




## After years of effort, Virginia is giving lower-income workers a major tax break

‘It has an outsized impact on the families that need the most help’

BY: **GRAHAM MOOMAW** - SEPTEMBER 16, 2022 12:04 AM



 Kitchen workers prepare pizzas for carry out orders at a Richmond restaurant. (Parker Michels-Boyce / For the Virginia Mercury)

Mercedes Benson, a single mom who makes a little under \$50,000 a year running a coffee shop in Richmond, doesn't usually expect things to go her way during tax season.

On her state income taxes, Benson said she usually owes money or gets a tiny refund that doesn't go very far. But as she tries to keep up with credit card bills and higher costs for gas and groceries, Benson, 40, says a recent change to state tax policy has given her hope she'll be getting a little more help next April.

“The state doesn't let up on us. We're always paying something,” Benson said. “I'm just happy to get some kind of break.”

Heading into this year's General Assembly session, the state was flush with revenue, Republican Gov. Glenn Youngkin was eager to deliver on his promises for big tax cuts, and Democrats still held enough power to insist on at least some of their priorities. Those factors combined to bring about a policy change years in the making: An earned-income tax credit (EITC) that's now partially refundable.

Making Virginia's version of the credit refundable, a change done through the new state budget, means that instead of only reducing how much a low-income tax filer owes without giving money back, it can now lead to a bigger refund – or create a refund that otherwise wouldn't exist.

Proponents say the change will mean hundreds of dollars going back into the pockets of roughly 600,000 working-class earners eligible for the credit next tax season, many of whom don't make enough to owe state income taxes but pay sales taxes and contribute to state revenues in other ways. The exact size of the credit depends on a tax filer's income and how many children they have. For the 2022 tax year, maximum credit amounts range from \$560 for filers with no children to \$6,935 for filers with three or more children, [according to the IRS](#).

Virginia made 15% of that credit refundable on state tax returns, joining at least 26 other states and the District of Columbia with similar policies, [according to the National Conference of State Legislatures](#).

Ashley Kenneth, president and CEO of the progressive Commonwealth Institute for Fiscal Analysis, which has advocated for the change for 15 years, said the strengthened credit will be particularly helpful to Black and Latino workers, who are more likely to have lower incomes that cause them to miss out on other forms of tax relief the General Assembly approved.

"It has an outsized impact on the families that need the most help," Kenneth said. She added that help for those on the lower end will bring some balance to a "regressive" state system that taxes all income above \$17,000 at the same rate.

In the next few weeks, the state will [send out 3.2 million tax rebate payments](#) of up to \$250 per person, but that money is only going to Virginians who made enough to owe state income taxes.

For a married couple with two children making \$24,000 a year, the refundable EITC could be worth \$827 next tax season, according to an [online calculator](#) the Commonwealth Institute created to estimate its impacts.

Making the EITC refundable was one of the main economic proposals recommended in [a report](#) released in January by a commission former Gov. Ralph Northam created to study racial inequality in Virginia and how it could be addressed. Black workers will disproportionately benefit from the change, that study found, because they account for 32% of the EITC-eligible population despite Black Virginians making up roughly a fifth of the state's population.

"It's a huge win for us as advocates," Kenneth said. "But an even bigger win for low-income working families who are now going to see some relief at tax time."

## Why now?

Del. Cia Price, D-Newport News, pointed to several factors to explain the breakthrough on EITC refundability: the work of those who have championed it for years, Senate Democrats "digging their heels in" during budget negotiations and a broad recognition that the COVID-19 crisis hit the poor harder than the wealthy.

"The pandemic just had a way of exposing things in a new light," said Price, one of several lawmakers who sponsored EITC legislation last session.

Sen. George Barker, D-Fairfax, who helped negotiate the bipartisan tax deal, said a big factor was the state having enough money to let the two parties get part, but not all, of what they wanted.

"We were able to do things where both sides were getting a win out of it," Barker said.

