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HOUSE BILL NO. 2168

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 24, 2021)

(Patron Prior to Substitute—Delegate Scott)

A BILL to amend and reenact § 18.2-325, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-331.1, relating to illegal gambling; skills games; civil penalty; enforcement by localities and Attorney General.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-325, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-331.1 as follows:

§ 18.2-325. (Effective until July 1, 2021) Definitions.

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

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

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

3. "Gambling device" includes:

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

b. 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 subsection; and provided further, that machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ from each other in composition, size, shape, or color, shall not be deemed gambling devices within the meaning of this subsection.

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

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

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

§ 18.2-325. (Effective July 1, 2021) Definitions.

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

For the purposes of this subdivision and notwithstanding any provision in this section to the contrary,

60 the making, placing, or receipt of any bet or wager of money or other consideration or thing of value
61 shall include the purchase of a product, Internet access, or other thing made in exchange for a chance to
62 win a prize, stake, or other consideration or thing of value by means of the operation of a gambling
63 device as described in subdivision 3 b, regardless of whether the chance to win such prize, stake, or
64 other consideration or thing of value may be offered in the absence of a purchase.

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

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

70 3. "Gambling device" includes:

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

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

83 c. Skill games.

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

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

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

91 6. "Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine, or
92 other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate,
93 activate, or play a game, the outcome of which is determined by any element of skill of the player and
94 that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents,
95 gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise;
96 or anything of value whether the payoff is made automatically from the device or manually.

97 7. *"Unregulated location" means any location that is not regulated or operated by the Virginia*
98 *Lottery or Virginia Lottery Board, the Department of Agriculture and Consumer Services or the*
99 *Charitable Gaming Board, the Virginia Alcoholic Beverage Control Authority, or the Virginia Racing*
100 *Commission.*

101 **§ 18.2-331.1. Operation of gambling devices at unregulated locations; civil penalty.**

102 A. *In addition to any other penalty provided by law, any person who conducts, finances, manages,*
103 *supervises, directs, or owns a gambling device that is located in an unregulated location is subject to a*
104 *civil penalty of up to \$25,000 for each gambling device located in such unregulated location.*

105 B. *The Attorney General, an attorney for the Commonwealth, or the attorney for any locality may*
106 *cause an action in equity to be brought in the name of the Commonwealth or of the locality, as*
107 *applicable, to enjoin the operation of a gambling device in violation of this section and to request an*
108 *attachment against all such devices and any moneys within such devices pursuant to Chapter 20*
109 *(§ 8.01-533 et seq.) of Title 8.01, and to recover the civil penalty of up to \$25,000 per device.*

110 C. *In any action brought under this section, the Attorney General, the attorney for the*
111 *Commonwealth, or the attorney for the locality may recover reasonable expenses incurred by the state*
112 *or local agency in investigating and preparing the case, and attorney fees.*

113 D. *Any civil penalties assessed under this section in an action in equity brought in the name of the*
114 *Commonwealth shall be paid into the Literary Fund. Any civil penalties assessed under this section in*
115 *an action in equity brought in the name of a locality shall be paid into the general fund of the locality.*

116 2. **That notwithstanding any provision of Article 1 (§ 18.2-325 et seq.) and Article 1.1:1**
117 **(§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia, any organization or**
118 **person that conducted bingo, network bingo, instant bingo, pull tabs, seal cards, raffles, duck**
119 **racers, Texas Hold'em poker tournaments, or regulated gaming outside of the county, city, or town**
120 **in which the organization's or person's principal office or registered agent, as registered with the**
121 **State Corporation Commission, is located or outside of an adjoining county, city, or town on or**

122 before February 1, 2021, may continue such activities only at those locations until June 30, 2022.