

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GREENSVILLE

SADLER BROTHERS OIL COMPANY, )  
d/b/a SADLER TRAVEL PLAZA, )  
SLIP-IN FOOD MARTS, INC. and )  
CHN, LLC )

Plaintiffs, )

v. )

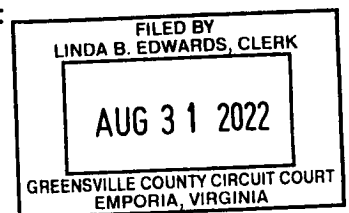
Civil Case No. CL21-207

THE COMMONWEALTH OF VIRGINIA, )  
GLENN YOUNGKIN, in his official )  
Capacity as Governor of the Commonwealth )  
Of Virginia, JASON MIYARES, in his )  
official capacity as Attorney General for the )  
Commonwealth of Virginia, and )  
THE VIRGINIA ALCOHOLIC )  
BEVERAGE CONTROL AUTHORITY, )

Defendants. )

**FIRST AMENDED COMPLAINT**

COME NOW, your Plaintiffs Sadler Brothers Oil Company, Inc. d/b/a Sadler Travel Plaza, Slip-In Food Marts, Inc., and CHN, LLC (“Plaintiffs” or “Sadler”), through the undersigned counsel, state as follows for their First Amended Complaint for declaratory judgment and temporary and permanent injunctive relief against Defendants the Commonwealth of Virginia (“the Commonwealth”), His Excellency Glenn Youngkin (“Governor Youngkin”), in his official capacity as Governor of the Commonwealth of Virginia, Jason Miyares (“Attorney General Miyares”), in his official capacity as Attorney General for the Commonwealth of Virginia, and the Virginia Alcoholic Beverage Control Authority (“ABC”), (collectively, “Defendants”):

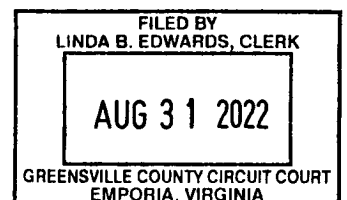


## INTRODUCTION

1. In 2020, in the midst of an unprecedented expansion of gaming in Virginia, including the approval of five casinos, the legalization of sports betting, and the expansion of charitable gaming, the Virginia Legislature passed a bill banning skill games. Skill games have been legal for centuries under the statutory and common law of the Commonwealth of Virginia and virtually every other jurisdiction in the United States, which have distinguished games of skill from gambling devices because the outcome of a skill game is controlled by the skill of the player rather than chance or other factors outside of the player's control. *See* Exhibit A, Chapter 1277 of the 2020 Acts of Assembly, as subsequently amended in 2022 ("the Skill Game Ban").

2. Skill games have now recently drawn the ire of the historical horse racing, casino, and sports betting special interests because skill games are a popular form of entertainment in local neighborhood convenience stores, bars, restaurants, and truck stops that kept the revenues in the local communities and threatened to undercut the revenue potential of the out-of-state gaming businesses that the legislature has now invited into the Commonwealth.

3. In response to industry pressures, the Virginia legislature passed the haphazard, nonsensical, and constitutionally infirm Skill Game Ban, which purported to ban skill games effective July 1, 2021 until this Court entered a temporary injunction enjoining enforcement of the Skill Game Ban on December 6, 2021 (the "Temporary Injunction").

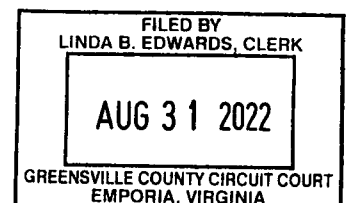


4. Some legislators resented this Court's entry of the Temporary Injunction. Senators Tommy Norment and Janet Howell submitted *amicus curiae* briefs in support of a failed appeal to the Virginia Supreme Court.

5. These legislative opponents of skill games in the Commonwealth failed to pass any new skill game legislation in the 2022 legislative session.

6. Instead, a select group of budget conferees, including Senator Howell and Delegate Barry Knight, schemed to sneak into the delayed budget bill a purported amendment to the enjoined Skill Game Ban tacked on as the 13th enactment to the budget bill's "effective date" provision at item 4-14 ("the Skill Game Budget Item"). With this tactic, the conferees could exploit the budget as a figurative hostage to ensure passage of an unpopular bill that did not appropriate any funds, was wholly unrelated to the budget, and which was not appropriately considered by a legislative committee. This is the archetypal case of legislative "logrolling" – forcing through unpopular and inadequately considered legislation by combining it with unrelated but popular or "must pass" laws – that is specifically forbidden by the single object rule in Article IV, section 12 of the Virginia Constitution. Nevertheless, the conferees' cynical tactic ensured that an amendment to the Skill Game Ban, which changed the substantive criminal law in the Commonwealth of Virginia, would not get a standalone up-down vote in either house of the General Assembly.

7. Moreover, the purported amendment did not cure the constitutional infirmity in the Skill Game Ban, which still fails for the same reasons that prompted the Court to enter the Temporary Injunction, *and* for additional reasons.

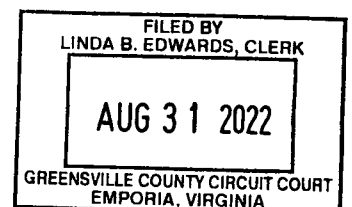


8. Sadler is the owner of a truck stop in Emporia known as Sadler Travel Plaza (“the Truck Stop”) that has offered its patrons skill games for nearly twenty (20) years and has depended on skill games to weather the COVID-19 pandemic. Additionally, and as more fully explained below, Sadler operates nine other establishments (in addition to the Emporia Truck Stop) throughout southern Virginia that offers skill games to the public who visit its stores. All in all, nearly three million people are estimated to patronize Sadler’s ten stores each year.

9. Like many small businesses in the Commonwealth, Sadler has relied on skill games to weather difficult economic circumstances and to provide it with sustainable, supplemental income.

10. The Skill Game Ban is unconstitutional under the Virginia Constitution. First, the so-called “family entertainment exception” violates Plaintiffs’ free speech rights in three respects:

- a. It restricts the games that Plaintiffs may offer at the Truck Stop and their other businesses and imposes impermissible content-based restrictions on the types of video games permitted to be operated in Virginia;
- b. It discriminates against retail locations, like those of Plaintiffs, that do not primarily advertise and market to families with children, which locations are not permitted to offer skill games to patrons; and
- c. It conditions the permissibility of skill games on the type of marketing that a retail establishment employs, thereby unconstitutionally compelling the speech of skill game purveyors in the Commonwealth such as Plaintiffs.



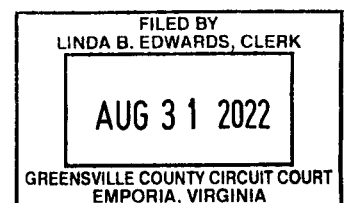
11. Second, the Skill Game Ban is a content-based regulation of speech insofar as it is intended to ban only a certain type of skill game based on the aesthetics, message, and/or ideas of that particular type of skill game. The Skill Game Ban, in operation, is only enforced against one particular type of skill games.

12. Third, the Skill Game Ban is unconstitutionally vague and overbroad and violates the due process guarantee in the Virginia Constitution insofar as it does not give a person of ordinary intelligence a reasonable opportunity to know or understand what is prohibited thereby, and it includes within its broad sweep unquestionably legal activities and constitutionally protected speech.

13. Fourth, the Skill Game Ban is also unconstitutional because the purported amendment in the Skill Game Budget Item violates the single object rule in Article IV, section 12, its purported amendment was not referred to a committee of each house of the general assembly, as required in Article IV, section 11, and because it is unconstitutional special legislation in violation of Article IV, sections 14 and 15.

14. Defendants have implemented and are charged with the enforcement of the Skill Game Ban.

15. As a result of the Skill Game Ban, Plaintiffs and many similarly situated convenience store, restaurant, and truck stop owners will lose an invaluable revenue stream all because of unconstitutional legislation that this Court should declare void and unenforceable. Accordingly, Plaintiffs file this Complaint and seeks declaratory and injunctive relief, including a preliminary injunction, voiding and restraining the enforcement of the Skill Game Ban, and the maintenance of the status quo ante to protect Plaintiffs' constitutional rights.