Bills to enact a refundable EITC in Virginia have been proposed for decades, but the idea got new traction recently due to changes in federal tax policy. That included former President

Donald Trump's 2017 tax-cutting plan, which Democrats criticized as skewed toward the wealthy.

When Northam proposed making the EITC refundable in the first two years of his term, Republican leaders dismissed it as an expensive giveaway that would stick the middle class with the bill.

The GOP characterized the policy as helping people who don't pay state income taxes at the expense of those who do.

"We keep talking about tax cuts," Del. Nick Freitas, R-Culpeper, said at a 2019 committee hearing on a refundable EITC bill that failed. "But if we're giving the money back to someone that hasn't paid the taxes, or they're getting more than what they paid in taxes, is that a tax cut? Or is that spending?"

After Democrats took control of the General Assembly in the 2019 elections, the Northam administration pursued a plan to send out direct tax rebates instead of making structural tax changes. The arrival of the COVID-19 pandemic in 2020 led to a period of fiscal caution as policymakers braced for economic disruption. But by 2021, the state was looking at record revenue surpluses, and Youngkin's victory in November meant tax relief would be a top item on the legislative agenda. In his final budget proposal, Northam included a partially refundable EITC along with several other tax cuts Youngkin campaigned on.

## **A signature from Youngkin, but no endorsement**

In the past, the EITC concept has drawn support from across the ideological spectrum because it's a pro-work incentive targeted largely toward people with children. It's often compared to free-market economist Milton Friedman's proposal for a "negative income tax," an anti-poverty idea he said would be more efficient than government aid programs by giving cash directly to lower-income people and letting them use it however they see fit.

Youngkin signed the budget making Virginia's EITC partially refundable, but he doesn't spotlight the policy in speeches about the \$4 billion in tax cuts the state approved on his watch.

Asked if Youngkin came around to supporting a refundable EITC or if it was mostly a concession to Democrats to get other wins like cutting grocery taxes and increasing the standard deduction on state income taxes, the governor's office didn't lay out a clear stance.

"The governor appreciated the work of the House and the Senate working with him to provide a budget that provided the largest tax relief in Virginia's history while focusing on reforms that can benefit taxpayers," said Youngkin spokesperson Macaulay Porter. "Regardless of whether the issue is cost of groceries, college affordability, housing, or the tax burden, the governor's commitment is to lower the rising cost of living as a result of failed leadership and economic policies from Washington."

During this year's legislative session, Youngkin administration officials opposed standalone bills to make the EITC refundable.

Republicans pushed back against accusations their policies were leaving low-income Virginians behind, arguing their plan to get rid of the state tax on groceries would help low-income people, who spend a bigger percentage of their income on food. Republicans also pitched Youngkin's unsuccessful plan for a gas tax holiday in populist terms, insisting even a slight dip in gas prices might not mean much to the laptop class but would help working people who have to drive on a regular basis.

With state revenues still looking strong, Youngkin said last month that he's [planning to pursue nearly \\$400 million in tax relief next year](#). Another round of tax negotiations could create another opportunity for Democrats to try to boost the EITC again by upping the percentage of the credit treated as refundable.

“Fifteen percent is just a step in the right direction. There are other states that have up to 30% and more,” Price said. “Eventually, Virginia is going to have to come to terms with the fact that the way we tax people is upside down and unfair, and continues to proliferate wealth gaps among communities of color.”

Benson, the Richmond coffee-shop worker, said she’s not sure how much extra money she’ll get next tax season. Whatever the amount, she said, she’ll probably use it to pay off a bill or stick it in savings.

“I’ll be happy if it was \$50,” she said. “Anything would be nice.”



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## Virginia's highest tax bracket starts at \$17K. Some say it's time for an update.

