UNDERSTANDING THE VIRGINIA BAN ON SKILL GAMES – A GUIDE FOR BUSINESSES

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. These devices many times resemble slot machines but did not fit the legal definition of a gambling device prior to July 2020.

Skill Games Banned in Virginia

The Virginia General Assembly banned skill games in July 2020. The term "skill game" means an electronic or mechanical device that requires something of value to operate or play a game, the outcome of which is determined by any element of skill of the player to deliver or entitle the player to something of value or something that could be exchanged for something of value. The law specifically lists skill games as "illegal gambling."

Shortly after the ban became law, a lawsuit was filed to stop the enforcement of the ban. A circuit court issued an injunction to stop the enforcement while the court considered the issue. During this time, it was lawful to operate and play skill games. Ultimately, the Virginia Supreme Court ruled at the end of 2023 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. Non-compliance can result in criminal and/or civil penalties. Additionally, non-compliance may result in possible other legal actions against violators.

Compliance Requirements

- Remove all skill game machines on your premises.
- Ensure your establishment is not hosting or facilitating any form of skill gaming.
- Inform employees about the ban and its implications.

Penalties for Non-Compliance

- 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.
- 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.

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Summary of Relevant Virginia Code Sections

§ 18.2-325(1) defines "**illegal gambling**", *in part*, as a wager made in exchange for a chance to win a prize dependent upon the result of any game, contest, or any other event the outcome of which is uncertain or a matter of chance. Skill games are listed as illegal gambling.

§ 18.2-326. Penalty for illegal gambling. Any person who illegally gambles shall be guilty of a Class 3 misdemeanor.

§ 18.2-327. Winning by fraud. If any person gambling cheats to win, or for another person to win, the person shall be fined not less than five nor more than ten times the value of such winnings. This penalty is additional to any other penalty.

§ 18.2-328. Conducting illegal gambling operation. The operator of an illegal gambling operation shall be guilty of a Class 6 felony.

§ 18.2-329. Owners of gambling place permitting its continuance. The owner or tenant in control of any place and knows, or reasonably should know, that it is being used for illegal gambling, and permits such gambling without notifying law-enforcement shall be guilty of a Class 1 misdemeanor.

§ 18.2-330. Accessories to gambling activity. Any person who knowingly aids, abets, or assists in the operation of an illegal gambling enterprise shall be guilty of a Class 1 misdemeanor.

§ 18.2-331. Illegal possession of gambling device. Any person who manufactures, sells, transports, rents, gives away, places or possesses any gambling device for use in unlawful gambling shall be guilty of a Class 1 misdemeanor.

§ 18.2-331.1. Operation of gambling device at unregulated locations; civil penalty. Any person that manages, sells, or owns a gambling device that is in an unregulated location is subject to a civil penalty of up to $25,000 for each device located in such unregulated location. The Attorney General, attorney of the Commonwealth, or the attorney for the locality may cause an action in equity to recover the civil penalty.

§ 18.2-334.6. Exemptions for amusement devices. A person may make amusement devices available for play if the prize won is a noncash, merchandise prize, or a voucher redeemable only for an appropriate reward at the device location.

