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## SENATE BILL NO. 212

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on January 15, 2024)

(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, 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 definition.

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.

"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 definition 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, 2 of the definition of "gambling device," 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

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

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

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

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

### **CHAPTER 57.**

#### **VIRGINIA SMALL BUSINESS ECONOMIC DEVELOPMENT ACT.**

##### **§ 59.1-603. Definitions.**

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

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

"Authority" means the Virginia Alcoholic Beverage Control Authority.

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

"Department" means the Virginia Department of Taxation.

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

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

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

"Inducement" means (i) consideration paid, directly or indirectly, from a distributor or operator, or another person on behalf of a distributor or operator, to an establishment, or an employee of the establishment, directly or indirectly, as an enticement to solicit or maintain the establishment's business or (ii) cash, incentive, marketing and advertising cost, gift, food, beverage, loan, prepayment of skill game revenue, or other contribution or payment that offsets an establishment's operational costs, or as otherwise determined by the Authority.

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

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

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

"Skill game" or "skill game machine" 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 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 cash or cash equivalents whether the payoff is made automatically from the device or manually. "Skill game" includes (i) any device that contains a meter or measurement device that records the number of free games or portions of games that are rewarded and (ii) any device designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than the amount that is ordinarily required to play the game. Skill games shall be programmed so that the maximum consideration to play is \$5 and the maximum winnings per a single play does not exceed \$5,000.

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

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

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

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

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

1. The total number of skill game machines provided for play in Virginia by the operator;
2. The address of each location where skill game machines are provided for play by the operator;
3. The total number of skill game machines provided for play by the operator at each respective location;
4. The total amount wagered during the previous month on each skill game machine provided for play by the operator at each establishment where the skill game machine was provided;
5. The total amount of prizes or winnings awarded during the previous month on each skill game machine provided for play by the operator at each establishment where the skill game machine was provided.

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

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

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

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

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

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

1. For initial registration:
  - a. Distributor: \$500,000;
  - b. Operator: \$100,000; and
  - c. Establishment: \$250.
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  
188 to 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  
191 provisions 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  
194 of 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 so,  
201 which shall be entered of record. Such action shall be final unless appealed in accordance with  
202 § 59.1-607. Suspension or revocation of a registration issued by the Authority for any violation shall not  
203 preclude 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  
207 review of such action in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act  
208 in the Circuit Court of the City of Richmond. Further appeals shall also be in accordance with Article 5  
209 of the 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  
213 by 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  
217 be 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.  
219 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
220 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
221 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of  
222 financing the administration and operation of skill game machines pursuant to the provisions of this  
223 chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on  
224 warrants issued 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 skill  
227 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 than  
232 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 21 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  
236 16-point Times New Roman bold font the following notice: "It is unlawful for any person under the age  
237 of 21 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:

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

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

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

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

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

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

7. Fifty-five percent to the general fund.

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

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

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

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

A. In addition to the penalties provided for in § 59.1-606, any person or employee of such person who knowingly violates any provision of this chapter shall be liable for a civil penalty of not more than \$25,000 for each such violation. Such amount shall be recovered in a civil action brought by the Authority and paid into the Virginia Small Business Economic Development Fund, established pursuant to § 59.1-609.

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

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

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

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

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

4. That, notwithstanding the provisions of the first enactment of this act to the contrary, until the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) (the Authority) adopts the regulations necessary to implement the provisions of this act pursuant to the third enactment of this act, the Authority may issue a provisional registration under the first enactment of this act to any entity that is duly licensed or registered to engage in the distribution, operation, or hosting of any skill game in another state on July 1, 2024. The Board shall establish procedures for the issuance of any provisional registration. The granting of a provisional registration pursuant to this enactment shall not entitle any such registered entity to the automatic granting of a registration pursuant to the first enactment of this act. Distributing, operating, or hosting any skill game at any time between July 1, 2024, and the date upon which the regulations necessary to implement the provisions of this act are adopted without obtaining a provisional registration pursuant to this enactment may permanently disqualify a person from obtaining a registration pursuant to the first enactment of this act. Any such disqualifications shall be within the sole discretion of the Authority.

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