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May 16, 2016

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: Senate Bill 941, "Worcester County – Family Entertainment Centers – Amusement Gaming Licenses"

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 941, "Worcester County – Family Entertainment Centers – Amusement Gaming Licenses." In reviewing the bill, we have noted a possible equal protection issue that we discuss below, but conclude that it is not certain the bill would violate the Equal Protection Clause of either the federal or State constitution..

Senate Bill 941 creates a new entity, a "family entertainment center," which will be permitted to operate up to 10 skills-based devices that award noncash prizes "with a minimal wholesale value that does not exceed \$599," and creates an exemption from the slot machine law for those devices. Other entities are limited to devices that "award[] the user only noncash merchandise or noncash prizes of minimal value." Criminal Law Article, § 12-301(3)(ii). While minimal value in this context has not been defined, the Fiscal and Policy Note reflects that proposed regulations would set that limit at about \$30.

Under the provisions of the bill, a family entertainment center is a location that offers licensed amusement, merchandise, redemption, or skills-based devices for operation or play by individuals of all ages and meets certain other requirements, including that it be located in Worcester County and that it has been in continuous operation in the same geographic location since 1975. The Fiscal and Policy Note reflects that only four establishments could qualify as a family entertainment center. It is our understanding that this is out of approximately fourteen similar establishments, all of which are located in Ocean City. This type of distinction has been upheld against equal protection challenge in some cases. For example, in *City of New Orleans v. Dukes*, 427 U.S. 297 (1976), the

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Supreme Court upheld a New Orleans ordinance that eliminated all push cart vendors in the French Quarter except those that had been in business for eight years or more, saying that the City could reasonably conclude that push cart vendors detracted from the historic ambience of the French Quarter, and could equally rationally decide to address the problem gradually, rather than eliminating all vendors simultaneously. The Court also found that the vendors who had been in business for a longer period of time had built up greater reliance interest, and that, due to their long tenure (factually established in the case as twenty years rather than only eight required in the statute at issue) had become part of the ambience of the French Quarter themselves. In *Legend Night Club v. Prince George's County Bd. of License Com'rs*, 2009 WL 926989 (D. Md. 2009), on the other hand, the court found that a grandfather clause in a statute effectively eliminating strip clubs was unconstitutional where the grandfather clause protected only one nightclub, owned by a former Senator. The club had been in business 24 years, 1 month and 16 days, whereas the plaintiff's establishment had been in business for 23 years and 8 months. We do not have information about the relative ages of the locations affected by this bill that would allow us to determine whether the present situation is more like that in *Dukes* or in *Legends*. We also do not know whether there is another distinction between the older and newer establishments that would explain the difference in treatment, such as location on the boardwalk rather than in other parts of Ocean City. Without such background we cannot say that the bill would violate the Equal Protection Clause of either the federal or State constitution.

Sincerely,



Brian E. Frosh
Attorney General

BEF/KMR/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Warren Deschenaux