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Emergency Regulation Agency Background Document

Agency name	Virginia Alcoholic Beverage Control Authority
Virginia Administrative Code (VAC) Chapter citation(s)	3 VAC 5 80
VAC Chapter title(s)	Skill Based Games
Action title	Skill Based Games
Date this document prepared	May 19, 2020 Revised June 11, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

On April 22, 2020, the General Assembly approved Chapter 1217 and Chapter 1277 of the Virginia Acts of Assembly. Both chapters amended and reenacted § 18.2-325 of the Code of Virginia (“Code”) relating to the definition of illegal gambling and skill games, as well as added § 2.2-115.1 (COVID-19 Relief Fund) and §18.2-334.5 (exemptions for family entertainment centers). The Virginia Alcoholic Beverage Control Authority (“VA ABC”) is charged with drafting the regulatory framework necessary to implement the provisions of Chapter 1217 and Chapter 1277. The regulations are necessary to provide guidance to both retail licensees and truck stops regarding the requirements, restrictions, and penalties associated with the operation of skill based games at these locations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

NA

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

Chapter 1217 and Chapter 1277 amend and reenact § 18.2-325 of the Code, add § 2.2-115.1 and § 18.2-334.5, relating to illegal gambling; skill games; and exceptions, and creates the COVID-19 Relief Fund. These provisions have an effective date of July 1, 2020. Additionally, there are requirements for participating distributors that must be fulfilled on or before June 30, 2020. This emergency regulation is necessary to provide prior notice and guidance as to how these machines will be regulated and the penalties associated with noncompliance.

Section 2.2-4011(A) of the Administrative Process Act provides that emergency regulations are appropriate where the agency finds they are necessitated by an emergency situation and upon consultation with the Attorney General. Additionally, § 2.2-4011(A) states that the necessity of such action shall be at the sole discretion of the Governor. On May 18, 2020, the Governor issued Executive Directive Eleven directing VA ABC to do all things necessary and prudent for carrying out the provisions of Chapter 1217 and Chapter 1277 of the 2020 Acts of the General Assembly, *including* the promulgation of emergency regulations.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 4.1-101 of the Code of Virginia establishes the Virginia Alcoholic Beverage Control Authority. Section 4.1-103 of the Code enumerates the powers of the VA ABC Board which includes the authority

to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code (ABC Act). Section 4.1-103(7) states the VA ABC Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. Section 4.1-103(24) permits the VA ABC Board to promulgate regulations in accordance with the Administrative Process Act and § 4.1-111.

Section 4.1-111(A) provides the VA ABC Board with the authority to adopt reasonable regulations which it deems reasonable to carry out the provisions of the ABC Act and to amend or repeal such regulations.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Prior to the recent provisions of Chapter 1217 and Chapter 1277, skill based games were not included in the statutory definition of illegal gambling included in §18.325 of the Code. Effective July 1, 2021, skill based games will fall within the definition of illegal gambling. This regulation is necessary to provide the general public with guidance as to how skill based games will be permitted in limited circumstances effective July 1, 2020. The regulation provides the necessary requirements for distributors of these games as they relate to registration and monthly reporting, required bonds. The regulation also provides guidance as to the labeling requirements for skill based game machines, limits on the number of skill based games allowed, and penalties for noncompliance. Effective and timely regulation is necessary to ensure the safety and welfare of the people of the Commonwealth of Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

This regulation provides the context for how VA ABC will regulate the operation of skill based games in VA ABC licensed retail establishments and truck stops. The regulation includes guidance on registering these games and the monthly reporting requirements. The regulation includes labeling requirements for skill based game machines, limits on the number of skill based games allowed, and penalties for noncompliance.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public and the Commonwealth is that the regulation provides a blueprint for the operation of these games that will allow them to continue to operate while ensuring the safety and wellbeing of the citizens of the Commonwealth. Additionally, 84% of the tax revenue collected will go to the COVID-19 Relief Fund established pursuant to § 2.2-115.1 of the Code.

There are no disadvantages to the public or the Commonwealth.

Alternatives to Regulation

Describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to this proposed regulation.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
3 VAC 5-80-10	Scope – briefly outlines the necessity of the regulation	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to explain where the necessity of the regulation is derived. The impact will be minimal as the regulation is just informational.
3 VAC 5-80-20	Definitions – defines relevant terminology	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to define words and phrases frequently used in the regulation. The impact will be minimal as the regulation is just informational.
3 VAC 5-80-30	Exclusions from Chapter; Certain Skill Games Offered at Family Entertainment Centers – explains that family entertainment centers are exempt.	§§ 18.2-325; 18.334.5	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to explain the exemption for skill games located on the premises of a family entertainment center. The impact will be minimal as the regulation is just informational.
3 VAC 5-80-40	Applicability of Chapter – provisions only apply to ABC retail establishments in good standing that possess a valid retail license with the VA ABC Board and truck stops meeting the definition in 3 VAC 5-80-20	3 VAC 5-80-20	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to explain that only licensed VA ABC retail establishments and truck stops are permitted to operate these machines at their establishments. The impact will be minimal as the regulation is just informational; however, licensees that are suspended or inactive for any reason shall not be considered in “good standing”.

