

**Maryland General Assembly  
Department of Legislative Services**

**Reproposed Regulations  
Maryland State Lottery and Gaming Control Agency  
(DLS Control No. 15-108)**

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## **Overview and Legal and Fiscal Impact**

These regulations establish a licensing process for the operation, manufacture, and distribution of electronic gaming devices.

The regulations present no legal issues of concern, but comments are included in the *Special Notes* section below for the committee's consideration.

State and local revenues may decrease beginning in fiscal 2017 by an indeterminate amount.

## **Regulations of COMAR Affected**

### **Maryland State Lottery and Gaming Control Agency:**

Electronic Gaming Devices – Pending: General: COMAR 36.06.01.01-.03  
Lawful and Unlawful Electronic Gaming Devices: COMAR 36.06.02.01 and .02  
Application, Licensing, and Registration: COMAR 36.06.03.01-.08  
Electronic Gaming Device General Standards: COMAR 36.06.04.01-.04  
Electronic Gaming Device Technical Standards: COMAR 36.06.05.01-.06  
Electronic Gaming Device Enforcement: COMAR 36.06.06.01

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## **Legal Analysis**

### **Background**

In *Chesapeake Amusements, Inc. v. Riddle*, the Maryland Court of Appeals took up the issue of “whether a dispensing machine with a video screen that displays the contents of the tickets that it dispenses and emits a musical tone that signals when a winning ticket is being dispensed is a ‘slot machine,’” as defined by Maryland law. The Court of Appeals found that the machine in question was not a slot machine. In response to this decision, Chapter 474 of 2008 prohibited certain gaming machines, primarily electronic bingo and tip jar machines, from operating after July 1, 2009. While Chapter 661 of 2009 extended this termination date to July 1, 2012, Chapter 603 of 2012 made permanent the authority for existing qualified organizations and licensed commercial bingo licensees to operate electronic instant bingo machines that would otherwise be illegal under State law after July 1, 2012.

Under Chapter 603, an entity licensed to offer instant bingo under a commercial bingo license on July 1, 2007, or by a qualified nonprofit organization may continue to operate a game of instant bingo in the same manner using electronic machines, provided that (1) the machines

were in operation for a one-year period ending December 31, 2007, or under a commercial bingo license on December 31, 2007; (2) the entity does not operate more than the number of machines in operation on February 28, 2008; and (3) the conduct of the gaming and operation of the machines are consistent with other specified laws.

Chapter 603 also requires the State Lottery and Gaming Control Commission (commission) to certify and regulate the operation, ownership, and manufacture of certain electronic gaming devices and determine whether such devices are legal and lawfully operated. Under the Act, a gaming device that is not licensed or otherwise compliant with necessary requirements as of January 1, 2013, is an illegal gaming device that may not legally operate in the State.

The Budget Reconciliation and Financing Act of 2013 (Chapter 425) specifies that if the commission does not make a determination that a county's licensing and regulatory process for electronic gaming devices is equivalent to the State process or that a county license for owning, operating, or manufacturing an electronic gaming device in that county is equivalent to a State license, then the regulations and licensing requirements of the commission supersede the application of any county fees or regulations and licensing requirements for electronic gaming or any requirement of a county license for owning, operating, or manufacturing an electronic gaming device.

The Budget Reconciliation and Financing Act of 2014 (Chapter 464) established a Maryland Amusement Game Advisory Committee to advise the State Lottery and Gaming Control Agency (agency) on the conduct and technical aspects of the amusement game industry, including recommendations for the legality of skills-based amusement games. The agency must adopt regulations that establish license fees, effective on July 1, 2016, that are sufficient to cover the direct and indirect costs of licensure.

## **Summary of Regulations**

The regulations establish six new chapters within a new subtitle 36.06 – *Electronic Gaming Devices*.

### **Overview (36.06.01)**

Section .01A states that the new subtitle applies to electronic gaming devices regulated by the commission under §§ 12-301 through 12-308 of the Criminal Law Article. The subtitle applies to all electronic gaming devices, regardless of whether the device delivers a game through the internet or offers internet or other services. Section .01C identifies devices to which the subtitle does not apply, including (1) certain slot machines regulated by the Comptroller; (2) lottery devices used by or under the authority of the agency; (3) video lottery terminals or table games; (4) certain instant bingo machines; or (5) paper tip jar gaming.

