VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

CHAPTER 1217

An Act to amend and reenact § 18.2-325 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-115.1 and 18.2-334.5, relating to illegal gambling; skill games; exception; COVID-19 Relief Fund created.

[H 881]

Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-325 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-115.1 and 18.2-334.5 as follows:

§ 2.2-115.1. COVID-19 Relief Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the COVID-19 Relief Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated to the Fund and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used by the Governor solely for the purposes of responding to the Commonwealth's needs related to the Coronavirus Disease of 2019 (COVID-19) pandemic. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Governor or his designee.

§ 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 which 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*; 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 skill of the player and that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise; or anything of value whether the payoff is made automatically from the device or manually.

§ 18.2-334.5. Exemptions to article; certain skill games offered at family entertainment centers.

A. As used in this section:

"Coin-operated amusement games" means games that do not deliver or entitle the person playing or operating the game to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; or merchandise or anything of value.

"Family entertainment center" means an establishment that (i) is located in a building that is owned, leased, or occupied by the establishment for the primary purpose of providing amusement and entertainment to the public; (ii) offers coin-operated amusement games and skill games pursuant to the exemption created by this section; and (iii) markets its business to families with children.

B. Notwithstanding the provisions of § 18.2-325, a person operating a family entertainment center may make skill games available for play if the prize won or distributed to a player is a noncash, merchandise prize or a voucher, billet, ticket, token, or electronic credit redeemable only for a noncash, merchandise prize (i) the value of which does not exceed the cost of playing the skill game or the total aggregate cost of playing multiple skill games; (ii) that is not and does not include an alcoholic beverage; (iii) that is not eligible for repurchase; and (iv) that is not exchangeable for cash, cash equivalents, or anything of value whatsoever.

2. That until July 1, 2021, 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 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 percent of the tax revenue collected pursuant to the second enactment of this act to the Virginia Alcohol Beverage Control Authority (the Authority) for the purposes of implementing the second, third, fourth, fifth, sixth, and seventh enactments of this act; (iii) 12 percent of the tax revenue collected pursuant to the second enactment of this act to the localities in which the skill games are located; and (iv) 84 percent of the tax revenue collected pursuant to the second 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. Allocation of funds by the Department pursuant to the second enactment of this act shall occur no later than 60 days after such funds are collected. For purposes of the second, third, fourth, fifth, and sixth enactments of this act, "distributor" means any person that (i) manufactures and sells skill games, including software and hardware, and distributes such devices to an ABC retail licensee or a truck stop or (ii) purchases or leases skill games from a manufacturer and provides such devices to an ABC retail licensee or a truck stop, and who otherwise maintains such games and is otherwise responsible for on-site data collection and accounting. For purposes of the second, third, fourth, fifth, and sixth enactments of this act, "ABC retail licensee" means a person licensed by the Authority pursuant to Title 4.1 of the Code of Virginia. For purposes of the second, third, fourth, fifth, and sixth enactments of this act, "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.

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

4. That the total number of machines provided for play in Virginia by a distributor shall not

exceed the total number of machines reported by that distributor to the Virginia Alcoholic Beverage Control Authority on July 1, 2020, pursuant to the third enactment of this act.

5. That only those skill games that were provided by a distributor and available for play in ABC retail licensees and truck stops on June 30, 2020, may continue to operate on or after July 1, 2020.

6. That any distributor found by the Virginia Alcoholic Beverage Control Authority (the Authority) to be in violation of the second, third, fourth, or fifth enactments of this act shall be subject to a civil penalty of not less than $25,000 and not more than $50,000 per incident. Civil penalties collected pursuant to the sixth enactment of this act shall be paid to the Authority and remitted by the Authority to the COVID-19 Relief Fund established pursuant to § 2.2-115.1 of the Code of Virginia, as created by this act.

7. That, notwithstanding the provisions of § 58.1-3 of the Code of Virginia, the Department of Taxation shall be permitted to disclose information to the Virginia Alcoholic Beverage Control Authority regarding the tax remitted by any distributor pursuant to the second enactment of this act.

8. That the second, third, fourth, fifth, sixth, and seventh enactments of this act shall expire on July 1, 2021.

9. That the provisions of the first enactment of this act amending the Code of Virginia by adding a section numbered 2.2-115.1 shall become effective on July 1, 2020, and that the remaining provisions of the first enactment of this act shall become effective on July 1, 2021.