Report shows how “bracket creep” raised taxes on lower-income people

BY: **GRAHAM MOOMAW** - NOVEMBER 4, 2022 12:02 AM



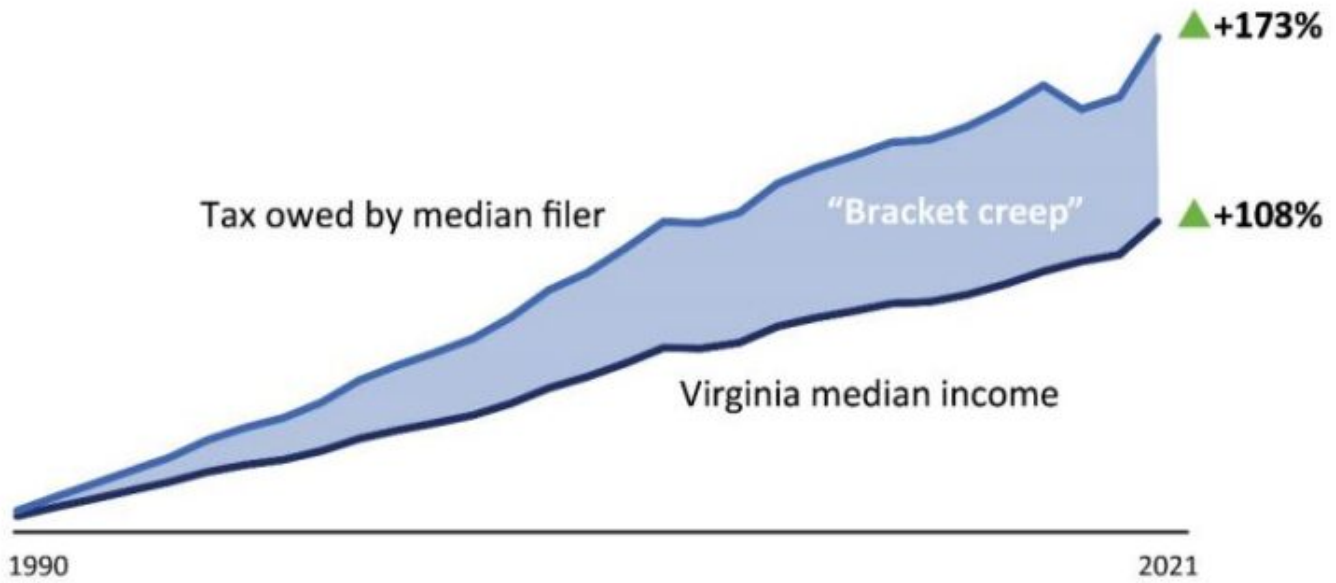
(junce / Getty Images)

Under Virginia's state income tax system, the highest tax bracket starts at just \$17,000, a number that hasn't changed since 1990.

Because the brackets stayed the same as incomes rose over three decades of inflation, more and more of the money Virginians make is now taxed at the highest rate of 5.75%, according to a new state report. Since 1990, the report found, the state's median income rose 108%. Over the same period, taxes owed by single filers making the median income went up 173%.

“Tax experts refer to this dynamic as ‘bracket creep,’” the state's Joint Legislative Audit and Review Commission wrote in the [report](#) on how Virginia could make its tax system fairer. “Incomes rise over time, but income tax brackets do not.”

## Taxes owed have far outpaced median income, because income brackets have not been changed since 1990



SOURCE: JLARC analysis of Virginia tax brackets and data on Virginia income, U.S. Census, 1990–2021.  
NOTE: Adjusted for inflation.

📷 (Joint Legislative Audit and Review Commission)

Bracket creep hits low- and middle-income filers the hardest, the report says, because people at the lower end would pay less if Virginia adjusted its tax brackets for inflation, as the federal government and many other states do.

“Thirty-two years ago, you were considered rich at \$17,000 and hit the top tax bracket,” Del. Joe McNamara, R-Salem, a certified public accountant who sponsored an unsuccessful bill to start adjusting the brackets for inflation, said at a legislative hearing earlier this year. “We are now still considered rich at \$17,000.”

Adjusting the brackets for inflation, JLARC found, would start the top bracket at \$35,348 of adjusted gross income, with similar increases for the three brackets below. Because less of Virginians’ income would be taxed at the highest rate, that change would mean a \$959 million hit to the state budget.