## THE PARTIES

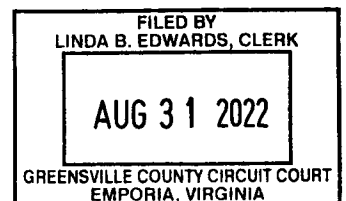
16. Sadler Brothers Oil Company is a Virginia corporation with its principal place of business in Emporia, Virginia. Slip-In Food Mart, Inc. is a Virginia corporation with its principal place of business in Emporia, Virginia. CHN, LLC is a Virginia limited liability company with its principal place of business in Emporia, Virginia. Sadler operates ten gas station/convenience stores as well as restaurants in southern Virginia. These include: the Cox Slip-In in Petersburg; The Franklin Slip-in in Franklin; the Market Drive Slip-In in Emporia; the Sadler Race-In in Petersburg; the Sadler Travel Plaza in Emporia; the Sadler Travel Plaza in Suffolk; the Shell station and store in Kenbridge; the Skippers Slip-In in Skippers; the South Hill Slip-In in South Hill; and the Sunoco station and store in Blackstone.

17. The Commonwealth is a governmental body under the auspices of which the Skill Game Ban is to be enforced.

18. Governor Youngkin is the Governor of the Commonwealth in whom the chief executive power of the Commonwealth is vested. Va. Const. Art. V § 1. He is sued in his official capacity.

19. Attorney General Miyares is the Attorney General of the Commonwealth charged with leading the Office of the Attorney General, “the Commonwealth’s law firm,” and enforcing the laws of the Commonwealth. He is sued in his official capacity.

20. ABC is a public safety agency in the Commonwealth, charged with the administration of the state’s alcoholic beverage-related laws, which has advised distributors and operators of skill games that it will exercise its authority to prohibit



gambling devices in ABC-licensed establishments pursuant to Va. Code § 4.1-325 and assist the Office of the Attorney General in the enforcement of the skill game ban.

### **JURISDICTION AND VENUE**

21. This Court has subject matter jurisdiction over this dispute pursuant to Va. Code § 17.1-513.

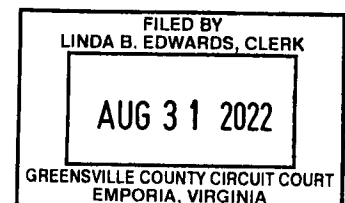
22. This Court has personal jurisdiction over Defendants as citizens, government officials, and/or governmental/administrative bodies of the Commonwealth and/or pursuant to Va. Code § 8.01-328.1(A)(1).

23. Venue is proper in this Court pursuant to Va. Code § 8.01-261 because this action seeks an injunction against the enforcement of unconstitutional criminal laws at Plaintiffs' businesses in Emporia, Virginia, and pursuant to Va. Code § 8.01-262 because the cause of action arose and Plaintiffs are located in Emporia, Virginia.

### **FACTS**

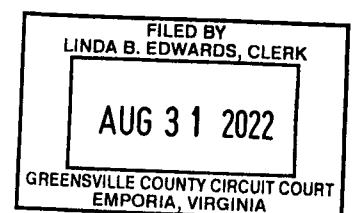
#### **A. Plaintiffs**

24. Sadler has owned and operated the Truck Stop for forty (40) years, and serves nearly three million customers every year, many of whom are out-of-state travelers passing through Emporia via I-95. Sadler operates ten gas station/convenience stores as well as restaurants in southern Virginia. These include: the Cox Slip-In in Petersburg; The Franklin Slip-in in Franklin; the Market Drive Slip-In in Emporia; the Sadler Race-In in Petersburg; the Sadler Travel Plaza in Emporia; the Sadler Travel Plaza in Suffolk; the Shell station and store in Kenbridge; the Skippers Slip-In in Skippers; the South Hill Slip-In in South Hill; and the Sunoco station and store in Blackstone.



25. In 1980, the Truck Stop, like thousands of other Virginia businesses, added skill games to its roster of arcade games, claw machines, pinball machines etc., providing local Emporia citizens and out-of-state travelers a new source of entertainment at the Truck Stop, as well as the other convenience stores and gas stations that it owns in southern Virginia. Specifically, Sadler has the following skill games machines in the following stores that it owns that are accessible for use by the general public during each store's hours of operation: the Cox Slip-In store in Petersburg currently operates three (3) skill games machines on premises; The Franklin Slip-in in Franklin operates seven (7) skill games machines on premises; the Market Drive Slip-In in Emoria operates three (3) skill games machines on premises; the Sadler Race-In in Petersburg operates four (4) skill games machines on premises; the Sadler Travel Plaza in Emporia operates seven (7) skill games on premises; the Sadler Travel Plaza in Suffolk operates four (4) skill games on premises; the Shell station and store in Kenbridge operates three (3) skill games on premises; the Skippers Slip-In in Skippers operates four (4) skill games on premises; the South Hill Slip-In in South Hill operates two (2) skill games on premises; and the Sunoco station and store in Blackstone operates four (4) skill games on premises .

26. Cumulatively, Sadler operates forty-one (41) skill games in the Commonwealth of Virginia. Pursuant to the current statutory regulations and taxation by the Commonwealth that was in place through June 30, 2021, Sadler paid one thousand two-hundred dollars (\$1,200.00) per month, per machine to the Commonwealth of Virginia in order to operate all of the aforementioned machines in these ten establishments, which equals a payment directly to the Commonwealth of Virginia





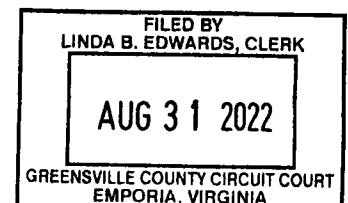
(regardless of the income from each machine) of five hundred and ninety thousand, four hundred dollars per year (\$590,400.00).

27. Plaintiffs, like many other Virginia businesses with skill games, have reinvested the revenue that skill games generated by hiring new employees, renovating, and maintaining current employees during the pandemic.

28. When the COVID-19 pandemic struck in March 2020, skill games proved a life-line for the Truck Stop and Plaintiffs' other businesses. Skill Games continued to attract patrons who might not normally have visited the Truck Stop, and the revenue generated from skill games allowed Plaintiffs to retain employees, stay open and provide free lunches to first responders during the shut-down.

#### **B. Skill Games**

29. Skill games are typically a type of coin-operated video game in which the player solves puzzles or plays video games to maximize his or her score or credits. There are many different type of skill games, including traditional video arcade games like Pac Man or Galaga, car racing games, puzzle solving or matching games with different game themes, sports-themed games like Golden Tee, skee ball, crane games, pinball machines, and basketball shooting games. These are all examples of skill games that exist in retail establishments throughout Virginia. Players use strategy, knowledge, physical dexterity and experience to play the game and potentially win free replays or other prizes based on their level of skill. Some skill games have the visual aesthetic of traditional arcade video games, some have sporting themes, and some have a more adult visual aesthetic reminiscent of a slot machine with spinning reels, matching rows of fruit, or poker themes. Skill games, however, are different from slot machines or other types of games



of chance because the outcome of a skill game is based on the skill of the player—and is not based on chance.

30. Skill games have always been legal in the Commonwealth, whether or not they awarded prizes of cash, merchandise or anything else of value. Moreover, as explained *infra*, skill games were recently regulated by the ABC and taxed by the Department of Taxation.

**C. The Virginia General Assembly’s Efforts to Ban Skill Games**

31. On January 15, 2020, a week after the 2020 General Assembly session convened, the Skill Game Ban was introduced in the Virginia Senate.

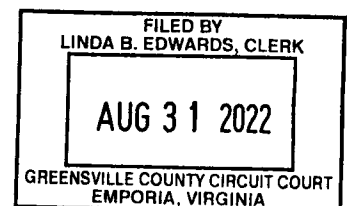
32. On January 29, 2020, the Skill Game Ban passed out of committee containing language which would ban skill games with an exception for so-called “family entertainment centers.”

33. The Skill Game Ban purported to amend Va. Code § 18.2-325(1) and (3)’s definitions of “illegal gambling” and “gambling device” to include “skill games,” which are defined as

an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise; or anything of value whether the payoff is made automatically from the device or manually.

Exhibit A.

34. On March 18, 2020, the Skill Game Ban passed in both the House and Senate, banning skill games with an exception only for “family entertainment centers.”