Regulation .02 defines various terms including “electronic gaming device.” An electronic gaming device is defined as an electronic machine, apparatus, or device that can be configured to (1) operate by inserting, depositing, or placing with another person money, a token, or another object and (2) through the element of chance, the reading of a game of chance, the delivery of a game of chance, or any other outcome unpredictable by the user, award the user anything of value

other than an award of free play or the right to receive anything of value other than an award of free play. An “electronic gaming device” does not include certain skills-based amusement devices.

Sections .03A and B authorize the commission to make a final determination that a county’s licensing and regulatory process for electronic gaming devices is equivalent to a license from the commission and a county license is equivalent to a State license. Section .03C requires that, in order for an electronic gaming device to be located in Baltimore City and Baltimore County, the device must be licensed by the jurisdiction in which the electronic gaming devices are located.

### **Lawful Electronic Gaming Devices (36.06.02)**

Regulation .01 identifies five lawful electronic gaming devices, with three of these devices excluded from the scope of these regulations. In addition to these excluded devices, certain devices operated in compliance with Title 13 of the Criminal Law Article are excluded. Regulation .02 makes clear that an electronic gaming device is unlawful if it is not authorized by Regulation .01.

### **Application for License (36.06.03)**

Regulation .01 establishes a process for the commission to accept and review the various licenses required under the regulations. Regulation .01 requires applicants to pay a nonrefundable fee established by the commission. In addition, Regulation .01 provides for review of the application, a process to make changes to the application, payment and collection of the required fee, and other continuing obligations of the applicant.

Regulation .02 requires that the application contain certain personal and background information about the applicant.

#### *Electronic Gaming Device Facility License*

Section .03A requires that key management hold a valid electronic gaming device facility license issued by the commission in order to operate electronic gaming devices. Section .03B provides that, beginning July 1, 2016, the application fee for an electronic gaming device facility license is \$50 for each electronic gaming device in operation at the facility. The \$50 fee is subject to annual adjustment by the commission. Section .03D authorizes the commission to issue an electronic gaming device facility license, subject to conditions. Section .03E authorizes the commission to issue the license after making certain determinations. Section .03F establishes that the licensee has a continuing duty to inform the commission of an act or omission that the licensee knows or should know constitutes a violation of the commission’s regulations. Section .03G establishes the term of the license and provides for the renewal of the license.

#### *Electronic Gaming Device Manufacturer/Distributor Licenses*

Section .04A requires that a manufacturer or distributor hold a valid electronic gaming device manufacturer/distributor license issued by the commission in order to offer electronic gaming devices. In addition, each person that owns, controls, or is a representative of a manufacturer or distributor must meet the commission’s license requirements. Section .04B specifies that, beginning July 1, 2016, the application fee for a manufacturer or distributor is \$150 for each electronic gaming device provided by the manufacturer or distributor that is in operation in the State. Section .04C requires that the manufacturer/distributor license issued by the

commission must specify the maximum number of electronic gaming devices that may be offered by the manufacturer or distributor under the license. Section .04D authorizes the commission to issue a manufacturer/distributor license, subject to conditions. Section .04E authorizes the commission to issue the license after making certain determinations. Section .04F establishes that the licensee has a continuing duty to inform the commission of an act or omission that the licensee knows or should know constitutes a violation of the commission's regulations. Section .04G establishes the term of the license and provides for the renewal of the license.

#### *Corrective Action*

If the director determines that a licensee no longer meets the requirements of a license or there is cause for imposing sanctions, Section .05 establishes a procedure for the licensee to take corrective action.

#### *Sanctions*

Sections .06A and B establish the conditions under which the director may impose sanctions on a licensee and the types of sanctions that may be imposed. Section .06D authorizes the Director, under certain conditions, to emergently suspend a license. Regulation .07 establishes a procedure for the commission and a licensee to enter into a settlement agreement by which a violation is settled without a penalty or sanction. Finally, Regulation .08 establishes the procedure for the commission to conduct a hearing to deny, suspend, or revoke a license.