**TABLE 4-1**  
**Virginia’s income brackets could be adjusted for inflation since 1990**

Brackets (current)	Brackets (adj. for inflation since 1990)	Tax rate
\$0 to \$3,000	\$0 to \$6,237	2%
\$3,001 to \$5,000	\$6,238 to \$10,395	3%
\$5,001 to \$17,000	\$10,396 to \$35,347	5%
\$17,001+	\$35,348+	5.75%

SOURCE: U.S. Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers, 1990–2021.

📷 (Joint Legislative Audit and Review Commission)

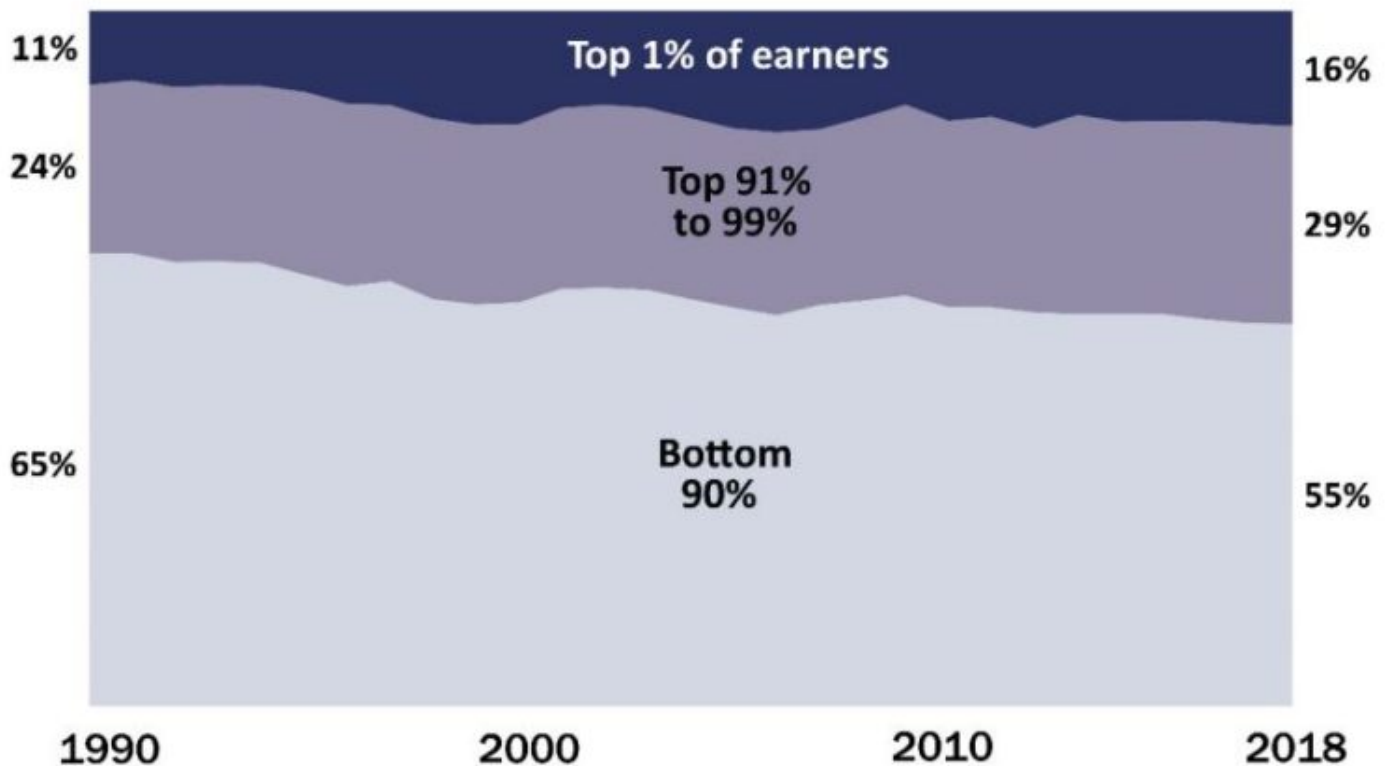
The JLARC report released last month laid out a variety of options for how Virginia’s tax code could be made more progressive. In the tax context, progressivity means taxing people according to their ability to pay, as opposed to setting the same tax rates for rich and poor alike or taxing the poor disproportionately.