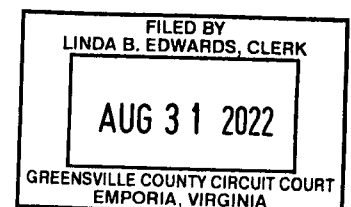
35. Pursuant to the bill, “family entertainment center” is defined as an establishment that (i) is located in a building that is owned, leased, or occupied by the establishment for the primary purpose of providing amusement and entertainment to the public; (ii) offers coin-operated amusement games **and skill games** pursuant to the exemption created by this section; and (iii) **markets its business to families with children.**” (Emphasis added.) The bill allows “a person operating a family entertainment center” to “make skill games available for play” under certain circumstances, but flatly prohibits the operation of skill games outside of family entertainment centers. *See* Exhibit A.

36. On April 11, 2020, after the Commonwealth began to experience the initial fiscal impacts of the early COVID-19 pandemic, then-Governor Northam proposed a substitute bill, which would delay the effective date of the skill game ban and add a one-year period in which skill games throughout the Commonwealth were taxed and regulated through June 30, 2021. Beginning July 1, 2021, however, skill games would be banned in all convenience stores and bars, but still allowed to operate in so-called “family entertainment centers.”

37. Then-Governor Northam’s substitute bill was approved by both houses of the General Assembly and enacted on April 22, 2020. *See* Exhibit A.

38. Pursuant to the one-year tax and regulate period, skill games operated in Virginia, paying significant taxes and fees.

39. During that year, skill game operators and manufacturers paid a tax of \$1,200 per machine each month. A portion of the money raised by this tax went to (1)



Virginia's COVID-19 Relief Fund, (2) Virginia's Problem Gambling Treatment and Support Fund, and (3) localities where skill games are located.

40. As noted by then-Governor Northam during his 2021 State of the Commonwealth Address:

[Skill games] bring in a lot of money. Upwards of \$90 to \$100 million dollars in revenue from these taxes. That could double the amount of small employers who get help and, for many, that could mean surviving instead of going under.

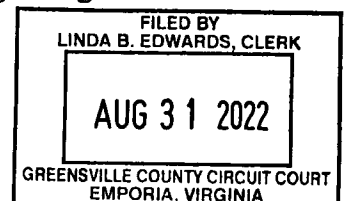
41. In fact, the skill games actually contributed approximately \$130 million in tax revenues for the Commonwealth and localities.

42. During the tax-and-regulate period and following this Court's entry of the Temporary Injunction on December 6, 2021, skill games provided a critical source of revenue for beleaguered restaurants, bars, convenience stores, and truck stops allowing owners, who might have otherwise been forced to close their shops, to stay open and continue serving their communities.

43. This is true for Plaintiffs, for whom these skill games provided over seven hundred and fifty-thousand dollars in net revenue that offset the deficits to their businesses caused by the ex-Governor's Executive Orders that restricted movement of the citizens and closures of surrounding businesses during the dark days of the pandemic.

44. On January 8, 2021, the 2021 General Assembly session convened and HB 1880 was introduced in the House of Delegates, proposing an extension of the tax and regulation of skill games through June 30, 2022. Despite the success of the previous year, the bill never left the General Laws Committee.

45. On January 12, 2021, HB 2168 was introduced and permitted localities to enforce gambling device laws against unregulated locations, including skill games.



46. On February 24, 2021, a conference amendment to HB 2168 was proposed, which purportedly allowed any organization that had conducted regulated gaming prior to February 1, 2021 to continue to do so through June 30, 2022. This amendment would have allowed skill games to continue to operate for another one-year period. HB 2168 passed both the House and Senate.

47. This preservation of existing regulated gaming accorded with the trend in Virginia toward liberalizing gaming, including the opening of the state to casinos (HB 4), the legalization of sports betting (HB 896), the expansion of charitable gaming (2020 Acts of Assembly, Ch 982 (SB 936)), and the expansion of historic horseracing facilities (SB 36)—all evidencing a relaxation of the state’s police power to enforce gambling.

48. Upon information and belief, while HB2168 was sitting on then-Governor Northam’s desk awaiting his signature, lobbyists for the casino and gaming industry intervened and demanded that the Governor to veto or amend HB 2168.

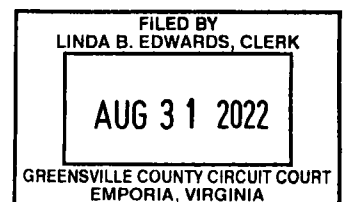
49. On April 7, 2021, then-Governor Northam proposed an amendment to HB 2168 removing the extension of “regulated gaming.”

50. The Governor’s amendment was passed by the House and Senate and enacted the same day. The Governor’s amendment effectively bans skill games beginning July 1, 2021.

**D. The 2022 Budget Bill Attempt to Circumvent this Litigation and Amend the Skill Game Ban**

51. On December 6, 2021, this Court enjoined enforcement of the Skill Game Ban.

52. On January 10, 2022, the Virginia Supreme Court rejected Defendants’ appeal of the injunction, which was supported by *amicus curiae* briefs from Senators Norment and Howell.



53. On January 12, 2022, the Virginia General Assembly opened its 2022 session. However, no bills purporting to ban skill games were introduced during the regular session.

54. Instead, some of the legislative drivers of the Skill Game Ban, including Senator Howell, conspired to force into the *budget bill* an amendment to the Skill Game Ban.

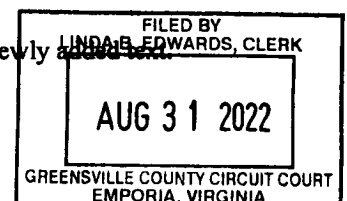
55. On or around May 27, the budget conferees released their proposed budget, which included a peculiar item that made no appropriation, and was not germane or relevant to the budget or the administration of the Commonwealth's finances. Instead, the Skill Game Budget Item amended the Skill Game Ban. The budget item removed the family entertainment center exception, but preserved the existing definitions of "illegal gambling" and "gambling devices" in Va. Code § 18.2-325, including the inscrutable, nonsensical directive that "[i]llegal gambling also means the playing or offering for play of any skill game." See Exhibit A.

56. The Skill Game Ban as amended modifies the definition of "skill game" at Va. Code § 18.2-325(6) as follows:<sup>1</sup>

6. "Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; ~~merchandise; or anything of value or cash equivalents~~ whether the payoff is made automatically from the device or manually. "Skill game" includes (i) a device that contains a meter or measurement device that records the number of free games or portions of games that are rewarded and (ii) a device designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than the amount that is ordinarily required to play the game. "Skill game" does not include any amusement device, as defined in § 18.2-334.6.

57. The Skill Game Budget Item goes on to remove the family entertainment center language at Va. Code § 18.2-334.6(A) and replace it with the following definitions:

<sup>1</sup> The strikethrough denotes language removed from the preexisting definition. Italics denote newly added text.



*"Amusement device" means a game that is activated by a coin, token, or other object of consideration or value and that does not provide the opportunity to (i) enter into a sweepstakes, lottery, or other illegal gambling event or (ii) receive any form of consideration or value, except for an appropriate reward.*

*"Appropriate reward" means a noncash, merchandise prize (i) the value of which does not exceed the cost of playing the amusement device or the total aggregate cost of playing multiple amusement devices, (ii) that is not and does not include an alcoholic beverage, (iii) that is not eligible for repurchase, and (iv) that is not exchangeable for cash or cash equivalents.*

58. Subsection B is amended as follows:

~~B. Notwithstanding the provisions of § 18.2-325, a person operating a family entertainment center may make skill games amusement devices available for play if the prize won or distributed to a player is a noncash, merchandise prize or a voucher, billet, ticket, token, or electronic credit redeemable only for a noncash, merchandise prize (i) the value of which does not exceed the cost of playing the skill game or the total aggregate cost of playing multiple skill games; (ii) that is not and does not include an alcoholic beverage; (iii) that is not eligible for repurchase; and (iv) that is not exchangeable for cash, cash equivalents, or anything of value whatsoever an appropriate reward. An appropriate reward shall only be redeemable on the premises where the amusement device is located.~~

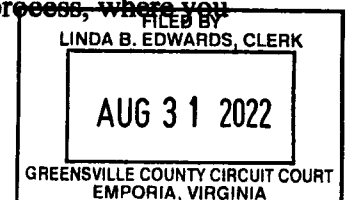
59. Finally, the Skill Game Ban as amended adds two new subsections to section 18.2-334.6:

*C. An amusement device shall not be designed or adapted to cause or enable a person to cause the release of free games or portions of games when designated as a potential reward for use of the device and shall not contain any meter or other measurement device to record the number of free games or portions of games that are rewarded.*

*D. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.*

60. Some legislators questioned the propriety of amending the Skill Game Ban in an appropriations bill, where it bore no reasonable relation to the budget and contained no appropriation. During floor debate on the budget bill on June 1, Delegate Marcus B. Simon (D-Fairfax) noted:

And so what bothers me about this process, Mr. Speaker is this, I guess I would describe this as sort of the D.C.-ification, right? The Washingtonization of our process, where you



take important policy priorities, that frankly, we couldn't get a consensus on, right? Like what are we going to do about marijuana legalization? What are we going to do about the definition of skill games? How are we going to regulate casinos? Should we have another referendum or not? These things that went through a normal legislative process where we had committee chairs and we had committee members and subject matter expertise come and testify on these things, didn't get the answer you wanted. So we stick it in the budget. In the other terms sections. That happens not usually in Richmond, that's how they do things in Washington, DC, Mr. Speaker. You tack things on to must pass provisions. We heard from Delegate Rome. She feels like she has to pass this budget because we don't want the government to shut down. Right? That's not how we used to do things here. And that's not how I think we ought to be doing things going forward. . . We did this budget late, outside the public view when we weren't even here in Richmond to be able to talk to the folks that were making the decision.

