred consideration only if the
206 applicant (i) is headquartered in the Commonwealth, (ii) has an annualized payroll for taxable wages in
207 the Commonwealth that is in excess of \$10 million over the 90-day period prior to the application date,
208 and (iii) the total number of individuals working at the facility in the Commonwealth where the major
209 league sports franchise plays five or more regular season games is in excess of 100.

210 6. If casino gaming is authorized under the laws of the Commonwealth, then in issuing permits to
211 operate sports betting platforms *and sports betting facilities*, the Director shall give substantial and
212 preferred consideration to any applicant that (i) has made or intends to make a capital investment of at
213 least \$250 million in a casino gaming establishment, including the value of the real property upon which
214 such establishment is located and all furnishings, fixtures, and other improvements; (ii) has had its name
215 submitted as a preferred casino gaming operator to the Department by an eligible host city; and (iii) has
216 been certified by the Department to proceed to a local referendum on whether casino gaming will be
217 allowed in the locality in which the applicant intends to operate a casino gaming establishment.

218 7. In a manner as may be required by Board regulation, any entity that applies pursuant to
219 subdivision D 4, D 5, or D 6 may demonstrate compliance with the requirements of an application, the
220 duties of a permit holder, and any other provision of this article through the use of a partner,
221 subcontractor, or other affiliate of the applicant.

222 E. The Director shall make a determination on an initial application for a sports betting permit within
223 90 days of receipt. The Director's action shall be final unless appealed in accordance with § 58.1-4007.

224 F. The following shall be grounds for denial of a permit or renewal of a permit:

225 1. The Director reasonably believes the applicant will be unable to satisfy the duties of a permit
226 holder as described in subsection A of § 58.1-4034;

227 2. The Director reasonably believes that the applicant or its directors lack good character, honesty, or
228 integrity;

229 3. The Director reasonably believes that the applicant's prior activities, criminal record, reputation, or
230 associations are likely to (i) pose a threat to the public interest, (ii) impede the regulation of sports
231 betting, or (iii) promote unfair or illegal activities in the conduct of sports betting;

232 4. The applicant or its directors knowingly make a false statement of material fact or deliberately fail
233 to disclose information requested by the Director;

234 5. The applicant or its directors knowingly fail to comply with the provisions of this article or any
235 requirements of the Director;

236 6. The applicant or its directors were convicted of a felony, a crime of moral turpitude, or any
237 criminal offense involving dishonesty or breach of trust within the 10 years prior to the submission date
238 of the permit application;

239 7. The applicant's license, registration, or permit to conduct a sports betting operation issued by any
240 other jurisdiction has been suspended or revoked;

241 8. The applicant defaults in payment of any obligation or debt due to the Commonwealth; or

242 9. The applicant's application is incomplete.

243 G. The Director shall have the discretion to waive any of the grounds for denial of a permit or

renewal of a permit if he determines that denial would limit the number of applicants or permit holders in a manner contrary to the best interests of the Commonwealth.

H. Prior to issuance of a permit, each permit holder shall either (i) be bonded by a surety company entitled to do business in the Commonwealth in such amount and penalty as may be prescribed by the regulations of the Board or (ii) provide other surety, letter of credit, or reserve as may be satisfactory to the Director. Such surety shall be prescribed by Board regulations and shall not exceed a reasonable amount.

I. Any person who knowingly and willfully falsifies, conceals, or misrepresents a material fact or knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any application pursuant to this article is guilty of a Class 1 misdemeanor.

J. In addition to the fee required pursuant to subdivision A 2, any applicant to which the Department issues a permit shall pay a nonrefundable fee of \$250,000 to the Department prior to the issuance of such permit.

§ 58.1-4039. Events on which betting is prohibited; penalty.

A. 1. *a.* No person shall place or accept a bet on youth sports.

b. In determining whether an event is considered youth sports, a permit holder may presume that it is not unless (i) publicly available information demonstrates that it involves a majority of participants under age 18; (ii) at least one participant in the event is a team from a public or private elementary, middle, or secondary school; or (iii) the Department posts on its website a determination that an event is youth sports. The Department shall determine a reasonable time period, but not less than two weeks before an event, for determining that an event is youth sports. If it becomes known after such time period or determination that an event is youth sports, that shall not be grounds for finding a person to be in violation of subdivision A 1 *a.*

c. In determining whether an event is youth sports based on the age of the participants, the Department shall prohibit only those events where publicly available information demonstrates that a majority of the participants are under age 18. It shall not determine an event is youth sports based on inability to determine the number of participants or their age.

d. If a league, tournament, or series of events involves a single game, match, or event that the Department determines to be youth sports, the Department shall prohibit betting only on each single game, match, or event it determines to be youth sports, and shall not prohibit betting on the league, tournament, or series of events.

2. No person shall place or accept a proposition bet on college sports.

3. No person shall place or accept a bet on Virginia college sports.

B. 1. A sports governing body may notify the Department that it desires to restrict, limit, or prohibit sports betting on its sporting events by providing notice in accordance with requirements prescribed by the Director. A sports governing body also may request to restrict the types of bets that may be offered.