Virginia has grown increasingly reliant on individual income taxes to fund state government. The \$17.2 billion collected in fiscal year 2021 amounted to 70% of the state’s general fund revenue, up from 63% in 2000. Corporate income taxes made up 6% of general fund revenue in fiscal 2021, according to JLARC.

The report also quantified the state-level rise in income inequality, showing the state's wealthiest 1% accounted for 16% of total income in Virginia for 2018, up from 11% in 1990. Meanwhile, the bottom 90% of earners made up 55% of 2018 income, down from 65% in 1990.

**FIGURE 2-1**

**Top 1% of earners' total share of Virginia income has grown**



SOURCE: IRS Statistics of Income and CPS data, World Inequality Database.

© (Joint Legislative Audit and Review Commission)

The JLARC study found that the bipartisan tax deal Gov. Glenn Youngkin and the General Assembly struck earlier this year already made the state's tax system substantially more progressive by nearly doubling the standard deduction on state income taxes and making the earned-income tax credit partially refundable.

For the lowest-income filers (up to \$14,000 in income), those changes reduced the effective tax rate from 0.8% to -1.2%, since those workers can now expect to get money back that they weren't eligible for before. For filers with \$14,000 to \$36,000 in income, the effective tax rate dropped from 2.4% to 1.2%.

Combined, those changes made Virginia's tax code more progressive than average when compared with other states, according to JLARC. Historically, Virginia's tax structure has been rated as less progressive than average and less progressive than tax structures in neighboring North Carolina, West Virginia, Maryland and the District of Columbia, according to the report.

The state hasn't raised taxes on the wealthy, but the JLARC report lays out several options for doing so by setting higher rates for the top 1% of filers, people with incomes above \$600,000, or the smaller group of filers with incomes over \$1 million. Of all the ways to increase progressivity, raising taxes on the rich is the only option the report envisions that also increases state revenue.

That doesn't seem likely to happen, with Gov. Glenn Youngkin and the Republican House of Delegates emphasizing broad tax cuts instead of tax hikes.

In a letter responding to the JLARC report, Youngkin Secretary of Finance Stephen Cummings said many of the states Virginia competes with to attract people and businesses either have no state income tax or are working to reduce their rates. In general, Cummings wrote, lower-tax states to the south are seeing stronger recoveries from the COVID-19 pandemic than higher-tax states to the north.

“The tax burden on Virginia families is a critical factor in businesses’ decisions to create well-paying, high-quality jobs in the Commonwealth,” Cummings wrote.

Youngkin has said he’ll push for more tax cuts in the 2023 General Assembly session.

Asked whether Youngkin supports adjusting the tax brackets for inflation, the governor’s office didn’t lay out a clear position, saying Youngkin is in the process of preparing a budget proposal to be presented in December.

In an interview after JLARC’s report was released, Del. Vivian Watts, D-Fairfax, said proposals to raise taxes on the rich probably won’t go anywhere given the current political environment. But the facts and figures in the report, she said, create “a base of information” for future debate on Youngkin’s proposals.

“This helps keep the dialogue more honest, more accurate,” Watts said.

The more modest steps of addressing bracket creep and indexing brackets to inflation, Watts said, could be bipartisan priorities.

“When you don’t index and you let time fly ... here we are 30 years later and you’ve got a huge hit,” Watts said.

Lawmakers who serve on the commission that received the tax report didn’t immediately indicate which tax changes they’re inclined to pursue, but the report will likely factor into whatever tax debates are coming next year.

“There’s no question in my mind this is going to be a topic we’re going to wrestle with during the upcoming regular session,” said Sen. Janet Howell, D-Fairfax, who chairs JLARC and co-chairs the Senate Finance Committee. “So we appreciate all of this work.”