### **Transportation, Registration, and Testing (36.06.04)**

Regulation .01 requires a person who transports an electronic gaming device to comply with applicable provisions of 15 U.S.C. §§ 1171-1178, commonly known as the Johnson Act. Generally, the Act outlines a comprehensive scheme designed to require certain persons who are engaged in certain businesses involving certain gambling devices to register annually with the U.S. Attorney General. In particular, the persons and activities included are: (1) any person who is in the business of manufacturing gambling devices and whose business affects interstate commerce, regardless of whether any such device ever enters interstate or foreign commerce; (2) any person who is in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others gambling devices where such person then sells, ships, or delivers a device with the knowledge that it will enter interstate or foreign commerce; and (3) any person who is in the business of repairing, reconditioning, buying, selling, leasing, using or making available for use by others gambling devices where such person buys or receives any such gambling device with the knowledge that it has been shipped in interstate or foreign commerce.

Section .02A requires a licensee to submit written notice on a quarterly basis to the commission indicating transportation of an electronic gaming device. Section .02B provides the information to be contained in the written notice. Section .02C requires a licensee to promptly submit written notice of any changes to the information already submitted.

Section .03A requires the commission to maintain a register of each electronic gaming device placed in operation in the State. Section .03B requires the commission, for each electronic gaming device placed in operation, to assign a device certification or registration control number and assign a certification or registration tag that is to be affixed to the device. Section .03C provides that if an electronic gaming device is transported outside of a facility, a licensee must

remove the certification or registration tag and submit the certification or registration tag to the commission with written notice.

Section .04A authorizes the commission to test electronic gaming devices and associated equipment for accuracy and any other function that the commission determines may be necessary to validate the proper functionality and performance of the devices and equipment. Section .04B authorizes the commission to accept prior testing by an independent certified testing laboratory or other testing facility recognized by the commission.

### **Testing (36.06.05)**

Regulation .01 requires testing of certain equipment and systems and software before it may be sold. Regulation .02 provides the process for a manufacturer or distributor seeking commission approval for an electronic gaming device to submit a prototype for testing. Regulation .03 requires a manufacturer or distributor, upon request, to deliver the commission certain information. Regulation .04 provides a procedure for a manufacturer or distributor to request to install a modification to equipment, a system, or software on an emergency basis. Regulation .05 establishes the process for a manufacturer, distributor, or facility to notify the commission of any known or suspected defect or malfunction in equipment, system, or software that is required to be tested, certified, and approved by the commission. Section .06A authorizes the commission to revoke an approval granted to equipment, a system, or software on a determination by the commission that the equipment, system, or software does not comply with technical standards specified by the commission pertaining to the equipment, system, or software. Section .06B authorizes the commission to impose additional conditions on the operation or placement of commission approved equipment, systems, or software.

### **Enforcement (36.06.06)**

Section .01A provides that a decision by the commission is a final determination as to whether a gaming device being operated in the State is a legal gaming device that is being operated in a lawful manner. Section .01B provides that, if local law enforcement fails to promptly enforce a final determination, the commission is required to refer the matter to the Department of State Police for enforcement of the law. Section .01C provides that, notwithstanding section .01B, if a local law enforcement agency refuses to enforce a provision regarding the legal operation of amusement games operated in Baltimore City or Baltimore County, the commission is required to refer the matter to the appropriate office of the State's Attorney.

### **Legal Issue**

The regulations present no legal issues of concern.

### **Statutory Authority and Legislative Intent**

The agency cites § 9-110 of the State Government Article and §§ 12-113, 12-301, and 12-301.1 of the Criminal Law Article as authority for the regulations.

Section 9-110(a) of the State Government Article authorizes the director, with the approval of the commission, to adopt regulations of the agency.

Section 12-113(b) of the Criminal Law Article provides that a decision by the commission is the final determination as to whether a gaming device being operated in the State is a legal gaming device and being operated in a lawful manner.

Section 12-301 of the Criminal Law Article defines “slot machine.” Section 12-301.1(b)(1) requires the commission to certify and regulate the operation, ownership, and manufacture of electronic gaming devices. Section 12-301.1(c) requires the commission to adopt regulations that: (1) define lawful and unlawful electronic and mechanical equipment used in connection with gaming devices; (2) approve and license electronic gaming devices; (3) approve and license owners, operators, and manufacturers of electronic gaming devices; (4) establish procedures for the license application and renewal processes; and (5) establish license fees that are sufficient to cover the direct and indirect costs of licensure. Chapter 464 of 2014 requires that the license fees be effective on July 1, 2016.

