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HOUSE BILL NO. 2295

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 18.2-325 and 18.2-331.1 of the Code of Virginia, to amend and reenact the second, third, and fourth enactments of Chapter 1217 and the second, third, and fourth enactments of Chapter 1277 of the Acts of Assembly of 2020, and to repeal the sixth and eighth enactments of Chapter 1217 and the sixth and eighth enactments of Chapter 1277 of the Acts of Assembly of 2020, relating to restrictions on legal and illegal electronic gaming activities; joint committee established; civil penalty; study; report.

Patron—Kilgore

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-325 and 18.2-331.1 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-325. 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 3 b, 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.

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

2. "Interstate gambling" means the conduct of an enterprise for profit 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;

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; and

c. Skill games.

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

6. "Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by ~~any element of the predominant~~ skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for

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59 cash or cash equivalents whether the payoff is made automatically from the device or manually. "Skill
60 game" includes (i) a device that contains a meter or measurement device that records the number of free
61 games or portions of games that are rewarded and (ii) a device designed or adapted to enable a person
62 using the device to increase the chances of winning free games or portions of games by paying more
63 than the amount that is ordinarily required to play the game. "Skill game" does not include any
64 amusement device, as defined in § 18.2-334.6.

65 7. "Unregulated location" means any location that is not regulated or operated by the Virginia Lottery
66 or Virginia Lottery Board, the Department of Agriculture and Consumer Services, the Virginia Alcoholic
67 Beverage Control Authority, or the Virginia Racing Commission *or any location where the operator*
68 *does not hold a license issued by the Virginia Lottery or Virginia Lottery Board, the Department of*
69 *Agriculture and Consumer Services, the Virginia Alcoholic Beverage Control Authority, or the Virginia*
70 *Racing Commission.*

71 **§ 18.2-331.1. Operation of gambling devices at unregulated locations; civil penalty.**

72 A. In addition to any other penalty provided by law, any person who conducts, finances, manages,
73 supervises, directs, sells, or owns a gambling device that is located in an unregulated location is subject
74 to a civil penalty of up to ~~\$25,000~~ \$50,000 for each gambling device located in such unregulated
75 location.

76 B. The Attorney General, an attorney for the Commonwealth, or the attorney for any locality may
77 cause an action in equity to be brought in the name of the Commonwealth or of the locality, as
78 applicable, to immediately enjoin the operation of a gambling device in violation of this section and to
79 request an attachment against all such devices and any moneys within such devices pursuant to Chapter
80 20 (§ 8.01-533 et seq.) of Title 8.01, and to recover the civil penalty of up to ~~\$25,000~~ \$50,000 per
81 device.

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

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

88 **2. That notwithstanding any other provision of law, no distributor shall locate more than five skill**
89 **game machines in any ABC retail licensee or more than 10 skill game machines in any truck stop.**
90 **No additional electronic gaming devices, except for an amusement device as defined in § 18.2-334.6**
91 **of the Code of Virginia, shall be placed or operated in any other location in the Commonwealth**
92 **not provided for by law. For purposes of this enactment and the third and fourth enactments of**
93 **this act, "ABC retail licensee" means a person licensed by the Authority pursuant to Title 4.1 of**
94 **the Code of Virginia. For purposes of this enactment and the third and fourth enactments of this**
95 **act, "truck stop" means an establishment that (i) is equipped with diesel islands used for fueling**
96 **commercial motor vehicles; (ii) has sold, on average, at least 50,000 gallons of diesel or biodiesel**
97 **fuel each month for the previous 12 months, or is projected to sell an average of at least 50,000**
98 **gallons of diesel or biodiesel fuel each month for the next 12 months; (iii) has parking spaces**
99 **dedicated to commercial motor vehicles; (iv) has a convenience store; and (v) is situated on not**
100 **less than three acres of land that the establishment owns or leases.**

101 **3. That no later than July 1, 2023, the distributor of each and every skill game placed in an ABC**
102 **retail licensee or a truck stop shall cause to be adhered to each individual skill game a label as**
103 **previously prescribed by the Virginia Alcoholic Beverage Control Authority (the Authority). All**
104 **labels shall be placed in a clearly visible and conspicuous location for law enforcement and**
105 **players. Any skill game found to not have such label and not be properly registered with the**
106 **Authority shall be in violation of this act and subject to immediate seizure pursuant to § 18.2-331.1**
107 **of the Code of Virginia, as amended by this act.**