61. As Delegate Simon noted, legislators had no choice, and the conferees, including Senator Howell, wielded the budget as a hostage to ensure that a ban on skill games that was not publicly disclosed prior to its inclusion in the budget bill, and which was not considered by any committee, let alone during the general legislative session, was forced through.

62. The conferees forced the unpopular Skill Game Budget Item to the General Assembly, which had no choice but to vote for it as part of the budget package, as the Commonwealth would effectively shut down without an enacted budget bill before July 1, 2022.

63. The budget passed both houses on June 1, 2022. Later that month, Governor Youngkin signed the budget bill, which became effective on July 1.

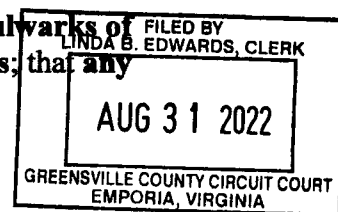
### COUNT I

#### **Violation of the Free Speech Clause of the Virginia Constitution**

64. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

65. The Virginia Constitution is especially clear that freedom of speech is sacrosanct in the Commonwealth:

**That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any**





**citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.**

Va. Const. Art. I §12 (emphasis added).

66. Electronic and video games are protected speech under the Virginia Constitution.

67. By banning skill games (other than in family entertainment centers), Defendants are infringing upon the free speech rights of Plaintiffs and other businesses that offer skill games but do not meet the requirements of the family entertainment exception by

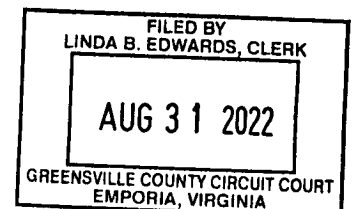
a. Restricting the games that Plaintiffs may offer at the Truck Stop and other businesses and imposing impermissible content-based restrictions on the types of video games permitted to be operated in Virginia;

b. Discriminating against locations that do not advertise and market to families with children, which locations are not permitted to offer skill games to patrons; and

c. Conditioning the permissibility of skill games on the type of marketing that the establishment employs, thereby unconstitutionally compelling the speech of skill game purveyors in the Commonwealth such as Plaintiffs.

68. During the year in which skill games were taxed and regulated, skill games that had a certain aesthetic or theme (i.e. looked like a slot machine) were regulated and taxed as “skill games.” Skill games that did not have this aesthetic or theme (such as traditional arcade games, crane games, coin-pushers, carnival games, etc.) did not have to pay the \$1,200 monthly tax and were not regulated.

69. Pac-Man and Galaga games in local restaurants were allowed to operate without taxation and regulation despite the fact that they fell within the definition of “skill game.”



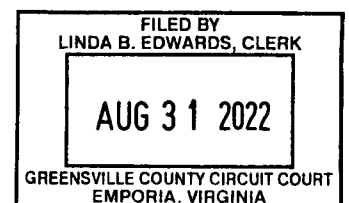
70. Skill games at Dave & Busters and Chuck E. Cheese were allowed to operate without taxation and regulation despite the fact that they fell within the definition of “skill game” and the “family entertainment center” exception was not yet effective.

71. Defendants and law enforcement clearly treated one type of skill game different than others. This disparate treatment was based on the speech of the game itself, i.e. its visual aesthetic.

72. Skill games that looked like traditional arcade games, carnival games, and sports games were tolerated and allowed to operate outside of the “skill game” taxation and regulation scheme. Skill games with more adult themes, especially those that looked similar to slot machines, spinning wheels, matching fruit games, or video poker were heavily regulated as “skill games” and were required to pay the hefty \$1,200 per month per game tax.

73. The Skill Game Ban bans certain games based on this very same content-based. Skill games like skee-ball and pinball arguably fall within the text of the new statutory definition of “skill game” because they are “electronic, computerized or mechanical” contrivances that require the insertion of some form of consideration, that are skill-based (i.e., skill of the player determines the outcome), and that reward something “of value” to the successful player. Even video arcade games fall within this textual definition if they award the player with something of value, such as a free replay.

74. Certain games were banned and others allowed to operate based on the content of the respective games’ speech. A pinball machine or video arcade game that does not have a visual theme that can be described as analogous to the “look” of a casino game will be permissible, but a skill game at a truck stop is not.



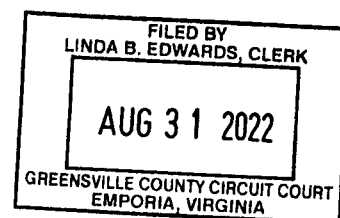
75. The Skill Game Ban is *intended* to target certain games based upon their aesthetics or visual content. The Skill Game Ban is intended to be enforced against skill games that resemble traditional gambling or casino games. It has not been enforced against carnival or amusement games that otherwise meet the definition of “skill game” in the Skill Game Ban, including as amended in the 2022 budget bill.

76. The Skill Game Budget Item does not cure the constitutional violation with respect to the free speech guarantee in the Virginia Constitution. It merely alters the definition of “skill game” to exempt games that award merchandise prizes or “anything of value” other than what is specifically enumerated in Va. Code § 18.2-325(6), and to exempt “amusement devices” that award “appropriate rewards” in a scheme that apparently replaces the family entertainment center exception.

77. Moreover, the Skill Game Budget Item should be disregarded as void because its enactment violates sections 11 and 12 of Article IV of the Virginia Constitution.

78. First, Article IV, section 11 provides that “[n]o law shall be enacted except by bill [and] [n]o bill shall become law unless, prior to its passage: (a) it has been referred to a committee of each house, considered by such committee in session, and reported...” The Skill Game Budget Item was tacked on to the wholly unrelated budget bill at the eleventh hour by state budget conferees who met in secret. It was never referred to or considered by a committee of each house of the General Assembly, At least one Delegate specifically criticized the budget process for circumventing this requirement. *See, supra*, ¶ 60.

79. Second, the Skill Game Budget Item runs afoul of Article IV, section 12 of the Virginia Constitution, which provides that “[n]o law shall embrace more than *one* object, which shall be expressed in its title.” (emphasis added). The budget bill, 2022 House Bill 30, is



intended to provide “for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of” Va. Code § 2.2-1509.

80. The Skill Game Budget Item is not germane to or congruous with the single subject of the bill. It does not appropriate any funds, it bears no relation to the state budget, and has no relation to the economic administration of the Commonwealth. It is a non sequitur, and void under Article IV, section 12 of the Virginia Constitution.<sup>2</sup>

81. As drafted, the Skill Game Ban effectively bans a wide swath of games, including Golden Tee games, coin pushers, crane games, and amusement games at venues like arcades, movie theaters, bowling alleys, Dave & Buster’s and Chuck E. Cheese that award cash prizes or merchandise in excess of the value of the consideration paid to play. Evidence was presented at the December 6, 2021 temporary injunction hearing that these games, while technically illegal under the Skill Game Ban, continued to proliferate in the Commonwealth of Virginia. The situation has not changed since the Skill Game Ban’s purported amendment in the budget bill.

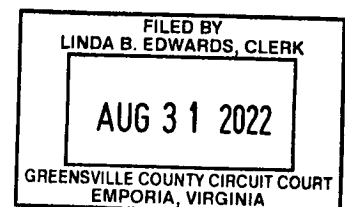
82. The Skill Game Ban effects an unlawful content-based restriction on free speech and unlawful viewpoint discrimination.

