

## **Community, Economic & Recreational Development Committee**

**October 6, 2020**

The Pennsylvania Race Horse Development and Gaming Act (“Act”) provides that the Gaming Control Board serves as the sole regulatory authority over the majority of legalized gaming in the Commonwealth. This oversight includes fantasy sports contests, slot machine gaming, table games, interactive gaming, sports wagering, airport gaming as well as video gaming (“VGTs”) at licensed truck stops. The Board’s authority does not extend to the Pennsylvania Lottery, small games of chance or horse racing.

Video gaming at licensed truck stops<sup>1</sup> was authorized through amendments to the Act enacted in 2017. The structure of VGT regulation is thorough and involves the licensing of terminal operators, truck stops as well as manufacturers and suppliers of video gaming terminals. Employees of these entities are also subject to backgrounding and review.

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<sup>1</sup> “Truck stop establishment” is currently defined as “A premises that: (1) Is equipped with diesel islands used for fueling commercial motor vehicles, (2) Has sold on average 50,000 gallons of diesel or biodiesel fuel each month for the previous 12 months or is projected to sell an average of 50,000 gallons of diesel or biodiesel fuel each month for the next 12 months, (3) Has at least 20 20 parking spaces dedicated for commercial motor vehicles, (4) Has a convenience store, (5) Is situated on a parcel of land of not less than three acres that the truck stop establishment owns or leases, (6) Is not located on any property owned by the Pennsylvania Turnpike.

Video gaming itself is offered in an area separated by a barrier from the normal operations of the truck stop. This area is overseen, at all times when VGTs are in operation, by a licensed employee of the truck stop. The area is also under video surveillance which is available for review by our staff as well as law enforcement authorities. Perhaps most importantly, all VGTs are required to have a connection to the Central Control Computer System prior to being made available for play. The machine's data is then able to be audited by the Department of Revenue to ensure tax compliance. Finally, a redemption machine is required for the distribution of winnings which assures that no cash is handled by the employees of the truck stop establishment.

At this time, the Board has licensed and approved the opening of 36 VGT facilities (See [Attachment](#)) which are geographically dispersed through the Commonwealth. Licensees' are prohibited from offering more than 5 VGTs which means that currently a total of 180 machines are being offered throughout the Commonwealth, with additional truck stops still applying for the ability to operate VGT's.

VGT gross terminal revenue (See Attached) varies by each individual licensee with a high of \$152,498 per month and a low of \$7,839 per month. Tax revenue generated for Fiscal Year 2020/21 are state tax of \$1,592,351.83 and \$379,131.39 Local Share Assessment.<sup>2</sup>

Relative to the discussion at hand, the Board believes that, should the General Assembly decide to expand the number of entities that are eligible to provide VGTs, the current regulatory framework is in place to efficiently implement the expansion. Whether our current staffing level is sufficient to handle the expansion is likely dependent upon the number of applicants. If a high volume of applications is received, the Board will be required to add a number of staff in order to efficiently process and investigate applicants as well as to oversee the placement and operations of the VGT premises when appropriate to open the new venues. Moreover, our ability to staff positions and oversee full implementation and operation of expanded VGT legislation is dependent upon the continuation of the current funding mechanism in the Act and appropriation of spending authority as well as the retention of fees collected for the implementation of Part III of the Act.

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<sup>2</sup> Local Share Assessment is “used exclusively for grants for projects in the public interest within the Commonwealth” and is distributed by the Commonwealth Financing Agency.

I would also caution that an expansion of this nature, can lead to frustration or unrealistic expectations by eligible applicants due to the unfamiliarity with gaming regulation, the protocols put in place to assure protection of the public, testing of equipment, costs of connection to the Central Computer control system and the time needed to assure compliance with all regulatory requirements. Applicants might be under the impression that opening a gaming area is as simple as turning on the lights. I assure you it is not. In addition to a rigorous background investigation, the gaming area pursuant to the Act must be separated from the normal area of business. The gaming area must be overseen by an employee who is licensed and has completed compulsive and problem gambling training. The area is also likely to require new wiring in order to handle the surveillance cameras which must be used. All the VGTs must be able to communicate with the Central Control Computer System which may or may not have to be modified and the contract may have to be amended as well by the Department of Revenue.

In sum, it is without doubt that gaming licenses are a privilege and not a right and an applicant always holds the burden of being and maintaining their

suitability to hold a license. I believe our staff will work to provide a process that facilitates and upholds the strict nature of our gaming application process. The process to obtain approval of VGT's and the subsequent operation of the machines, should not be cut short for the sake of expeditious openings when the fairness and integrity of the gaming product for the consuming public is at stake.

Finally, I want to touch upon the issue of skill games which have proliferated throughout the state. Earlier this year, the Board filed a Motion to Intervene (See Attached) in litigation between the Pennsylvania State Police ("PSP"), the Department of Revenue ("DOR") and POM of Pennsylvania, LLC ("POM").

In this litigation, POM argues that it operates skill-based amusement devices throughout the Commonwealth whereas the PSP and the DOR assert that these games are illegal gambling devices as a matter of law. The Commonwealth Court recently held a scheduling conference between the parties in order to set the litigation calendar which was interrupted by the pandemic.

The Board's Motion to Intervene provides the following arguments:

1. The amendments to the Act in 2017 made provision for skill slot machines as a regulated gaming device under the Board's oversight. Subsequently, the Commonwealth Court held in 2019 that the "skill games" as operated and placed throughout Pennsylvania by POM are "slot machines" as defined in the Act.
2. The Act provides the Gaming Control Board shall have general and sole regulatory authority over the conduct of gaming, and related activities as described in the Act and shall have sole regulatory authority over every aspect of the authorization, operation and play of slot machines.
3. No provision of law permits slot machines to be operated anywhere in the Commonwealth but in a PGCB-licensed facility.
4. The General Assembly clearly intended by the comprehensive regulatory scheme for slot machines set forth in the Act that slot machines can only be in a PGCB-licensed facility and that slot machines operated outside such a facility are illegal.
5. Slot machines are required to be tested and certified by the Board's gaming laboratory.
6. Slot machines are required to have a connection to the Central Control Computer System.

7. Slot machines shall pay a minimum payout of 85% and no one under the age of 21 shall play a slot machine.
8. There are no protections in place to ensure the integrity of skill games, to assure the collection of tax revenue produced by those machines which are operated outside of licensed facilities, or to provide compulsive and problem gambling prevention strategies, funding and treatment.

In conclusion, expanding the eligible entities which can hold a VGT license can be implemented by the Board if the General Assembly and the Governor determine to implement a policy determination that would expand VGT gaming. Furthermore, Senate Bill 1256 recognizes that skill games, as have proliferated the unregulated market, fall within the definition of slot machines in the Act and therefore can be offered to the gaming public only by licensees vetted and approved by the Board, which clears up a current legal ambiguity. We thank you for the opportunity to provide this brief statement.