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
3 VAC 5-80-50	Initial Registration and Monthly Reporting – explains the registration requirement for operators and distributors of skill based games as well as the monthly reporting requirements to VA ABC Bureau of Law Enforcement.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide guidance for registering and reporting skill based games. The impact will be that distributors and operators will have to be diligent in ensuring timely registration and reporting of these machines in order to avoid violations and penalties. Games not registered will be considered illegal gambling devices.
3 VAC 5-80-60	Labeling of Skill Game Machines – outlines the labeling requirements for each skill based game machine.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to explain the labeling process. The impact will be distributors and operators will have to take time to appropriately label these machines to avoid violations and penalties.
3 VAC 5-80-70	Total Number of Skill Games by Any Single Operator or Distributor – limits the number of skill based games at single VA ABC licensed retail establishments and truck stops to the number reported by the distributor or operator.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide guidance as to the permitted number of machines allowed by a single operator or distributor. The impact will be that operators and distributors will be limited to the number that was reported to VA ABC and will not be permitted to go over that amount. There will be penalties assessed for exceeding the reported number.

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
3 VAC 5-80-80	Relocation of Skill Game Machine from One Establishment to Another – outlines the procedures for relocating skill game machines from one qualified location to another	3 VAC 5-80-60	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide guidance as to the procedure for relocating skill games. The impact will be minimal as the regulation is just informational and only applicable in the very specific situation of having to relocate a skill game machine. Distributors will be permitted to relocate 20% of their games between July 1, 2020 and September 1, 2020. From September 2, 2020 to June 30, 2021 distributors will be allowed to relocate 20% of their machines.
3 VAC 5-80-90	Taxation Generally – provides an explanation for the taxation requirements for registered skill games.	3 VAC 5-80-50 3 VAC 5-80-80	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide guidance as to taxation of skill based games. The impact will be that is a \$1,200 tax for each skill game located in the Commonwealth during the previous month by a distributor.
3 VAC 5-80-100	Bond Required – explains requirements for the surety bond and VA ABC’s authority to call the bond for violations of the Code or regulations	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to explain required bond that must be posted by each operator and distributor. There is a financial impact as this bond ranges between \$50,000 and \$1,000,000 depending on the number of machines and may be called by VA ABC if there are any violations of the regulations and/or Code.
3 VAC 5-80-110	Records to be Kept by Operators and Distributors Generally – Outlines the minimum records requirements for operators and distributors of skill games.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide guidance as to the records that must be kept for operators and distributors of skill games. The impact will be that distributors and operators must have a means of keeping the required records and making them available upon request within the required time.

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
3 VAC 5-80-120	Minimum Age of Skill Game Player and Consumer Rights	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide a minimum age (18) requirement for playing skill based games and provide notice of the players' consumer rights. The impact will be distributors and operators will be responsible for providing notice of the age requirement to the proprietor of the establishment prior to placement of the game and responsible for providing information regarding the consumer rights for players.
3 VAC 5-80-130	Referral to the Commonwealth Attorney – VA ABC may refer allegations of unlawful gambling devices to the Commonwealth Attorney for the jurisdiction in which the skill based game is located.	§ 18.2-331	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to notice that noncompliance can result in both administrative and criminal charges. The impact will be that operators and distributors will have to be diligent in complying with these regulations because violations carry both criminal and administrative liability.
3 VAC 5-80-140	Penalty – Outlines the penalty for violations of the regulations.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to provide guidance as to associate penalties. This is primarily informational; however, there will be financial impact for noncompliance that will be a minimum \$25,000.

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
3 VAC 5-80-150	Compliance with the COVID-19 Related Executive Orders - mandates compliance with existing Executive Orders and other applicable provision in the placement of any skill game machines within a qualified location.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to explain that only licensed VA ABC retail establishments and truck stops permitted to operate skill game machines at their establishments must also comply with any existing Executive Orders related to social distancing and other applicable provisions in the placement of any skill game machines within a qualified location. The impact will be that existing rules meant to mitigate the spread of COVID-19 must be adhered to in the placing of skill game machines.
3 VAC 5-80-160	Public Records – provides that information from the required monthly reports shall be public information and subject to the Virginia Freedom of Information Act without exclusions.	NA	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to give notice to operators and distributors that the information received from their monthly reports shall be public information. The impact will be minimal as the regulation is just informational.
3 VAC 5-80-170	Expiration – the regulation shall expire on July 1, 2021; however distributors will still be required to file the monthly report for June 2021 no later than July 20, 2021.	3 VAC 5-80-110	There are no changes to an existing regulation as this is a new regulation. The intent and rationale is to give notice that these provisions will expire on July 1, 2021. The impact will be minimal as the regulation is just informational.