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<sup>2</sup> The Budget Bill’s enacting clause even refers to it as part of a *separate act* in violation of the requirement that each law embrace a single object that must be expressed in its title. The title of the bill as enumerated in its enacting clause expresses *multiple* objects in violation of Article IV, section 12 of the Virginia Constitution:

**An Act** for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of § 2.2-1509, Code of Virginia, and to provide a portion of the revenues for the two years ending respectively on the thirtieth day of June, 2023, and the thirtieth day of June, 2024, **and an Act to amend and reenact** §§ 3.2-5145.5, 4.1-1100, 4.1-1101, 18.2-325, 18.2-334.6, 22.1-349.1, 58.1-322.02, 58.1-322.03, 58.1-339.8, 58.1-439.30, 58.1-611.1, and 59.1-200 of the Code of Virginia.

(emphasis added).



83. This is the same as banning the sale of violent video games, a practice which courts, including the United States Supreme Court, have universally found to be an unconstitutional violation of free speech. In both instances, a video game is allowed or banned based on the content or aesthetic of the video game itself. In both instances, the law constitutes impermissible viewpoint discrimination in violation of free speech principles.

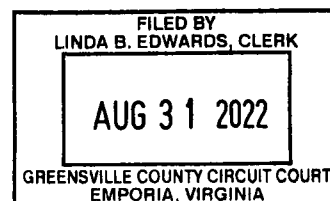
84. In addition to discriminating against the content of the game itself, the Skill Game Ban likewise infringes upon Plaintiffs' speech rights by permitting retail locations that market and advertise to families with children to offer games, but forbidding locations that do not market or speak about themselves in that way from offering games.

85. The Government cannot infringe Plaintiffs' free speech by requiring it to cater to a family friendly clientele or speak in a manner that pleases the government.

86. The Skill Game Ban requires retailers to market and advertise their business to "families with children" in order to qualify as a "family entertainment center" that is able to operate skill games. This is the same as requiring a store owner to post a sign warning customers about violent video games before selling video games, which is another practice that courts have repeatedly found to violate free speech. Unless Plaintiffs market and advertise their businesses in the particular manner mandated by the State, it will not be allowed to operate skill games under Defendants' interpretation of the Skill Game Ban.

87. Such government compelled speech is not permitted under the Virginia Constitution, which describes freedom of speech as "among the great bulwarks of liberty." Va. Const. Art. I § 12.

88. For these reasons, the Skill Game Ban is an unconstitutional infringement of Plaintiffs' right of free speech.

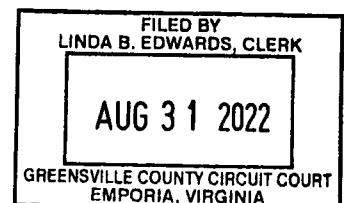


89. No justification exists for these restrictions upon Plaintiffs' free speech. If the State deems the games to be somehow inimical or harmful to public safety, allowing *children* to play them at so called family entertainment centers undermines that interest. Moreover, at the same time that Virginia banned skill games, Virginia has allowed the unprecedented expansion of actual gambling in the form of casino gambling, sports betting, charitable gambling, and historic horseracing. The General Assembly and Governor cannot pick and choose winners and losers in such a manner, especially when free speech and due process rights are at issue.

90. It is noteworthy that other parties have complained and challenged the Defendants' regulation of skill games as impermissible discrimination on the basis of race, religion and national origin, given that skill games are operated in convenience stores that are disproportionately owned and frequented by people of color. Disparaging comments were made about the people who play and operate skill games on the General Assembly floor during the skill ban debate. To the extent that these racial, ethnic or cultural stereotypes were the rationale behind the General Assembly's and Governor's actions, such paternalistic and stereotypical thinking is not a permissible governmental interest, much less a compelling interest.

91. Even if there were some articulable government interest or justification for the Skill Game Ban, the interest is not compelling, narrowly tailored to effectuate that interest, or substantially effective insofar as the Skill Game Ban permits *children* to play skill games at family entertainment centers and the General Assembly has otherwise opened the door to actual gambling in a variety of other contexts.

92. The Skill Game Ban is both over-inclusive and under-inclusive and does not survive strict scrutiny, intermediate scrutiny, rational basis, or any other applicable constitutional standard.



## COUNT II

### **Violation of the Due Process Clause of the Virginia Constitution**

93. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

94. The due process clause of the Virginia Constitution provides that “no person shall be deprived of his life, liberty, or property without due process of law.” Va. Const. Art. I § 11.

95. The Skill Game Ban’s definitions of “skill game” and “family entertainment center” are unconstitutionally vague and overbroad and accordingly offend the due process guarantee in the Virginia Constitution.

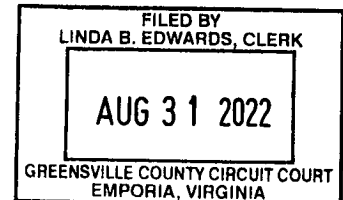
96. Legislative enactments must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and what is permitted, so that the person may act accordingly.

97. The definition of “skill game” in the Skill Game Ban is similar in some respects but departs drastically in other respects from the established definition of a gambling device.

The Skill Game Ban first defined a skill game as:

an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise; or anything of value whether the payoff is made automatically from the device or manually.

98. In one interpretation of this language, “skill games” would include pinball machines and nearly all types of video arcade games, all of which are based on the skill of the player and many of which may reward the player with electronic credits or something of value.



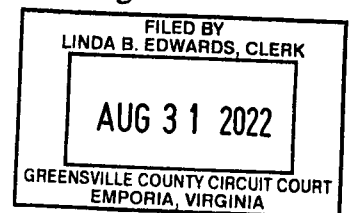
A free replay – a common feature in pinball video arcade games – would certainly qualify as “anything of value” because it would otherwise cost money in order to play the game again.

99. Indeed, the General Assembly had specifically addressed this ambiguity in the definition of illegal “gambling device” in Va. Code § 18.2-325. The definition of “gambling device” is similar to the definition of “skill game” and contains the same language about awarding the player with “something of value.” But the “gambling device” statute then clarifies that “provided, however, that the return to the user of nothing more than additional chances or the right to use such machine is not deemed something of value within the meaning of this subsection.” Va. Code § 18.2-325(3)(b).

100. Such clarifying language does not exist in the General Assembly’s new definition of “skill game” in the Skill Game Ban, thus leaving video game manufacturers, operators, players, and retailers like Plaintiffs to guess as to whether the General Assembly has outlawed all pinball machines or video arcade machines that award free replay. It appears that perhaps that is what the General Assembly has done in its overzealous attempt to ban skill games.

101. The ambiguity in the definition of “skill game” is evident from the ABC’s enforcement of skill games during the previous year’s tax and regulate statutory scheme. The definition of skill games was exactly the same during the “tax and regulate” year. Defendants enforced that statute by collecting the \$1,200 per month tax and regulating certain types of skill games, but not others, based on the aesthetic of the game itself. Defendants did not collect the tax or prosecute retail locations that operated arcade games or pinball games, despite the fact that those games fell within the technical definition of “skill game.”

102. Similar ambiguities exist with respect to common carnival games that are coin-operated, based on skill, and reward the player with tickets, merchandise or something of value.





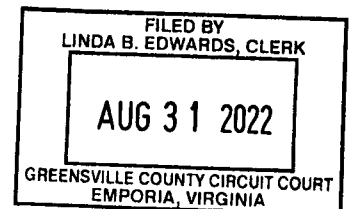
103. Moreover, the statutory scheme in the Skill Game Ban eviscerates centuries of common law jurisprudence, enshrined in the Virginia Code, and providing that in order to be gambling, a game or activity must satisfy three elements: (1) consideration; (2) prize; and (3) that the awarding of a prize be dependent upon chance.

104. Under Va. Code § 18.2-333, Virginia law expressly exempts contests of skill from the Commonwealth's ban on gambling. That provision remains the law of the land, and yet the Skill Game Ban purports to proscribe skill games. The legislation is therefore nonsensical, in addition to being vague and overbroad.

105. Similarly, the definition of "family entertainment center" is unconstitutionally vague and ambiguous.

106. It is unclear what it means for an establishment to market "its business to families with children." A reasonable person may think that a bowling alley is a family entertainment center, but so might be a convenience store or truck stop that serves families throughout the local community and offers skill games or other amusements to patrons. The statute does not provide how much "marketing...to families with children" is necessary to qualify for the exception, what separates a business that markets to families with children from one that merely serves families with children, or whether such establishments that merely serve families with children without expressly advertising thereto are subject to the skill game ban.