In an interview, McNamara said he plans to reintroduce his bill to start indexing the brackets to inflation going forward, avoiding the budget hit from adjusting for 32 years of inflation all at once. However, he argued the issue can also be addressed through more increases to the standard deduction.

“I don’t think there’s going to be an appetite to do both,” McNamara said.

According to the JLARC report, the biggest boost in progressivity would come through a bigger overhaul of the tax brackets. That option would involve growing from four income brackets to six, with lower tax rates for everyone with less than \$50,000 in income and higher tax rates for everyone over \$50,000. In that scenario, the highest tax bracket would cover income over \$93,000, which would be taxed at 7.5%.

“For a married taxpayer with an annual income of \$50,000 (approximately the average for the middle income group), this would translate into a \$770 reduction in tax liability – a 1.5% increase in after tax income,” the JLARC report says. “In contrast, a married taxpayer with an annual income of \$300,000 (approximately the average for the highest 20% of taxpayers) would see their tax liability increase by about \$2,700, a 0.9% reduction in income.”



**TABLE 4-3**

**Virginia’s income brackets could reflect actual income amounts, and rate span could be widened to be substantially more progressive**

<b>Brackets (current)</b>	<b>Rates (current)</b>	<b>Brackets (based on income deciles)</b>	<b>Rates (more progressive)</b>
\$0 to \$3,000	2%	Up to \$5,000	1%
\$3,001 to \$5,000	3%	\$5,001 to \$14,000	1.5%
\$5,001 to \$17,000	5%	\$14,001 to \$36,000	3.5%
\$17,001+	5.75%	\$36,001 to \$50,000	5.5%
--	--	\$50,001 to \$93,000	6.5%
--	--	\$93,001+	7.5%

SOURCE: Virginia Tax and JLARC staff analysis.

📷 (Joint Legislative Audit and Review Commission)

Watts said she’s skeptical of adjusting the brackets to assess higher rates on people in the middle to upper middle of the income spectrum, given Virginia’s steep variability in cost of living, which makes \$60,000 in income in Northern Virginia far different from \$60,000 in Southwest Virginia. For that reason, Watts said she’s more inclined to support creating new tax brackets covering the highest earners.

“At that level I’m not talking about basic living,” she said.

A 10% tax rate on the roughly 17,700 Virginia filers with incomes over \$1 million, according to JLARC, would generate an extra \$1 billion per year for the state.



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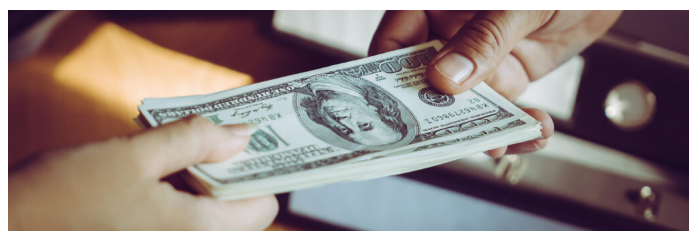
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## Virginia tried to crack down on unlicensed poker. It's still happening in the open.

State charitable gaming regulators refuse to comment on reopening of Beach Poker Room

BY: **GRAHAM MOOMAW** - SEPTEMBER 30, 2022 3:45 PM



(Getty Images / Caspar Benson)

When a Hampton Roads-area kitten rescue lost its [lawsuit](#) challenging a new state law cracking down on [unlicensed charitable poker](#), it seemed like the end for the handful of poker rooms that recently opened in Virginia.

But a poker room in Virginia Beach is back up and running, advertising on Facebook despite the new law that threatens civil fines of up to \$50,000. The Facebook page for the Beach Poker Room went quiet when the law took effect in July, but the facility now says it's opening daily and running tournaments three days a week with buy-ins ranging from \$120 to \$160.

Whatever's happening at the Beach Poker Room could be against the law, according to legislators who led the push to shut down poker rooms until the state can get a better handle on overseeing them.

