

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland State Lottery and Gaming Control Agency  
(DLS Control No. 16-140)**

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**Overview and Legal and Fiscal Impact**

These regulations establish a licensing process for the operation of electronic gaming devices and specify the enforcement powers of the State Lottery and Gaming Control Commission over these devices.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

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

Electronic Gaming Devices: General: COMAR 36.06.01.01-.03

Lawful and Unlawful Electronic Gaming Devices: COMAR 36.06.02.01-.02

Electronic Gaming Device Enforcement: COMAR 36.06.03.01

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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 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 was to adopt regulations that established license fees sufficient to cover the direct and indirect costs of licensure. To address this, the agency proposed regulations that were published in the July 10, 2015 issue of the *Maryland Register*. On August 24, 2015, the Joint Committee on Administrative, Executive, and Legislative Review (AELR) notified the agency of its intent to conduct a more detailed study of these regulations and requested that the agency delay final adoption. These regulations reintroduce the previously proposed regulations with changes as discussed below.

## **Summary of Regulations**

The regulations establish three new chapters within the new subtitle 36.06 – *Electronic Gaming Devices*.

### **General (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) paper tip jar gaming; or (5) certain skills-based amusement devices that award prizes.

Regulation .02 defines various terms including “antique electronic gaming device” and “electronic gaming device.” An antique electronic gaming device is defined as an electronic

gaming device that is at least 25 years old. 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 a preponderance of 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.

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 and Unlawful Electronic Gaming Devices (36.06.02)**

Regulation .01 identifies three lawful electronic gaming devices: (1) an antique electronic gaming device; (2) an electronic gaming device that is in the possession of or being transported by a person to demonstrate or sell the device to a prospective customer if the person meets certain qualifications; and (3) certain instant bingo machines. Regulation .02 makes clear that an electronic gaming device is unlawful if it is not authorized by Regulation .01.

### **Electronic Gaming Device Enforcement (36.06.03)**

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. 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 Issues**

The regulations present no legal issues of concern.

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

The agency cites §§ 12-113 and 12-301 through 12-308 of the Criminal Law Article and Section 6 of Chapter 603 of the Acts of 2012 as authority for the regulations.

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.

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. Section 12-301.1(d)(2) provides that, if the commission does not make a determination under § 12-301.1(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.

Section 12-302 prohibits a person from locating, possessing, keeping, or operating a slot machine, except as provided in §§ 12-304 through 12-306 of the Criminal Law Article, and establishes a corresponding penalty.

Section 12-303 defines “antique slot machine” and exempts a person from conviction under § 12-302 if the person shows that the slot machine is an antique slot machine.

Section 12-304 provides that certain nonprofit organizations in certain counties may operate slot machines subject to the framework established in the section and provides that the Comptroller shall regulate slot machines under the section.

Section 12-305 authorizes a person to take delivery of, possess, or transport a slot machine to a prospective customer who is allowed to purchase a slot machine and establishes a corresponding penalty.

Section 12-306 prohibits, subject to exceptions, a person in any place of business or building or any premises from keeping or operating a slot machine. The section also provides that prior to disposing of a slot machine, the machine must be registered, sealed against use, stored, and kept under supervision.

Section 12-307 authorizes the removal or transfer of a slot machine due to an act of God or condemnation or abandonment of the primary business by the owner.

Section 12-308 authorizes entities licensed to offer instant bingo to continue to operate in the same manner using electronic machines subject to certain conditions.

Section 6 of Chapter 603 of the Acts of 2012 authorizes the regulations adopted by the commission to include provisions that regulate the repair and replacement of electronic bingo machines and requires the regulations to include provisions providing for the legal operation of amusement games licensed by Baltimore City and Baltimore County.

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

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

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

The regulations define electronic gaming devices and specify enforcement powers over these devices. The agency advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **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 concurs.

## **Contact Information**

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