2. For any request made pursuant to subdivision 1, the requester shall bear the burden of establishing to the satisfaction of the Director that the relevant betting or other activity poses a significant and unreasonable integrity risk. The Director shall seek input from affected permit holders before making a determination on such request.

3. If the Director denies a request made pursuant to subdivision 1, the Director shall give the requester notice and the right to be heard and offer proof in opposition to such determination in accordance with regulations established by the Board. If the Director grants a request, the Board shall promulgate by regulation such restrictions, limitations, or prohibitions as may be requested.

4. A permit holder shall not offer or take any bets in violation of regulations promulgated by the Board pursuant to this subsection.

C. The prohibitions in subdivisions A 1 and A 3 shall be limited to the single game or match in which a youth sports or Virginia college sports team is a participant. The prohibitions shall not be construed to prohibit betting on other games in a tournament or multigame event in which a youth sports or Virginia college sports team participates, so long as such other games do not have a participant that is a youth sports or Virginia college sports team.

D. Any person convicted of violating this section is guilty of a Class 1 misdemeanor.

§ 58.1-4100. Definitions.

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

"Adjusted gross receipts" means the gross receipts from casino gaming less winnings paid to winners.

"Board" means the Virginia Lottery Board established in the Virginia Lottery Law (§ 58.1-4000 et seq.).

"Casino gaming" or "game" means baccarat, blackjack, twenty-one, poker, craps, dice, slot machines, roulette wheels, Klondike tables, punchboards, faro layouts, numbers tickets, push cards, jar tickets, or pull tabs and any other activity that is authorized by the Board as a wagering game or device under this chapter. "Casino gaming" or "game" includes on-premises mobile casino gaming.

305 "Casino gaming establishment" means the premises upon which lawful casino gaming is authorized
306 and licensed as provided in this chapter. "Casino gaming establishment" does not include a riverboat or
307 similar vessel.

308 "Casino gaming operator" means any person issued a license by the Board to operate a casino
309 gaming establishment.

310 "Cheat" means to alter the selection criteria that determine the result of a game or the amount or
311 frequency of payment in a game for the purpose of obtaining an advantage for one or more participants
312 in a game over other participants in a game.

313 "Department" means the independent agency responsible for the administration of the Virginia
314 Lottery created in the Virginia Lottery Law (§ 58.1-4000 et seq.).

315 "Director" means the Director of the Virginia Lottery.

316 "Eligible host city" means any city described in § 58.1-4107 in which a casino gaming establishment
317 is authorized to be located.

318 "Entity" means a person that is not a natural person.

319 "Gaming operation" means the conduct of authorized casino gaming within a casino gaming
320 establishment.

321 "Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens, or
322 electronic cards by casino gaming patrons.

323 "Immediate family" means (i) a spouse and (ii) any other person residing in the same household as
324 an officer or employee and who is a dependent of the officer or employee or of whom the officer or
325 employee is a dependent.

326 "Individual" means a natural person.

327 "Licensee" or "license holder" means any person holding an operator's license under § 58.1-4111.

328 "On-premises mobile casino gaming" means casino gaming offered by a casino gaming operator at a
329 casino gaming establishment using a computer network of both federal and nonfederal interoperable
330 packet-switched data networks through which the casino gaming operator may offer casino gaming to
331 individuals who have established an on-premises mobile casino gaming account with the casino gaming
332 operator and who are physically present on the premises of the casino gaming establishment, as
333 authorized by regulations promulgated by the Board.

334 "Permit holder" means any person holding a supplier or service permit pursuant to this chapter.

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

338 "Preferred casino gaming operator" means the proposed casino gaming establishment and operator
339 thereof submitted by an eligible host city to the Board as an applicant for licensure.

340 "Principal" means any individual who solely or together with his immediate family members (i) owns
341 or controls, directly or indirectly, five percent or more of the pecuniary interest in any entity that is a
342 licensee or (ii) has the power to vote or cause the vote of five percent or more of the voting securities
343 or other ownership interests of such entity, and any person who manages a gaming operation on behalf
344 of a licensee.

345 "Professional sports" means ~~an athletic event involving at least two competing individuals who~~
346 ~~receive compensation, in excess of their expenses, for participating in such event the same as such term~~
347 ~~is defined in § 58.1-4030.~~

348 "Security" has the same meaning as provided in § 13.1-501. If the Board finds that any obligation,
349 stock, or other equity interest creates control of or voice in the management operations of an entity in
350 the manner of a security, then such interest shall be considered a security.

351 "Sports betting" means ~~placing wagers on sporting events as such activity is regulated by the Board~~
352 ~~the same as such term is defined in § 58.1-4030.~~

353 "Supplier" means any person that sells or leases, or contracts to sell or lease, any casino gaming
354 equipment, devices, or supplies, or provides any management services, to a licensee.

355 "Voluntary exclusion program" means a program established by the Board pursuant to § 58.1-4103
356 that allows individuals to voluntarily exclude themselves from engaging in the activities described in
357 subdivision B 1 of § 58.1-4103 by placing their names on a voluntary exclusion list and following the
358 procedures set forth by the Board.

359 "Youth sports" means the same as such term is defined in § 58.1-4030 and as it is determined
360 pursuant to § 58.1-4039.