108 **4. That the provisions of this act authorizing skill games shall apply to an ABC retail licensee in**
109 **good standing that possesses a valid Authority retail license issued by the Virginia Alcoholic**
110 **Beverage Control Authority pursuant to Title 4.1 of the Code of Virginia. No other electronic**
111 **game, other than an amusement device as defined in § 18.2-334.6 of the Code of Virginia or any**
112 **other device as allowed by law, shall be allowed to operate in the Commonwealth.**

113 **5. No person younger than 21 years of age shall be eligible to play a skill game regulated by this**
114 **act. The distributor shall adhere to the front of all skill game machines a notice in 16-point Times**
115 **New Roman bold font the following notice: "It is unlawful for any person under the age of 21 to**
116 **play this game."**

117 **6. In the event that law enforcement or the Authority determines that, other than provided for in**
118 **this act, any other electronic gaming device, other than an amusement device as defined in §**
119 **18.2-334.6 of the Code of Virginia or any other device as allowed by law, is placed, is operating,**
120 **or exists in any establishment in violation of this act or the laws of the Commonwealth, including**

operating more than the prescribed maximum number of games afforded by this act, such device or devices may be seized pursuant to § 18.2-331.1 of the Code of Virginia, as amended by this act, and the distributor or manufacturer is subject to a civil penalty of not less than \$25,000 nor more than \$50,000 per device.

7. That each distributor of a skill game machine shall post a surety bond naming the Authority as beneficiary. The Authority may call the bond for any violation of this act or law regulating skill game machines. The bond shall be in the amount of \$1 million and shall remain in effect for 14 months following issuance.

8. That the Authority shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

9. That a study of the regulation of all electronic gaming in the Commonwealth shall be completed by a joint committee of the Senate Committee on General Laws and Technology and the House Committee on General Laws (the joint committee). The joint committee shall have a total membership of 10 members that shall consist of five members from each committee, to be appointed by the respective committee chairmen. The joint committee shall elect a chairman and vice-chairman from among its membership. In conducting its study, the joint committee shall analyze and make recommendations, as appropriate, regarding (i) the current games operating legally and illegally in Virginia; (ii) any enforcement efforts currently taking place; (iii) the types of organizations and electronic games that should be regulated; (iv) the regulatory framework and oversight needed to eliminate illegal electronic gaming; (v) the licensing fees that should be authorized for the current games operating legally in Virginia; and (vi) the appropriate regulatory body and funding mechanisms for strict enforcement of the gaming laws of Virginia and to oversee the investigation of illegal gaming activities in Virginia. Such study shall not include any gaming activities governed by the Virginia Lottery Board, the Department of Agriculture and Consumer Services, or the Virginia Racing Commission and shall specifically focus on electronic gaming. Administrative staff support for the joint committee shall be provided by the Office of the Clerk of the chairman of the joint committee. No recommendation of the joint committee shall be adopted if a majority of the House members or a majority of the Senate members of the joint committee (a) vote against the recommendation and (b) vote for the recommendation to fail notwithstanding the majority vote of the joint committee. Legal, research, policy analysis, and other services as requested by the joint committee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint committee for this study, upon request. The joint committee shall complete its meetings by November 1, 2023, and report its findings to the General Assembly no later than the first day of the 2024 Regular Session of the General Assembly.

10. That the second, third, and fourth enactments of Chapter 1217 and the second, third, and fourth enactments of Chapter 1277 of the Acts of Assembly of 2020 are amended and reenacted as follows:

2. That *beginning August 15, 2023, and continuing on the 15th of each month thereafter until July 1, 2024*, distributors shall remit a monthly tax to the Department of Taxation (the Department) of \$1,200 for each skill game that such distributor provided for play in Virginia during the previous month. The Department shall allocate (i) two percent of the tax revenue collected pursuant to ~~the second~~ *this enactment of this act* to the Problem Gambling Treatment and Support Fund, created pursuant to legislation enacted during the 2020 Regular Session of the General Assembly; (ii) ~~two~~ *four* percent of the tax revenue collected pursuant to ~~the second~~ *this enactment of this act* to the Virginia Alcohol Beverage Control Authority (the Authority) for the purposes of implementing *this enactment and the second, third, fourth, fifth, sixth, and seventh enactments of this act*; (iii) ~~12~~ *15* percent of the tax revenue collected pursuant to ~~the second~~ *this enactment of this act* to the localities in which the skill games are located; (iv) *seven percent of the tax revenue collected pursuant to this enactment to the Virginia Compensation Board to be used by law-enforcement for employment purposes and other resources needed related to seizing and stopping illegal gaming*; (v) *seven percent of the tax revenue collected pursuant to this enactment to the Virginia Compensation Board to be used to hire and train new assistant attorneys for the Commonwealth*; (vi) *four percent of the tax revenue collected pursuant to this enactment to the Department of State Police to be used for the creation of an illegal gaming enforcement unit*; (vii) *one percent of the tax revenue collected pursuant to this enactment to the Virginia Attorney General to be used for the creation of an illegal gaming crimes unit to assist local attorneys for the Commonwealth and state and local law-enforcement agencies*; and ~~(iv) 84~~ *(viii) 60* percent of the tax revenue collected pursuant to ~~the second~~ *this enactment of this act* to the ~~COVID-19 Relief Fund established pursuant to § 2.2-115.1 of the Code of Virginia, as created by this act~~ *general fund*. Allocation of funds by the Department pursuant to ~~the second~~ *this enactment of this act* shall

182 occur no later than 60 days after such funds are collected. For purposes of *this enactment and the*
183 ~~second, third, fourth, and fifth, and sixth~~ enactments of this act, "distributor" means any person
184 that (i) manufactures ~~and or~~ sells skill games, including software and hardware, and distributes
185 such devices to an ABC retail licensee or a truck stop or (ii) purchases or leases skill games from
186 a manufacturer and provides such devices to an ABC retail licensee or a truck stop, and who
187 otherwise maintains such games and is otherwise responsible for on-site data collection and
188 accounting. For purposes of the second, third, fourth, *and fifth, and sixth* enactments of this act,
189 "ABC retail licensee" means a person licensed by the Authority pursuant to Title 4.1 of the Code
190 of Virginia. For purposes of the second, third, fourth, *and fifth, and sixth* enactments of this act,
191 "truck stop" means an establishment (i) that is equipped with diesel islands used for fueling
192 commercial motor vehicles; (ii) has sold, on average, at least 50,000 gallons of diesel or biodiesel
193 fuel each month for the previous 12 months, or is projected to sell an average of at least 50,000
194 gallons of diesel or biodiesel fuel each month for the next 12 months; (iii) has parking spaces
195 dedicated to commercial motor vehicles; (iv) has a convenience store; and (v) is situated on not
196 less than three acres of land that the establishment owns or leases.

197 3. That, beginning July 1, ~~2020~~ 2023, and each month following until July 1, ~~2021~~ 2024,
198 distributors shall provide a report to the Virginia Alcoholic Beverage Control Authority (the
199 Authority), in such form as required by the Authority, detailing (i) the total number of skill games
200 provided for play in Virginia by the distributor, (ii) the address of each location where skill games
201 are provided for play in Virginia by the distributor, (iii) the total number of skill games provided
202 for play by the distributor at each respective location, (iv) the total amount wagered during the
203 previous month on each skill game provided for play in Virginia by the distributor at each
204 respective location where the skill game was provided, and (v) the total amount of prizes or
205 winnings awarded during the previous month on each skill game provided for play in Virginia by
206 the distributor at each respective location where the skill game was provided. The Authority shall
207 aggregate information collected pursuant to this enactment and report it to the Governor, the
208 Chairman of the Senate Committee on Finance and Appropriations, and the Chairmen of the
209 House Committees on Appropriations and Finance on a monthly basis.

210 4. That the total number of machines provided for play in Virginia by a distributor shall not
211 exceed the total number of machines reported by that distributor to the Virginia Alcoholic
212 Beverage Control Authority on July 1, 2020, ~~pursuant to the third enactment of this act 2021.~~

213 11. *That the sixth and eighth enactments of Chapter 1217 and the sixth and eighth enactments of*
214 *Chapter 1277 of the Acts of Assembly of 2020 are repealed.*