If it's charity poker, said Del. Paul Krizek, D-Fairfax, it's the same type of unlicensed activity the General Assembly wanted to stop by [creating](#) civil fines of \$25,000 to \$50,000 per violation. If the Beach Poker Room is avoiding charitable poker rules by dropping the charity aspect altogether, Krizek said, it's no longer the type of poker Virginia legalized.

"If it's poker, it's illegal," Krizek said.

Several people who could potentially explain the situation at the Beach Poker Room, which operates out of a bingo hall called Bingo Palace that's connected to a member of the state's Charitable Gaming Board, either didn't respond to inquiries from the Virginia Mercury or refused to comment for this story.

The Beach Poker Room didn't respond to multiple phone calls and emails over several days. The Virginia Department of Agriculture and Consumer Services (VDACS), which regulates charitable bingo and poker, refused to comment. Sen. Chap Petersen, D-Fairfax, an attorney who was working with managers at the Beach Poker Room earlier this year to try to fight the poker room shutdown, also refused to comment.

Others involved in the charitable gaming industry argued it's the General Assembly's fault no one seems to know what's happening with poker in Virginia.

A spokesperson for the Virginia Charitable Bingo Association said the legislature's "totally flawed" handling of the industry's attempted expansion into poker is to blame for unlicensed games continuing, possibly with no benefit to charities.

"I think Virginians should be asking their legislators if what they intended with this legislation was to put operators in a position to have to say, 'Rather than incur these absurd fines and risk jail time, we will simply remove the charitable aspect of these games,'" said Liam Gray, whose bingo organization helped fight the General Assembly's attempts to rein in charitable poker.

Amy Solares, a partner in the business entity behind Bingo Palace and vice chair of the Charitable Gaming Board, didn't respond directly to phone calls and emails. In a statement given to the Mercury by Gray, she said she doesn't own the facility itself and isn't involved with poker.

"If no one is certain in what manner or even whether or not Beach Poker Room or any other poker operator can play poker, that strongly suggests these laws are too ambiguous and problematic to be of use to anyone," Solares said.

Solares worked closely with charitable gaming regulators due to her position on the state board. She's also currently running for the Virginia Beach School Board as a Republican and has received donations from Sen. Bill DeSteph, Del. Glenn Davis and Del. Tim Anderson.

The group behind the Beach Poker Room applied for a poker license last year under the corporate name 2 G's Business Inc. State records show the corporation's status as "pending inactive" because of an overdue annual report.

## **'We just need the existing legislation enforced'**

Virginia has significantly relaxed its formerly strict stance on gambling over the last four years, and some feel there's no harm in people getting together to play cards with money on the line. But there's widespread agreement the state needs coherent gambling laws and someone making sure they're followed, and many see the latest poker room twist as another sign of failure on that front.

"I don't think we need new legislation, we just need the existing legislation enforced," said Sen. John Bell, D-Loudoun, who sponsored this year's bill that shut down all poker rooms temporarily. "I will be working with a bipartisan group of legislators who will ask the governor, attorney general and commonwealth's attorneys to ensure the current laws are enforced."

The casinos that will offer poker games in Virginia are governed by a lengthy set of regulations and a licensing process overseen by the Virginia Lottery. The state has no regulations in effect for standalone charity poker rooms, but VDACS is working on creating them.

Some would-be poker operators in Virginia have tried to exploit the legal gray area between games of chance and games of skill, where the player's talent and aptitude determines the outcome. A 2013 legal challenge attempting to exempt poker from the state's illegal gambling

law, which bans certain unsanctioned games of chance, failed after the Portsmouth Circuit Court ruled the law was not unconstitutionally vague. The Supreme Court of Virginia upheld that ruling without resolving the skill versus chance question. If authorities were to crack down on the Beach Poker Room, it could create a new opening to try to legalize poker through the courts.

## Past prosecutions

In the past, it seemed clear anyone trying to make money from underground poker games was breaking the law.