107. Vague and ambiguous statutory language is subject to abuse and arbitrary (and discriminatory) enforcement by law enforcement. Such ambiguity is especially concerning when there is disparate racial impact or racial animus underlying the ambiguous and vague statutory language. When "everything" is illegal, law enforcement can more easily discriminate against people and businesses in an unconstitutional manner.

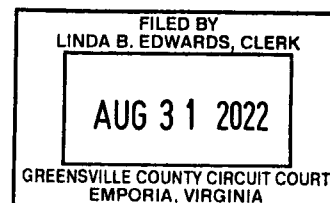


108. The definitions of “skill game” and “family entertainment center” are hopelessly vague and ambiguous. The textual definition of “skill game” encompasses numerous lawful games which were allowed to operate tax free during the “tax and regulate” period and were allowed to operate after July 1, yet purports to ban all “skill games.”

109. The purported amendment to the Skill Game Ban in the 2022 budget bill fares no better and does not cure the constitutional violation with respect to due process. As a result of the Skill Game Budget Item, arcade and game operators, and small businesses that host skill games like Plaintiffs cannot be certain if they are violating the inscrutable ban. The distinction between “amusement device” and “skill game” is hopelessly unclear, vague, and ambiguous, and the definition of “appropriate reward” fails to define how value is to be calculated, leaving businesses with games unclear of the parameters of what they can legally offer as prizes. It also imposes standards and criteria that cannot be evaluated or enforced by law enforcement, which cannot establish probable cause or obtain a search warrant to determine whether a machine has a “meter or measurement device that records the number of free games or portions of games that are rewarded” or is “designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than the amount that is ordinarily required to play the game.” Nor could law enforcement reasonably determine whether a machine’s internal source code awards an “appropriate reward” and does not award prizes valued in excess of “the total aggregate cost of playing multiple amusement devices.”

110. Moreover, the Skill Game Budget Item should be disregarded as void because its enactment violates sections 11 and 12 of Article IV of the Virginia Constitution.

111. First, Article IV, section 11 provides that “[n]o law shall be enacted except by bill [and] [n]o bill shall become law unless, prior to its passage: (a) it has been referred to a



committee of each house, considered by such committee in session, and reported...” The Skill Game Budget Item was tacked on to the wholly unrelated budget bill at the eleventh hour by state budget conferees who met in secret. It was never referred to or considered by a committee of each house of the General Assembly, At least one Delegate specifically criticized the budget process for circumventing this requirement. *See, supra*, ¶ 60.

112. Second, the Skill Game Budget Item runs afoul of Article IV, section 12 of the Virginia Constitution, which provides that “[n]o law shall embrace more than *one* object, which shall be expressed in its title.” (emphasis added). The budget bill, 2022 House Bill 30, is intended to provide “for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of” Va. Code § 2.2-1509.

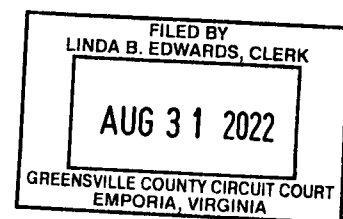
113. The Skill Game Budget Item is not germane to or congruous with the single subject of the bill. It does not appropriate any funds, it bears no relation to the state budget, and has no relation to the economic administration of the Commonwealth. It is a non sequitur, and void under Article IV, section 12 of the Virginia Constitution.<sup>3</sup>

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<sup>3</sup> The Budget Bill’s enacting clause even refers to it as part of a *separate* act in violation of the requirement that each law embrace a single object that must be expressed in its title The title of the bill as enumerated in its enacting clause expresses *multiple* objects in violation of Article IV, section 12 of the Virginia Constitution:

**An Act** for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of § 2.2-1509, Code of Virginia, and to provide a portion of the revenues for the two years ending respectively on the thirtieth day of June, 2023, and the thirtieth day of June, 2024, **and an Act to amend and reenact** §§ 3.2-5145.5, 4.1-1100, 4.1-1101, 18.2-325, 18.2-334.6, 22.1-349.1, 58.1-322.02, 58.1-322.03, 58.1-339.8, 58.1-439.30, 58.1-611.1, and 59.1-200 of the Code of Virginia.

(emphasis added).



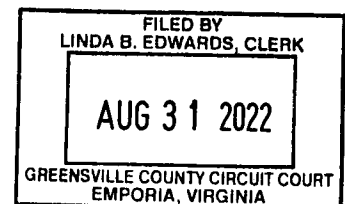
114. Moreover, the Skill Game Ban, including as amended by the Skill Game Budget Item, infringes on Plaintiffs' due process because it is unconstitutional special legislation that specifically targets plaintiffs and similarly situated businesses that operate skill games. Article IV, § 14 of the Virginia Constitution provides that the General Assembly "shall not enact any local, special, or private law" in, inter alia, the following cases: "(12) regulating labor, trade, mining, or manufacturing, or the rate of interest on money." Article IV, § 15 of the Virginia Constitution provides that the General Assembly shall enact general laws.

115. The Skill Game Ban, including as amended by the Skill Game Budget Item, renders the Skill Game Ban as unconstitutional special legislation. It is intended and operates to apply to only certain games and persons in the amusement/gaming industry; to wit, those skill games that resemble or adopt the aesthetics of traditional gambling and casino games. It does not affect all persons similarly situated or engaged in the amusement/gaming industry or the skill game industry, specifically.

116. The Skill Game Ban does not bear a reasonable and substantial relationship to any legitimate object sought to be accomplished by the legislature.

117. The Skill Game Ban is an arbitrary separation of persons, places, or things of the general class. The establishment of a class of skill games based on their appearance is unconstitutional.

118. A reasonable person, let alone sophisticated, experienced businesses like Plaintiffs, cannot decipher what is illegal or legal under the definitions in the Skill Game Ban. The Skill Game Ban is therefore unconstitutional as a violation of Plaintiffs' due process rights.



**COUNT III**

**Request for Temporary and Permanent Injunctive Relief**

119. Plaintiffs incorporate all prior paragraphs as though fully restated herein, verbatim.

120. Temporary injunctive relief is necessary to preserve the *status quo ante* pending litigation.

121. Moreover, Plaintiffs have been and will continue to be irreparably harmed absent the issuance of a temporary and permanent injunction.

122. Plaintiffs have no adequate remedy at law.

123. Defendants will not be harmed if a temporary and/or permanent injunction is granted.

124. Plaintiffs are likely to succeed on the merits.

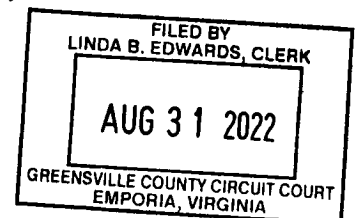
125. The public interest in the preservation of the Virginia Constitution's guarantees of equal protection, due process, and free speech, and the principle that no one should be required at peril of life, liberty or property to speculate as to the meaning of penal statutes is served by the issuance of a preliminary and/or permanent injunction.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Enter a declaratory judgment in Plaintiffs' favor declaring that the Skill Game Ban including as amended in the 2022 Budget Bill is unconstitutional and void;
- B. Enter temporary and permanent injunctions prohibiting Defendants from enforcing the Skill Game Ban including as amended in the 2022 Budget Bill; and
- C. Award Plaintiffs reasonable attorney's fees and costs and all such further relief as the Court deems just and equitable.