Section 12-301.1(d)(1) authorizes the commission to determine that a county’s licensing and regulatory process for electronic gaming devices is equivalent to the State licensing and regulatory process and that a county license for owning, operating, or manufacturing an electronic gaming device in the county is equivalent to a State license. Paragraph 12-301.1(d)(2) provides that, if the commission does not make a determination under § 12-301(d)(1), the regulations and licensing requirements of the commission supersede that of a county.

Section 12-301.1(e) provides that an electronic gaming device that is not licensed or otherwise operated in compliance with the provisions of § 12-301.1 as of January 1, 2013 is an illegal gaming device that may not legally operate in the State.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

### **Special Note**

As noted above, 36.06.03.06(D) authorizes the director, under certain conditions, to emergently suspend a license. The Maryland Administrative Procedure Act generally prohibits a unit from suspending a license unless the unit *first* gives the licensee written notice of the facts that warrant suspension or revocation and an opportunity to be heard. However, as an exception to this general rule, a unit may summarily suspend a license if it finds that the public health, safety, or welfare imperatively requires emergency action, and then promptly gives the licensee specified notice and an opportunity to be heard. Section .06(D) of the regulations authorizes an emergency suspension if the director finds that immediate action is necessary to protect against an imminent, serious threat by a licensee to *the security, financial stability, reputation or integrity of the State*; the unit then must provide the licensee with written notice of specified items, most notably, of the right to request a hearing. Arguably, the regulation clarifies what constitutes a matter of public “welfare” necessitating such a suspension – in this case, “the security, financial stability, reputation or integrity of the State.”

### **Fiscal Analysis**

State and local revenues may decrease beginning in fiscal 2017 by an indeterminate amount.

## **Agency Estimate of Projected Fiscal Impact**

The regulations implement provisions of Chapter 603 of 2012 and Chapter 464 of 2014 that regulate electronic gaming devices and skills-based amusement devices. The agency advises that the regulations have no impact on State or local governments. The Department of Legislative Services generally concurs that there is no impact beyond the fiscal and policy note estimates for Chapter 603 of 2012 and Chapter 464 of 2014, which assumed that any increase in revenues from electronic gaming license fees would be offset by the cost of regulating electronic gaming, resulting in no net impact. Beginning in fiscal 2017, State special fund revenues from the admissions and amusement tax on electronic gaming devices may decrease, and beginning in fiscal 2022, State general fund revenues may also decrease. The amount cannot be quantified at this time but is likely to be significant for a limited number of facilities. Local revenues from electronic gaming devices may also decrease in some jurisdictions.

## **Impact on Budget**

Although there is a minimal increase in special fund revenues beginning in fiscal 2017 from electronic gaming device facility and manufacturer or distributor application and license fees as a result of allowing qualified organizations to operate electronic gaming devices, this increase in revenues is offset by the anticipated increase in expenditures to cover the direct and indirect costs of licensure.

The regulations specify the fees to be charged. Thus, special fund revenues from application fees and license renewal fees increase annually, beginning July 1, 2016, by \$50 for each electronic gaming device that is in operation at an electronic gaming device facility. Also, special fund revenues from application fees and license renewal fees increase annually, beginning July 1, 2016, by \$150 for each electronic gaming device provided by the manufacturer or distributor that is operating in the State.

State special fund revenues from the State admissions and amusement tax on electronic gaming devices may decrease beginning in fiscal 2017 to the extent that State regulation of electronic gaming device facilities and manufacturers/distributors results in a reduction in the number of facilities or devices operated in the State. General fund revenues may also be affected beginning in fiscal 2022.

## **Agency Estimate of Projected Small Business Impact**

The agency advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services generally concurs that there is minimal or no impact beyond the fiscal and policy note estimates for Chapter 603 of 2012 and Chapter 464 of 2014. Any such impact cannot be estimated at this time, but it is likely to be significant for a limited number of electronic gaming facilities that are small businesses.

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