Fairfax County police [made headlines in 2015](#) when heavily armed officers raided a high-stakes poker game happening in the basement of a private home in Great Falls. A 2011 poker raid in Virginia Beach led to criminal charges against the man accused of running the games out of a house across the street from the seafood buffet he owned. He faced up to 30 years in prison but agreed to a plea deal that came with a two-year suspended sentence, a \$5,000 fine and the forfeiture of nearly \$275,000 in cash and gambling equipment, [according to the Virginian-Pilot](#).

“It has been this office’s position that poker is a game of chance, and we have prosecuted illegal gambling cases in the past,” said Macie Allen, a spokesperson for Virginia Beach Commonwealth’s Attorney Colin Stolle. “If the Virginia Beach Police Department brings us evidence of illegal gambling we will evaluate it and take appropriate action.”

When asked about the Beach Poker Room, Virginia Beach police spokesperson said the department was “looking into the matter.” Last year, the [Richmond Free Press reported](#) that Richmond police officers were doing off-duty security work at a similar bingo hall/poker room in South Richmond. The Virginia Beach police spokesperson didn’t immediately answer when asked if officers are doing similar work at the Bingo Palace/Beach Poker Room.

## The fight over charitable poker rules

Virginia legalized charity Texas Hold ’em poker tournaments in 2020 as a way to boost a declining charitable gaming industry best known for bingo halls. Charitable gaming operators were also looking to expand into new areas and to protect their turf in anticipation of several casinos opening in the state that will offer poker and other table games.

The rollout of state-sanctioned poker, long considered a form of illegal gambling, quickly turned into a [contentious dispute](#) between the Charitable Gaming Board, run largely by industry insiders who stood to profit from poker, and the Virginia Department of Agriculture and Consumer Services, which regulates charitable gaming.

Agency officials felt the board was overstepping by writing poker regulations to maximize the industry’s revenue and minimize state oversight. A major concern was the lack of clear separation among charities, for-profit poker operators and landlords who charge them rent, a setup state officials have said is susceptible to financial conflicts of interest and corruption.

Charitable Gaming Board Chairman Chuck Lessin, who opened an unlicensed poker room at his South Richmond bingo hall last year but closed it this summer to comply with the new law, accused VDACS of undermining the board’s authority and working to block the board-approved regulations from taking effect. Lessin has argued the General Assembly is taking a harsher line on small-scale charitable gaming operators to clear out competition for the big out-of-state companies opening casinos in Virginia.

The General Assembly largely sided with VDACS in 2021 by passing legislation to freeze charitable poker altogether. Several poker rooms opened anyway, despite none of them being officially licensed or regulated by VDACS.

Legislators took a harder stance this year, passing a new bill threatening poker operators with crippling fines, a move meant to stop all unlicensed games until VDACS could craft a new set

of regulations and start issuing licenses.

The lawsuit this summer was an attempt to block that law from going into effect, with Petersen arguing the state was hurting charities like Virginia Beach's Billy the Kidden cat rescue by legalizing charitable poker but refusing to give out licenses for it.

Krizek, who led a General Assembly committee last year that scrutinized the charitable gaming industry, said he's hoping the situation improves soon with the Virginia State Police expected to fill a gaming enforcement coordinator position the legislature created this year. But he said he's worried "the clock is ticking."

"When more and more of these illegal gambling dens pop up, the harder it's going to be," Krizek said. "It's going to be like whack-a-mole trying to get rid of them all."



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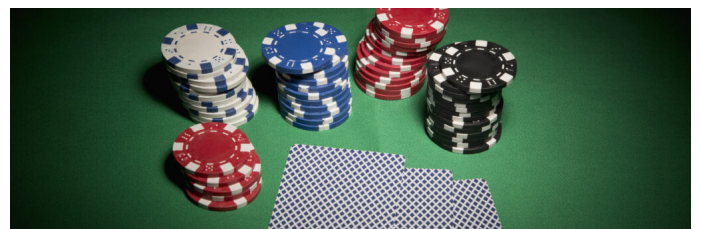
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