Dated: August 30, 2022

Respectfully submitted,



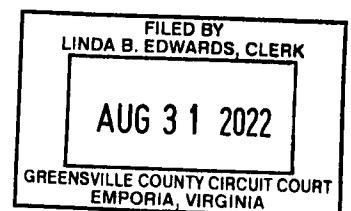
SADLER BROTHERS OIL COMPANY,  
d/b/a SADLER TRAVEL PLAZA,  
SLIP-IN FOOD MART, INC. and  
CHN, LLC

*By Counsel*



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*Attorney for Plaintiffs*



**CERTIFICATE OF SERVICE**

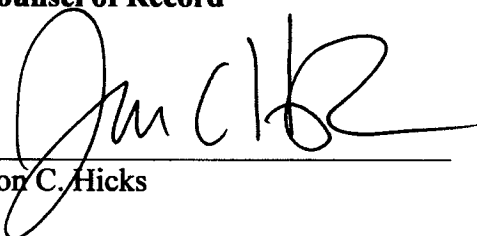
I hereby certify that on the 30<sup>th</sup> day of August, 2022, a true and accurate copy of the foregoing First Amended Complaint was served by United States Mail and email to the following counsel for Defendants:

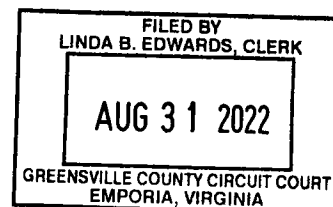
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**\*Counsel of Record**

  
\_\_\_\_\_  
Jason C. Hicks



# VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

## CHAPTER 1277

*An Act to amend and reenact § 18.2-325 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-115.1 and 18.2-334.5, relating to illegal gambling; skill games; exception; COVID-19 Relief Fund created.*

[S 971]

Approved April 22, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-325 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-115.1 and 18.2-334.5 as follows:**

**§ 2.2-115.1. COVID-19 Relief Fund.**

*There is hereby created in the state treasury a special nonreverting fund to be known as the COVID-19 Relief Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated to the Fund and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used by the Governor solely for the purposes of responding to the Commonwealth's needs related to the Coronavirus Disease of 2019 (COVID-19) pandemic. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Governor or his designee.*

**§ 18.2-325. Definitions.**

1. "Illegal gambling" means the making, placing, or receipt of any bet or wager in the Commonwealth of money or other consideration or thing of value, made in exchange for a chance to win a prize, stake, or other consideration or thing of value, dependent upon the result of any game, contest, or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest, or event occurs or is to occur inside or outside the limits of the Commonwealth.

For the purposes of this subdivision and notwithstanding any provision in this section to the contrary, the making, placing, or receipt of any bet or wager of money or other consideration or thing of value shall include the purchase of a product, Internet access, or other thing made in exchange for a chance to win a prize, stake, or other consideration or thing of value by means of the operation of a gambling device as described in subdivision 3 b, regardless of whether the chance to win such prize, stake, or other consideration or thing of value may be offered in the absence of a purchase.

*"Illegal gambling" also means the playing or offering for play of any skill game.*

2. "Interstate gambling" means the conduct of an enterprise for profit which engages in the purchase or sale within the Commonwealth of any interest in a lottery of another state or country whether or not such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest.

3. "Gambling device" includes:

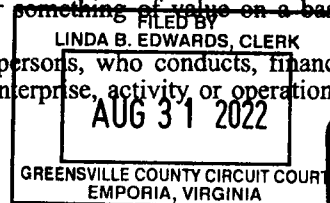
a. Any device, machine, paraphernalia, equipment, or other thing, including books, records and other papers, which are actually used in an illegal gambling operation or activity; **and**

b. Any machine, apparatus, implement, instrument, contrivance, board or other thing, or electronic or video versions thereof, including but not limited to those dependent upon the insertion of a coin or other object for their operation, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled; provided, however, that the return to the user of nothing more than additional chances or the right to use such machine is not deemed something of value within the meaning of this subsection; and provided further, that machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ from each other in composition, size, shape or color, shall not be deemed gambling devices within the meaning of this subsection; **and**

c. *Skill games.*

Such devices are no less gambling devices if they indicate beforehand the definite result of one or more operations but not all the operations. Nor are they any less a gambling device because, apart from their use or adaptability as such, they may also sell or deliver something of value on a basis other than chance.

4. "Operator" includes any person, firm or association of persons, who conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling enterprise, activity or operation.



EXHIBIT

A



5. "Skill" means the knowledge, dexterity, or any other ability or expertise of a natural person.

6. "Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; merchandise; or anything of value whether the payoff is made automatically from the device or manually.

**§ 18.2-334.5. Exemptions to article; certain skill games offered at family entertainment centers.**

A. As used in this section:

"Coin-operated amusement games" means games that do not deliver or entitle the person playing or operating the game to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; or merchandise or anything of value.

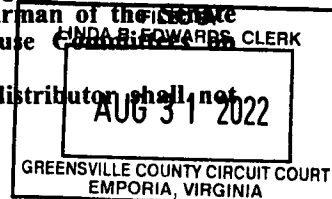
"Family entertainment center" means an establishment that (i) is located in a building that is owned, leased, or occupied by the establishment for the primary purpose of providing amusement and entertainment to the public; (ii) offers coin-operated amusement games and skill games pursuant to the exemption created by this section; and (iii) markets its business to families with children.

B. Notwithstanding the provisions of § 18.2-325, a person operating a family entertainment center may make skill games available for play if the prize won or distributed to a player is a noncash, merchandise prize or a voucher, billet, ticket, token, or electronic credit redeemable only for a noncash, merchandise prize (i) the value of which does not exceed the cost of playing the skill game or the total aggregate cost of playing multiple skill games; (ii) that is not and does not include an alcoholic beverage; (iii) that is not eligible for repurchase; and (iv) that is not exchangeable for cash, cash equivalents, or anything of value whatsoever.

2. That until July 1, 2021, distributors shall remit a monthly tax to the Department of Taxation (the Department) of \$1,200 for each skill game that such distributor provided for play in Virginia during the previous month. The Department shall allocate (i) two percent of the tax revenue collected pursuant to the second enactment of this act to the Problem Gambling Treatment and Support Fund, created pursuant to legislation enacted during the 2020 Regular Session of the General Assembly; (ii) two percent of the tax revenue collected pursuant to the second enactment of this act to the Virginia Alcohol Beverage Control Authority (the Authority) for the purposes of implementing the second, third, fourth, fifth, sixth, and seventh enactments of this act; (iii) 12 percent of the tax revenue collected pursuant to the second enactment of this act to the localities in which the skill games are located; and (iv) 84 percent of the tax revenue collected pursuant to the second enactment of this act to the COVID-19 Relief Fund established pursuant to § 2.2-115.1 of the Code of Virginia, as created by this act. Allocation of funds by the Department pursuant to the second enactment of this act shall occur no later than 60 days after such funds are collected. For purposes of the second, third, fourth, fifth, and sixth enactments of this act, "distributor" means any person that (i) manufactures and sells skill games, including software and hardware, and distributes such devices to an ABC retail licensee or a truck stop or (ii) purchases or leases skill games from a manufacturer and provides such devices to an ABC retail licensee or a truck stop, and who otherwise maintains such games and is otherwise responsible for on-site data collection and accounting. For purposes of the second, third, fourth, fifth, and sixth enactments of this act, "ABC retail licensee" means a person licensed by the Authority pursuant to Title 4.1 of the Code of Virginia. For purposes of the second, third, fourth, fifth, and sixth enactments of this act, "truck stop" means an establishment (i) that is equipped with diesel islands used for fueling commercial motor vehicles; (ii) has sold, on average, at least 50,000 gallons of diesel or biodiesel fuel each month for the previous 12 months, or is projected to sell an average of at least 50,000 gallons of diesel or biodiesel fuel each month for the next 12 months; (iii) has parking spaces dedicated to commercial motor vehicles; (iv) has a convenience store; and (v) is situated on not less than three acres of land that the establishment owns or leases.

3. That, beginning July 1, 2020, and each month following until July 1, 2021, distributors shall provide a report to the Virginia Alcoholic Beverage Control Authority (the Authority), in such form as required by the Authority, detailing (i) the total number of skill games provided for play in Virginia by the distributor, (ii) the address of each location where skill games are provided for play in Virginia by the distributor, (iii) the total number of skill games provided for play by the distributor at each respective location, (iv) the total amount wagered during the previous month on each skill game provided for play in Virginia by the distributor at each respective location where the skill game was provided, and (v) the total amount of prizes or winnings awarded during the previous month on each skill game provided for play in Virginia by the distributor at each respective location where the skill game was provided. The Authority shall aggregate information collected pursuant to this enactment and report it to the Governor, the Chairman of the Finance Committee on Finance and Appropriations, and the Chairmen of the House of Delegates on Finance and Appropriations and Finance on a monthly basis.

4. That the total number of machines provided for play in Virginia by a distributor shall not



exceed the total number of machines reported by that distributor to the Virginia Alcoholic Beverage Control Authority on July 1, 2020, pursuant to the third enactment of this act.

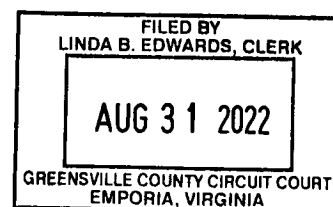
5. That only those skill games that were provided by a distributor and available for play in ABC retail licensees and truck stops on June 30, 2020, may continue to operate on or after July 1, 2020.

