

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland State Lottery and Gaming Control Agency  
(DLS Control No. 16-142)**

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**Overview and Legal and Fiscal Impact**

These regulations provide for the registration and testing of certain skills-based amusement 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:**

Skill-based Amusement Devices: General: COMAR 36.08.01.01-.02

Registration: COMAR 36.08.02.01

Amusement Gaming License: COMAR 36.08.03.01-.06

General Standards: COMAR 36.08.04.01-.02

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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 Chapter 603, 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 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 to incorporate provisions that better define and refine the requirements for skills-based amusement games. 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. Along with the regulations proposed in the new subtitle 36.06 (Electronic Gaming Devices), these regulations reintroduce the previously proposed regulations with changes as discussed below.

## **Summary of Regulations**

The regulations establish four new chapters within the new subtitle 36.08 – *Skills-Based Amusement Devices*.

### **General (36.08.01)**

Section .01A provides that the subtitle applies to skills-based amusement devices regulated by the commission under §§ 12-301 and 12-301.1 of the Criminal Law Article and Title 9, Subtitle 1B of the State Government Article.

Regulation .02 defines certain terms. “Merchandiser device” is defined as a skills-based device by which a player controls a mechanical or electromechanical claw or other device to retrieve merchandise or prizes. “Minimal value” is defined as having a wholesale value of not

more than \$30. “Reasonable player” is defined as a first-time player of average levels of intelligence, physical and mental skills, reaction time, and dexterity. “Redemption device” is defined as a skills-based amusement device that issues only tickets, tokens, or other objects that represent or that can be converted into merchandise or prizes. “Skill” is defined generally as adhering to the common definition of the word. “Skills-based amusement device” is defined as a machine, apparatus, or device that (a) operates or can be made to operate by inserting, depositing, or placing with another person money, a token, or another object and (b) through the use of skill awards the user certain prizes or tickets.

### **Registration (36.08.02)**

Regulation .01 provides for the registration of certain devices. Section .01A requires the owner of a skills-based amusement device to register with the commission if the device awards prizes other than the award of free play. Section .01B lists the information that a person required to register must provide. Section .01C requires, under certain circumstances, the commission to issue a registration number and certificate. Section .01D requires the owner of a device required to register to adhere the registration sticker to the device. Section .01E provides that an owner may operate registered devices in accordance with this subtitle.

### **Amusement Gaming License (36.08.03)**

Regulation .01 defines “family entertainment center” as having the same definition as provided under Title 9, Subtitle 1B of the State Government Article. Regulation .02A authorizes a family entertainment center in Worcester County to apply for an amusement gaming license if it meets certain conditions. Regulation .02B provides the information required and manner by which a family entertainment center may apply for a license. Regulation .02C provides that a license is valid for five years. Regulation .02D requires a licensee to register annually. Regulation .02E authorizes licensees to operate up to 10 skills-based amusement devices. Regulation .02F authorizes the commission to require the manufacturer to submit a prototype for testing, determine whether an applicant is qualified, and conduct a hearing. Regulation .02G provides that a license may not be transferred to another geographic location.

Regulation .03 provides that, if the director determines that a licensee no longer meets the requirements of this subtitle, or that there is cause for imposing sanctions under Regulation .04, the director may require a licensee to take corrective action. Regulation .04 provides that the director may impose sanctions for violating or failing to fulfill the licensee’s responsibilities or a condition of a license under this subtitle or for violating a provision of law, regulation, or order or directive of the commission. Sanctions may include emergency suspension, suspension, revocation, and placement of conditions on the licensee.

Regulation .05 provides that the commission may provide a licensee with the opportunity to enter into a settlement agreement with the commission by which the violation is settled without a penalty or sanction. Regulation .06 requires the commission to conduct a hearing in order to deny, suspend, or revoke an amusement gaming license and provides the procedures by which a denial, suspension, or revocation may occur.

## **General Standards (36.08.04)**

Regulation .01A provides the conditions by which a skills-based amusement device may be legally operated. Regulation .01B provides that the winnings from a skills-based amusement device may be accumulated and exchanged for non-cash merchandise or prizes of value that is similar to the cumulative value of the items exchanged.

Regulation .02A provides for the testing of skills-based amusement devices. Section .02A authorizes the commission to require testing of a skills-based amusement device for (1) overall operational integrity; (2) compliance with these regulations; and (3) any other function that the commission determines may be necessary to validate the proper functionality and performance of the device. Regulation .02B authorizes the commission to accept testing of a prototype by commission staff or a testing facility recognized by the commission. Regulation .02C provides that the costs of testing shall be the responsibility of the licensee.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The State Lottery and Gaming Control Agency cites §§ 12-301 and 12-301.1 of the Criminal Law Article and §§ 9-101 and 9-1B-02 of the State Government Article as authority for the regulations. Section 12-301 of the Criminal Law Article defines “slot machine.” Specifically § 12-301(3)(vii) provides that a “slot machine” does not include a machine, apparatus, or device that is a skills-based amusement device that awards prizes of minimal value approved by the commission through regulation. Section 12-301.1 requires the commission to certify and regulate the operation, ownership, and manufacture of an electronic gaming device. Specifically, § 12-301.1(c) requires the commission to adopt regulations to approve and license electronic gaming devices, owners, and operators.

Section 9-101 of the State Government Article defines certain terms relating to the commission and licenses. Section 9-1B-02, which became effective through Chapter 595 of 2016, provides that the commission may issue an amusement gaming license to a family entertainment center in Worcester County that satisfies certain conditions.

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 implement provisions of Chapter 603 of 2012, Chapter 464 of 2014, and Chapter 595 of 2016 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 concurs that there is no impact beyond the fiscal and policy note estimates for Chapters 603,464, and most recently, 595, which assumed the agency can issue amusement gaming licenses to family entertainment centers with existing resources.

## **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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