Skill Games

Issues for Local Governments

Legislative Committee

October 15, 2024

What are Skill Games?

- Skill games are electronic or mechanical gaming devices that incorporate elements of player skill to determine the outcome. Traditional gambling devices rely on chance, while skill games may involve knowledge, dexterity, or any other ability or expertise.
- Skill games devices often resemble slot machines but have frequently been referred to as “gray machines” because of a lack of clarity about them in state law prior to July 2020, as they did not fit the legal definition of a gambling device prohibited under state law.

History of Skill Games in Virginia

- In July 2020, the Virginia General Assembly banned skill games.
- Shortly afterwards, a lawsuit was filed in the Emporia Circuit Court challenging the skill games ban.
- During that time, an injunction prevented enforcement of the ban while the courts considered the issue. It was lawful to operate and play skill games in Virginia.
- In October 2023, the Virginia Supreme Court ruled that the skill game ban was lawful, and it is lawful to enforce the ban.
- Therefore, all skill games in convenience stores, restaurants, truck stops, bars, or any other place in Virginia are prohibited.

Current Penalties for Non-Compliance

- Non-compliance can result in criminal and/or civil penalties, as well as additional penalties or legal actions against violators for continued non-compliance.
- Civil penalty of up to $25,000 per gambling device, an immediate injunction prohibiting operation of gambling devices, seizure of the gambling device, and all costs associated with investigating and bringing the lawsuit, including attorney fees.
- Operation of illegal gambling is a Class 6 felony, which may result in a term of imprisonment for up to five years, or confinement in jail for up to twelve months and/or a fine up to $2,500.
- Possession of a gambling device is a Class 1 misdemeanor, which may result in confinement in jail for up to 12 months and/or a fine up to $2,500.
- Playing skill games is a Class 3 misdemeanor, which may result in a fine up to $500.
- Permitting the continuance of gambling is a Class 1 misdemeanor with the same penalties listed above.
- Aiding, abetting, or assisting the operation of illegal gambling is a Class 1 misdemeanor with the same penalties listed above.

2024 General Assembly

SB 212 (Rouse) would have established a regulatory and tax framework for skill games, establishing the Virginia Small Business Economic Development Act, to provide a regulatory and registration scheme for skill game machines in the Commonwealth.

- The bill would have authorized and specified the registration requirements for the distribution, operation, hosting, and play of skill game machines, as defined in the bill.
- The bill would have imposed a 25 percent tax on the gross receipts from the play of each skill game machine from each distributor and provides for the use of such tax proceeds, with most being deposited into the PreK-12 Priority Fund, established in the bill.

- The Governor's amendments to **SB 212** proposed significant changes, including increasing the tax rate, allowing local governing bodies to hold referenda to prohibit electronic gaming devices within a locality, revising the distribution of tax revenues, and barring electronic gaming devices within certain distances of casino gaming establishments, horse racetracks or satellite facilities, or schools, child day centers, or religious institutions.
- In April 2024, at the Reconvened (or Veto) Session, the GA rejected the Governor's amendments.
- Governor Youngkin then vetoed **SB 212**, citing the need for "a robust set of safeguards" for expanded gaming options, while indicating a willingness to work with the GA on the issue.

2024 General Assembly Special Session

SB 6008 (Lucas/Rouse)

- Authorizes and specifies registration and licensing requirements for the manufacture, distribution, operation, hosting, and playing of electronic skill gaming devices.
- Generates state funding to be used for a new PreK-12 Priority Fund.
- Imposes criminal and civil penalties for violations of the law and regulations.
- Allows localities to hold referendums on opting out of legalizing the games and would place the Virginia Lottery in charge of regulation — both provisions recommended by Youngkin.
- Levies a 25% tax on skill games as put forth in the original measure, rejecting Youngkin's suggested hike to 35%.
- Caps the number of games statewide at 35,000 (the original bill had no cap, and the Governor's amendments would have limited them to 20,000).
- Allows for a maximum of four machines at restaurants or convenience stores and seven at truck stops.

SB 6007 (New Craig)

- Establishes the Virginia Gaming Commerce Regulation Act for the purpose of providing a regulatory and registration scheme for electronic gaming devices in the Commonwealth.
- Authorizes registration requirements for the distribution, operation, hosting, and play of electronic gaming devices.
- Directs the Virginia Lottery Board to promulgate regulations by June 30, 2025, to implement the provisions of the bill and authorizes the Virginia Alcoholic Beverage Control Authority to grant a provisional registration, until the Virginia Lottery Board has issued regulations, to any entity that meets the respective criteria.
- Levies a 35% tax (as suggested by the Governor) and would cap the number of games statewide at 30,000.
- Imposes a $1,200 monthly tax on each electronic gaming device from each distributor, providing for the use of such tax proceeds after deposit in the Virginia Gaming Commerce Regulation Fund, established in the bill, with most being distributed to the Elementary and Secondary Education Fund, also established in the bill.
- Allows for a maximum of three machines at restaurants or convenience stores and seven at truck stops.

Legislative Outlook on Skill Games

- Over the summer, a major skill game firm (Pace-O-Matic) introduced a variation of its Queen of Virginia game that does not require a direct deposit of money but that still allows a player to wager funds.
- The company announced that the new version of machines would not be illegal under state law.
- Recently, Attorney General Jason Miyares issued a memorandum saying the new Queen of Virginia games are illegal under Virginia law, and that Pace-O-Matic's changes, which allow bettors to pay a cashier who then unlocks the device so it can be played, are simply an evasion of the state's ban on the games.
- The Governor has described Pace-O-Matic's actions as breaking trust in good faith negotiations and is not willing to consider skill games legislation as a result – he recently announced that he would veto any skill game bill (that may change over time, but there has been discussion that the General Assembly might reconvene the 2024 special session in order to consider skill games legislation, and it seems unlikely the Governor would agree to any new legislation at present).
- The General Assembly passed a resolution in 2023 that established the Joint Subcommittee to Study the Feasibility of Establishing the Virginia Gaming Commission to analyze and make recommendations, as appropriate, with respect to creating a new executive branch agency for the purpose of consolidating regulatory and oversight authority on gaming, excluding the state lottery. The Subcommittee is required to submit reports by the beginning of the 2025 and 2026 GA sessions with their recommendations.