6. That any distributor found by the Virginia Alcoholic Beverage Control Authority (the Authority) to be in violation of the second, third, fourth, or fifth enactments of this act shall be subject to a civil penalty of not less than \$25,000 and not more than \$50,000 per incident. Civil penalties collected pursuant to the sixth enactment of this act shall be paid to the Authority and remitted by the Authority to the COVID-19 Relief Fund established pursuant to § 2.2-115.1 of the Code of Virginia, as created by this act.

7. That, notwithstanding the provisions of § 58.1-3 of the Code of Virginia, the Department of Taxation shall be permitted to disclose information to the Virginia Alcoholic Beverage Control Authority regarding the tax remitted by any distributor pursuant to the second enactment of this act.

8. That the second, third, fourth, fifth, sixth, and seventh enactments of this act shall expire on July 1, 2021.

9. That the provisions of the first enactment of this act amending the Code of Virginia by adding a section numbered 2.2-115.1 shall become effective on July 1, 2020, and that the remaining provisions of the first enactment of this act shall become effective on July 1, 2021.



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# VIRGINIA STATE BUDGET

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2022 Special Session I

## Budget Bill - HB30 (Chapter 2)

Bill Order » Part 4: General Provisions » Effective Date » Item 4-14

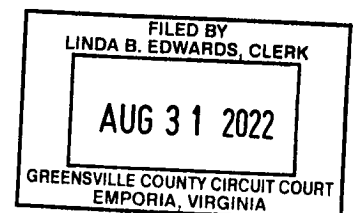
### Item 4-14

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#### § 4-14.00 EFFECTIVE DATE

This act is effective on July 1, 2022.

#### ADDITIONAL ENACTMENTS



13. That §§ 18.2-325 and 18.2-334.6 of the Code of Virginia are amended and reenacted as follows:

**§ 18.2-325. Definitions.**

1. "Illegal gambling" means the making, placing, or receipt of any bet or wager in the Commonwealth of money or other consideration or thing of value, made in exchange for a chance to win a prize, stake, or other consideration or thing of value, dependent upon the result of any game, contest, or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest, or event occurs or is to occur inside or outside the limits of the Commonwealth.

For the purposes of this subdivision and notwithstanding any provision in this section to the contrary, the making, placing, or receipt of any bet or wager of money or other consideration or thing of value shall include the purchase of a product, Internet access, or other thing made in exchange for a chance to win a prize, stake, or other consideration or thing of value by means of the operation of a gambling device as described in subdivision 3 b, regardless of whether the chance to win such prize, stake, or other consideration or thing of value may be offered in the absence of a purchase.

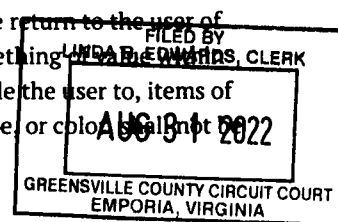
"Illegal gambling" also means the playing or offering for play of any skill game.

2. "Interstate gambling" means the conduct of an enterprise for profit that engages in the purchase or sale within the Commonwealth of any interest in a lottery of another state or country whether or not such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest.

3. "Gambling device" includes:

a. Any device, machine, paraphernalia, equipment, or other thing, including books, records, and other papers, which are actually used in an illegal gambling operation or activity;

b. Any machine, apparatus, implement, instrument, contrivance, board, or other thing, or electronic or video versions thereof, including but not limited to those dependent upon the insertion of a coin or other object for their operation, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled; provided, however, that the return to the user of nothing more than additional chances or the right to use such machine is not deemed something of value for the meaning of this subsection; and provided further, that machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ from each other in composition, size, shape, or color shall not be



deemed gambling devices within the meaning of this subsection; and

c. Skill games.

Such devices are no less gambling devices if they indicate beforehand the definite result of one or more operations but not all the operations. Nor are they any less a gambling device because, apart from their use or adaptability as such, they may also sell or deliver something of value on a basis other than chance.

4. "Operator" includes any person, firm, or association of persons, who conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling enterprise, activity, or operation.

5. "Skill" means the knowledge, dexterity, or any other ability or expertise of a natural person.

6. "Skill game" means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; ~~merchandise; or anything of value~~ or cash equivalents whether the payoff is made automatically from the device or manually. "Skill game" includes (i) a device that contains a meter or measurement device that records the number of free games or portions of games that are rewarded and (ii) a device designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than the amount that is ordinarily required to play the game. "Skill game" does not include any amusement device, as defined in § 18.2-334.6.

7. "Unregulated location" means any location that is not regulated or operated by the Virginia Lottery or Virginia Lottery Board, the Department of Agriculture and Consumer Services or the Charitable Gaming Board, the Virginia Alcoholic Beverage Control Authority, or the Virginia Racing Commission.

§ 18.2-334.6. Exemptions to article; amusement devices.

A. As used in this section:

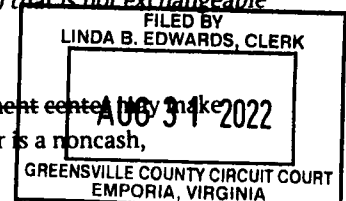
~~"Coin-operated amusement games" means games that do not deliver or entitle the person playing or operating the game to receive cash; cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash; or merchandise or anything of value.~~

~~"Family entertainment center" means an establishment that (i) is located in a building that is owned, leased, or occupied by the establishment for the primary purpose of providing amusement and entertainment to the public; (ii) offers coin-operated amusement games and skill games pursuant to the exemption created by this section; and (iii) markets its business to families with children.~~

~~"Amusement device" means a game that is activated by a coin, token, or other object of consideration or value and that does not provide the opportunity to (i) enter into a sweepstakes, lottery, or other illegal gambling event or (ii) receive any form of consideration or value, except for an appropriate reward.~~

~~"Appropriate reward" means a noncash, merchandise prize (i) the value of which does not exceed the cost of playing the amusement device or the total aggregate cost of playing multiple amusement devices, (ii) that is not and does not include an alcoholic beverage, (iii) that is not eligible for repurchase, and (iv) that is not exchangeable for cash or cash equivalents.~~

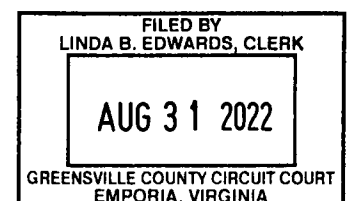
~~B. Notwithstanding the provisions of § 18.2-325, a A person operating a family entertainment center may make skill games amusement devices available for play if the prize won or distributed to a player is a noncash,~~



merchandise prize or a voucher, billet, ticket, token, or electronic credit redeemable only for a ~~non~~cash, merchandise prize (i) the value of which does not exceed the cost of playing the skill game or the total aggregate cost of playing multiple skill games; (ii) that is not and does not include an alcoholic beverage; (iii) that is not eligible for repurchase; and (iv) that is not exchangeable for cash, cash equivalents, or anything of value whatsoever an appropriate reward. An appropriate reward shall only be redeemable on the premises where the amusement device is located.

*C. An amusement device shall not be designed or adapted to cause or enable a person to cause the release of free games or portions of games when designated as a potential reward for use of the device and shall not contain any meter or other measurement device to record the number of free games or portions of games that are rewarded.*

*D. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.*





August 30, 2022

Hon. Linda B. Edwards  
Greensville Circuit Court  
337 South Main Street  
Emporia, VA 23847

Via Federal Express

Re: *Sadler Brothers Oil Company, et al. v. Commonwealth of Virginia, et al.*  
Case No. CL21-207

Womble Bond Dickinson (US) LLP

201 East Main Street  
Suite P  
Charlottesville, VA 22902

t: 434.422.5110

Jason C. Hicks  
Direct Dial: 202-857-4536  
Direct Fax: 202-261-0013  
E-mail: [Jason.Hicks@wbd-us.com](mailto:Jason.Hicks@wbd-us.com)

Dear Ms. Edwards:

Pursuant to Judge Lerner's Order dated August 26, 2022, please find attached for filing in the above-referenced matter Plaintiffs' First Amended Complaint. If you have any questions, please feel free to contact me. Thank you for your assistance.

Best regards,

**Womble Bond Dickinson (US) LLP**

A handwritten signature in black ink that reads "Jason C. Hicks".

**Jason C. Hicks**

Enclosures

cc: William M. Stanley, Jr., Esq. (w/encl.)  
Office of the Attorney General (w/encl.)  
The Honorable Louis R. Lerner (w/encl.)

