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Fast-Track Regulation Agency Background Document

Agency name	Virginia Lottery
Virginia Administrative Code (VAC) Chapter citation(s)	__11__ VAC __5_-__60__
VAC Chapter title(s)	Self-Exclusion Program
Action title	Amend Self-Exclusion Program to incorporate casino gaming
Date this document prepared	June 1, 2022

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action is being taken in order to incorporate casinos and casino gaming into [11VAC5-60](#) (Self-Exclusion Program) as required by § [58.1-4103](#) (Voluntary Exclusion Program).

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.

N/A

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On April 27, 2022, the Virginia Lottery Board approved edits to each section of 11VAC5-60 Self-Exclusion Program in order to incorporate the appropriate references to § 58.1-4100 (Casino Gaming law) and 11VAC5-90 (Casino Gaming regulations).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The Virginia Lottery Board, in accordance with § 58.1-4007.A.15, established a voluntary exclusion program for sports betting as provided in § 58.1-4015.1. Said program was promulgated by 11VAC5-60 (Self-Exclusion Program). § 58.1-4103 requires the establishment and administration of a voluntary exclusion program for casino gaming.

The changes to Chapter 60 (Self-Exclusion) chapter were made in order to incorporate Chapter 90 (casinos) self-exclusion sections just like it incorporates Chapter 70 (sports betting) self-exclusions sections. The noncontroversial changes include the addition of terms/language such as “casino gaming establishment,” “casino,” and “casino gaming,” etc., in order to have the Chapter clearly reflect its applicability to Chapter 90 as well as Chapter 70.

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 and 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.

- (1) Virginia Lottery Board
- (2) Code of Virginia, §§ 58.1-4101A, 58.1-4102, and 58.1-4103

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The changes to Chapter 60 (Self-Exclusion) chapter were made in order to incorporate Chapter 90 (casinos) self-exclusion sections just like it incorporates Chapter 70 (sports betting) self-exclusions sections.

The purpose of this action is to continue to protect the public health, safety, and welfare by lessening the sociological, financial, and psychological damage that can occur to individuals who exhibit problem gambling behaviors, and by extension, to their families.

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.

The changes to Chapter 60 (Self-Exclusion) chapter were made in order to mirror Chapter 90 (casinos) self-exclusion sections just like it mirrors Chapter 70 (sports betting) self-exclusions sections. The noncontroversial changes include the addition of terms/language such as "casino gaming establishment," "casino," and "casino gaming," etc., in order to have the Chapter clearly reflect its applicability to Chapter 90 as well as Chapter 70.

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.

There are no disadvantages associated with, and the public interest shall be served by, amending Chapter 60 to include references to casinos (Chapter 90).

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

N/A

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local

governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Department of State Police and Commonwealth’s Attorneys, if needed to charge and prosecute an individual on the self-exclusion list with trespassing if the individual improperly enters a casino.

Localities Particularly Affected

Local law enforcement in jurisdictions where a casino is located, if needed to charge an individual on the self-exclusion list with trespassing if the individual improperly enters a casino.

Other Entities Particularly Affected

N/A

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Negligible; as staff and ongoing administrative expenses associated with potentially additional individuals opting into the self-exclusion program is already budgeted for.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>Potential that law enforcement agencies (in jurisdictions where casinos are located) will be called upon to process trespassing charges against individuals who gain access to a casino floor despite having opted into the program. Beneficial impact on social service agencies if fewer individuals and families suffer the financial and psychological damage that can be incurred by individuals who exhibit problem gambling behaviors.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Goal is to lessen the sociological, financial, and psychological damage that can occur to individuals who exhibit problem gambling behaviors, and by extension, to their families.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>Potential that law enforcement agencies (in jurisdictions where casinos are located) will be called upon to process trespassing charges against individuals who gain access to a casino floor despite having opted into the program. Beneficial impact on social service agencies if fewer individuals and families suffer the financial and psychological damage that can be incurred by individuals who exhibit problem gambling behaviors.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Goal is to lessen the sociological, financial, and psychological damage that can occur to individuals who exhibit problem gambling behaviors, and by extension, to their families.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The addition of casino gambling into the self-exclusion program can help to minimize the problems created by individuals who exhibit problem gambling behaviors. Those behaviors can negatively impact families, neighborhoods, and personal finances.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Truly minimal, except to the extent that a self-excluded individual is spared from damaging their own small business as result of problem gambling behaviors. Total number of individuals in the program was 250, as of April 18, 2022.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>The amount of time for individuals to gather information and complete the application form is minimal. The information should be readily available to applicants and cost them nothing. Requests for lifetime exclusion require an in-person interview. Enforcement costs borne by casinos are essentially non-existent, because they are included in duties the casinos would already be performing.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Goal is to lessen the sociological, financial, and psychological damage that can occur to individuals who exhibit problem gambling behaviors, and by extension, to their families.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small

businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The Code of Virginia gives the Virginia Lottery oversight over these regulations and amending them is the least burdensome method of accomplishing this purpose. Therefore, no alternative action was considered.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The agency has no flexibility to consider alternatives to regulations. The Board is statutorily required to promulgate regulations to effect the Code provisions concerning the Voluntary Exclusion Program for lottery games, sports betting and casinos. The regulations as promulgated provide the most straightforward and least onerous requirements necessary to maintain the Voluntary Self-Exclusion list and to accommodate those individuals who choose to be included in it.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Lottery is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to

Amy Roper
 Virginia Lottery
 600 E. Main Street
 Richmond, VA 23219
 804-692-7133
aroper@valottery.com.

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held in conjunction with this regulatory action.

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 proposed 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
11VAC5-60-10		Defined terms relating to sports betting.	To add/amend terms relating to casino gaming.
11VAC5-60-20		Requirements for requesting self-exclusion from sports betting activity.	Language added to reflect that the requirements pertain to casino gaming as well. Correction of the term “chapter” to “department” as applicable. Authorizes in-person requests for self-exclusion. Requires submission of valid photo identification to make the exclusion program workable in a land-based environment such as a casino. Grammatical changes.
11VAC5-60-30		Self-exclusion maintenance and retention responsibilities.	The addition of “Virginia casino gaming establishment” to the list of entities to be notified with changes to the Self-exclusion list. Requires submission of valid photo identification to make the exclusion program workable in a land-based environment such as a casino. Grammatical changes.

11VAC5-60-40		Duties of sports betting permit holder.	Language added to reflect that the responsibilities also apply to casino gaming establishments. Grammatical changes.
11VAC5-60-50		Requirements for the removal of individuals from self-exclusion list for sports betting activity.	Language added to reflect that the requirements pertain to casino gaming as well as the existing types of gambling under the program. Grammatical changes.
11VAC5-60-60		How winnings of a self-excluded individual are handled.	Language added to reflect that the requirements pertain to casino gaming as well as the existing types of gambling under the program. Grammatical changes.

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	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but *changes have been made* since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage