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HOUSE BILL NO. 1123

Offered January 12, 2022

A BILL to amend and reenact §§ 18.2-328 through 18.2-331.1, 18.2-340.15, and 18.2-340.37 of the Code of Virginia and to amend the Code of Virginia by adding in Title 52 a chapter numbered 13, consisting of sections numbered 52-53 through 52-62, relating to illegal gambling and unlawful gaming; Illegal Gambling and Unlawful Gaming Investigation Unit; penalties.

Patron—Campbell, J.L.

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-328 through 18.2-331.1, 18.2-340.15, and 18.2-340.37 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 52 a chapter numbered 13, consisting of sections numbered 52-53 through 52-62, as follows:

§ 18.2-328. Conducting illegal gambling operation; penalties.

The operator of an illegal gambling enterprise, activity, or operation ~~shall be~~ is guilty of a Class 6 felony. However, any such operator who engages in an illegal gambling operation ~~which~~ that (i) has been or remains in substantially continuous operation for a period in excess of ~~thirty~~ 30 days or (ii) has gross revenue of \$2,000 or more in any single day shall be fined not more than ~~\$20,000~~ \$100,000 and imprisoned not less than one year nor more than ~~ten~~ 20 years.

As used in this section, the term "gross revenue" means the total amount of illegal gambling transactions handled, dealt with, received by, or placed with such operation, as distinguished from any net figure or amount from which deductions are taken, without regard to whether money or any other thing of value actually changes hands.

§ 18.2-329. Owners, etc., of gambling place permitting its continuance; penalty.

If the owner, lessee, tenant, occupant, or other person in control of any place or conveyance, knows, or reasonably should know, that it is being used for illegal gambling, and permits such gambling to continue without having notified a law-enforcement officer of the presence of such illegal gambling activity, he ~~shall be~~ is guilty of a Class 4 ~~misdemeanor~~ 6 felony.

§ 18.2-330. Accessories to gambling activity; penalty.

Any person, firm, or association of persons, other than those persons specified in other sections of this article, ~~who~~ that knowingly aids, abets, or assists in the operation of an illegal gambling enterprise, activity, or operation, ~~shall be~~ is guilty of a Class 4 ~~misdemeanor~~ 6 felony.

§ 18.2-331. Illegal possession, etc., of gambling device; penalty.

A person is guilty of illegal possession of a gambling device when he manufactures, sells, transports, rents, gives away, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, believing or having reason to believe that the same is to be used in the advancement of unlawful gambling activity. Violation of any provision of this section shall constitute a Class 4 ~~misdemeanor~~ 6 felony.

§ 18.2-331.1. Operation of gambling devices at unregulated locations; civil penalty.

A. In addition to any other penalty provided by law, any person who conducts, finances, manages, supervises, directs, or owns a gambling device that is located in an unregulated location is subject to a civil penalty of up to ~~\$25,000~~ \$50,000 for each gambling device located in such unregulated location.

B. The Attorney General, an attorney for the Commonwealth, or the attorney for any locality may cause an action in equity to be brought in the name of the Commonwealth or of the locality, as applicable, to enjoin the operation of a gambling device in violation of this section ~~and~~, to request an attachment against all such devices and any moneys within such devices pursuant to Chapter 20 (§ 8.01-533 et seq.) of Title 8.01, and to recover the civil penalty of up to ~~\$25,000~~ \$50,000 per device.

C. In any action brought under this section, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorney fees.

D. Any civil penalties assessed under this section in an action in equity brought in the name of the Commonwealth shall be paid into the Literary Fund. Any civil penalties assessed under this section in an action in equity brought in the name of a locality shall be paid into the general fund of the locality.

§ 18.2-340.15. State control of charitable gaming.

A. Charitable gaming as authorized herein shall be permitted in the Commonwealth as a means of funding qualified organizations but shall be conducted only in strict compliance with the provisions of this article. The Department of Agriculture and Consumer Services is vested with control of all

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charitable gaming in the Commonwealth; however, nothing in this section shall preempt the authority or relieve the duty of any law-enforcement agency, including the Illegal Gambling and Unlawful Gaming Investigation Unit established pursuant to § 52-54, or law-enforcement officer to investigate, examine, and prosecute suspected violations of law. The Charitable Gaming Board shall have the power to prescribe regulations and conditions under which such gaming shall be conducted to ensure that it is conducted in a manner consistent with the purpose for which it is permitted.

B. The conduct of any charitable gaming is a privilege that may be granted or denied by the Department of Agriculture and Consumer Services or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this article.

§ 18.2-340.37. Criminal penalties.

A. Any person who violates the provisions of this article or who willfully and knowingly files, or causes to be filed, a false application, report, or other document or who willfully and knowingly makes a false statement, or causes a false statement to be made, on any application, report, or other document required to be filed with or made to the Department ~~shall be~~ is guilty of a Class 4 ~~misdemeanor~~ 6 felony.

B. Each day in violation shall constitute a separate offense.

C. Any person who converts funds derived from any charitable gaming to his own or another's use, when the amount of funds is less than \$1,000, ~~shall be~~ is guilty of petit larceny and, when the amount of funds is \$1,000 or more, ~~shall be~~ is guilty of grand larceny. The provisions of this section shall not preclude the applicability of any other provision of the criminal law of the Commonwealth that may apply to any course of conduct that violates this section.

CHAPTER 13.

ILLEGAL GAMBLING AND UNLAWFUL GAMING INVESTIGATION UNIT.

§ 52-53. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Casino gaming operator" means the same as that term is defined in § 58.1-4100.

"Illegal gambling and unlawful gaming" means a violation of Article 1 (§ 18.2-325 et seq.) or 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 40 (§ 58.1-4000 et seq.) or 41 (§ 58.1-4100 et seq.) of Title 58.1, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, or any other provision prohibiting, limiting, regulating, or otherwise affecting gambling or gaming activity.

"Licensee" means the same as that term is defined in § 59.1-365.

"Qualified organization" means the same as that term is defined in § 18.2-340.16.

"Sports betting permit" means the same as that term is defined in § 58.1-4030.

§ 52-54. Illegal Gambling and Unlawful Gaming Investigation Unit established; powers and duties of Department of State Police.

A. There shall be established within the Department of State Police, Bureau of Criminal Investigation, the Illegal Gambling and Unlawful Gaming Investigation Unit. The purposes of this unit shall be to:

1. Initiate independent inquiries and conduct independent investigations when the Department has reason to believe that illegal gambling and unlawful gaming may have been or is currently being conducted and undertake studies to determine the extent of such illegal gambling and unlawful gaming;

2. Respond to notification or complaints alleging illegal gambling and unlawful gaming generated by federal, state, or local police; other law-enforcement authorities, governmental agencies, or units; or any other person; and

3. Review notices and reports of illegal gambling and unlawful gaming; select the incidents of suspected fraud that, in its judgment, require further detailed investigation; and conduct the investigations.

B. The Superintendent may appoint such agents as he may deem necessary to assist the Illegal Gambling and Unlawful Gaming Investigation Unit in carrying out its powers and duties under this chapter.

§ 52-55. Access to evidence, documentation, and related materials.

A. If the Department seeks evidence, documentation, and related materials from a casino gaming operator, licensee, qualified organization, or sports betting permit holder, or any agent, officer, or employee thereof, whether in written or electronic format, that are located within the Commonwealth and that are deemed by the Department as pertinent to an investigation or examination, the Department may request access to such evidence, documentation, or related materials. The person so requested shall either provide electronic or physical copies of such evidence, documentation, or related materials to the Department or shall make such evidence, documentation, or related materials available for inspection or examination by a designated representative of the Department.

B. The provider of evidence, documentation, and related materials under the provisions of subsection A may authenticate any electronic or physical copies of such evidence, documentation, and related materials, excluding the contents of any electronic communications, by providing an affidavit from the

custodian of those electronic or physical copies or from a person to whom the custodian reports certifying that the copies are true and complete and that they are prepared in the regular course of business. Any copies authenticated in accordance with this subsection are admissible in evidence as a business record.

§ 52-56. Confidentiality and immunity from service of process.

A. Papers, records, documents, reports, materials, or other evidence relative to the subject of an illegal and unlawful gaming investigation or examination in the possession of the Department shall remain confidential and shall not be subject to public inspection.

B. Agents employed by the Department shall not be subject to subpoena in civil actions by any court in the Commonwealth to testify concerning any matter of which they have knowledge pursuant to a pending or continuing illegal and unlawful gaming investigation or examination being conducted by the Department.

§ 52-57. Duties of casino gaming operators, licensees, qualified organizations, or sports betting permit holders, their agents, officers, and employees.

If a casino gaming operator, licensee, qualified organization, or sports betting permit holder, or any agent, officer, or employee thereof, has knowledge that, or has reason to believe that, a violation of Article 1 (§ 18.2-325 et seq.) or 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, Chapter 40 (§ 58.1-4000 et seq.) or 41 (§ 58.1-4100 et seq.) of Title 58.1, Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, or any other provision prohibiting, limiting, regulating, or otherwise affecting gambling or gaming activity has been, is being, or will be committed, that person shall furnish and disclose any information in his possession concerning the fraudulent act to the Department, subject to any legal privilege protecting such information.

§ 52-58. Receipt of information; immunity from liability.

A. Any casino gaming operator, licensee, qualified organization, or sports betting permit holder, or any agent, officer, or employee thereof, providing information to an authorized representative of the Department pursuant to § 52-55 shall have the right to request relevant information and receive, within 30 days, the information requested.

B. No cause of action in the nature of defamation, invasion of privacy, or negligence shall arise against any person furnishing information concerning any suspected, anticipated, or completed criminal violation when the information is provided to or received from the Department or any federal or state governmental entity established for the purposes of detecting and preventing illegal gambling and unlawful gaming.

C. No casino gaming operator, licensee, qualified organization, or sports betting permit holder, or any agent, officer, or employee thereof, or any other person shall be subject to such cause of action for cooperating with or furnishing evidence or information regarding any suspected criminal violation to the Department.

D. This section shall not provide immunity for those disclosing or furnishing false information with malice or willful intent to injure any person.

E. This section does not abrogate or modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person or entity, nor does it authorize the Department to make public casino gaming operator, licensee, qualified organization, or sports betting permit holder records that are proprietary in nature.

§ 52-59. Reward fund.

The Department, in cooperation with a casino gaming operator, licensee, qualified organization, or sports betting permit holder, may establish and operate a fund to offer monetary rewards for information sufficient to procure conviction in a court of appropriate jurisdiction of a person responsible for illegal gambling and unlawful gaming. No law-enforcement officer, employee of the Virginia Lottery, Virginia Racing Commission, or Department of Agriculture and Consumer Services, casino gaming operator, licensee, qualified organization, or sports betting permit holder, or any agent, officer, or employee thereof, shall be eligible to receive such reward.

§ 52-60. Reports.

The Department shall submit an annual report to the Governor and General Assembly no later than February 15 of each year on the progress made in deterring illegal gambling and unlawful gaming. Such report shall detail (i) all expenditures and receipts of the Illegal Gambling and Unlawful Gaming Investigation Unit; (ii) the uses to which these funds were put, including payment of salaries and expenses, purchases of equipment and supplies, and other expenditures by type; and (iii) the results achieved as a consequence of such expenditures, including the number of notifications or inquiries received, the number of inquiries and investigations undertaken, the number of inquiries to which an investigation was not initiated, the number of arrests, the number of files presented to prosecutors, the number of prosecutions, the number of convictions, and the total dollar amount of restitution resulting from the operation of the Illegal Gambling and Unlawful Gaming Investigation Unit.

§ 52-61. Other law-enforcement authority.

The provisions of this chapter shall not:

1. Preempt the authority or relieve the duty of any law-enforcement agencies to investigate, examine, and prosecute suspected violations of law; or

2. Limit any of the powers granted elsewhere by the laws of the Commonwealth to the Department to investigate and examine possible violations of law and to take appropriate action.

§ 52-62. Illegal Gambling and Unlawful Gaming Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Illegal Gambling and Unlawful Gaming Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose 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 solely for the purposes of accomplishing the powers and duties assigned to the Department under this chapter and effectuating any other purposes as so enumerated in this chapter, including the funding of multi-jurisdictional assistant attorney for the Commonwealth positions that shall be dedicated to prosecuting illegal gambling and unlawful gaming and related criminal activities. 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 Superintendent.

In the event that the Illegal Gambling and Unlawful Gaming Investigation Unit is dissolved by operation of law or otherwise, any balance remaining in the Fund, after deducting administrative costs associated with the dissolution, shall revert to the general fund.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.