

POLITICS

## Skilled litigation

*Inside a former NASCAR driver's fight to overturn Virginia's ban of electronic betting machines.*



by **Markus Schmidt**  
May 24, 2022



Hermie Sadler. Photo by Markus Schmidt.

EMPORIA – In the evenings, after truck drivers park their cargo trailers for the night, dozens of them gather at Sadler's Travel Plaza in Emporia, a truck stop with an old-school road-trip vibe right off of Interstate 95 that offers not just gas and food but amenities like showers, a laundromat and several forms of entertainment. The truck stop's eight electronic betting machines are especially popular among truckers and locals seeking to kill some time. "You come to this place in the evening time and it's hard to find a game to play," said operations manager Michael Allen. "Folks are definitely enjoying it."

Skill games, which have the look and feel of a casino slot machine, are a common sight in restaurants, taverns, convenience stores, and other establishments around the commonwealth. But unlike slots in casinos, these games don't just rely on chance, but they require a level of human skill or ability for players to win and earn a payout.

And this special status has made them a prime target for lawmakers from both sides of the aisle who in 2020 passed legislation banning the devices effective July 1 of last year – a move that Hermie Sadler, a former NASCAR driver and the owner of Emporia's truck stop, is currently fighting to have overturned in court.

Sadler alleges that the new law, which he considers “government overreach,” was designed to create an advantage for large, resort-style casinos and gambling chains moving into Virginia.

“They roll out the red carpet for the out-of-state casino businesses, but those profits are mostly going out of state,” Sadler said in an interview with *Cardinal News* at his office on Emporia's Main Street last week. “The government is supposed to work for the people, but I had to sue the government to protect my rights as a business person,” he said. “Why is a casino more vital to the commonwealth of Virginia than a convenience store, a restaurant or a truck stop?”



Map by Robert Lunsford.



A skill game at Sadler's truck stop. Photo by Markus Schmidt.

Sadler, 53, a savvy entrepreneur whose family has owned businesses in Emporia for decades, currently operates two convenience stores in the area, plus a racetrack-themed restaurant, and the truck stop.

The Sadlers first began offering skill games in the mid-1980s. Today, they operate a total of 41 machines, including different variations of card-, fantasy-, strategy- sports- and role-playing games, among others.

Since they first emerged in the 1970s, electronic betting machines are sometimes dubbed “gray machines,” because they mostly operate in a legally gray area, functioning like slot machines that pay out winnings to players with skill.

But unlike games of chance, such as the slot machines at the larger casinos, skill games have an interactive component, said Allen, Sadler's operations manager. “A slot machine is going to spin and you either win or you don't,” he said. “With skill games, you have to recognize the patterns within a game and you have to know when to click the button. You have to remember up to 30 different sequences, and if you get them all right it will forward you to a different level.”

Allen said that some players are so well trained that they know they are about to hit the jackpot when they see a certain pattern. “They sit here, put another hundred bucks in it and win \$5,000 or \$6,000,” Allen said. “It's nothing for us at some of our locations to do payouts of between \$5,000 and \$10,000 a day. If people know what they are doing, they can win a lot of money.”

Sadler doesn't own the machines but commissions them from distributors for a share in profits. “We make deals with them, we rent the space to them and they handle all of it. We don't work on the games, we only split proceeds,” Sadler said. In a good month, one machine makes between \$300 and \$400 in profits. In a bad month, the distributors take the losses – a win-win for Sadler.

People that come to play skill games at his establishments for the most part are locals that live around the corner or down the street, Sadler said. "They are not the same customer that would load up and drive to Norfolk or Richmond to a casino. They just want to hang out and spend a couple of hours entertaining themselves."

People like Debra Bookman and her husband Gary, who come to Sadler's Travel Plaza about twice a week to play games.

"I play here all the time, it's good entertainment, it's a lot of fun, it's a clean place and the people who work here are nice. It's the best place to play at because it actually does pay," Debra Bookman said, her eyes fixed on the symbols blinking on the screen of the slot machine before her. "You're not just sitting here throwing your money in. You have to have skill, you have to know the sequences and how it follows."

As a frequent patron of the truck stop, Bookman said that she was disappointed about the skill games ban, and she applauded Sadler's efforts to get the law thrown out. "I just don't think it's fair to someone like him when you have people down the road doing the same thing," she said, referring to Rosie's Gaming Emporium, a franchise that currently operates five establishments in Virginia and that is working to open another one in Emporia next year. "I'm not planning to go there or anywhere else, I just like to come here and have a good time."

For years, small business owners were able to operate the machines unbothered by law enforcement. But in 2019, the push to legalize casinos and expand gaming in Virginia began in earnest when the General Assembly passed legislation authorizing the development of resort-style casinos in five localities – Bristol, Danville, Norfolk, Portsmouth and Richmond.

The legislature then directed the Virginia Joint Legislative Audit and Review Committee to review the casino gaming laws in other states, evaluate the commonwealth's current and potential gaming governance structures and project potential revenues from expanding legal forms of gaming. Allowing casinos to eventually open in the commonwealth was made contingent on the JLARC review and approval by the 2020 General Assembly.

The 202-page [JLARC study](#) projected that casinos in these five locations would generate about \$970 million annually in net gaming revenue and approximately \$260 million in gaming tax revenue for the state, with about one-third of total casino revenue to be generated by out-of-state visitors, while creating about 3,500 new jobs.

The study also found that skill games – referred to as "unsanctioned gaming ventures" due to their unregulated status – were already generating between \$83 million and \$468 million in annual revenue, although the committee conceded that the numbers were based on estimates because the betting machines weren't taxed by a government authority.

During the same 2020 session when the General Assembly greenlighted the local referendums on casinos, the legislature also passed Senate Bill 971, sponsored by Sen. Janet Howell, D-Fairfax, which banned skill games in the commonwealth. Lawmakers said at the time that this move would help increase revenue for the Virginia Lottery which then expected to lose nearly \$140 million in sales in fiscal 2020.

However, after the coronavirus pandemic shuttered thousands of businesses in the commonwealth, lawmakers agreed to a one-year reprieve for the operations of the electronic skill games operating across Virginia – but only after taking a promise from then-Gov. Ralph Northam that he would veto any future legislation to extend the industry's life.

In the meantime, the Virginia Alcoholic Beverage Control Authority took on regulating about 6,000 of the estimated 8,000 betting machines in the commonwealth, labeling each with a yellow sticker. For the Authority, regulating games of skill was a time consuming effort, VABC spokeswoman Valerie Hubbard said in an email.

"Because we were tasked with this as a one-year responsibility, we used a paper system as the short time period did not warrant the expense to create new technology for the process, which is outside the scope of ABC's mission," Hubbard said.

After the ban went into effect on July 1, 2021, a Norfolk Circuit Court judge denied a request from a group of Virginia business owners for an injunction that would allow the continued operation of skill games at their establishments, stating that the plaintiffs failed to prove that they had been "irreparably harmed" by the ban. The group had argued that the legislation was discriminatory and a violation of Virginia human rights law because many businesses operating skill games are owned by ethnic and religious minorities.

But in December, a judge at the Greensville County Circuit Court issued a temporary injunction blocking the enforcement of the ban after Sadler filed a suit against Northam, Mark Herring, then the attorney general, and the Virginia ABC.

For his effort, Sadler enlisted Sen. Bill Stanley, R-Franklin County, a trial lawyer in Moneta. "Hermie and I have been friends for a long time, and at the time when skill games were being debated to be banned in Virginia in the General Assembly, Hermie came to me and talked about it," Stanley said in a recent

phone interview.

Although he was personally against gambling and voted against the casino referendums, Stanley agreed to take on the case. “We already passed laws allowing casinos and other forms of sports betting and gambling like that. If you rip the bandaid off, why not allow the small businesses in Virginia to participate in this emerging industry, especially when it seems like the deck is stacked against them,” Stanley said.

Banning skill games while allowing casinos to operate is unconstitutional, Stanley argued, and he and Sadler won a first victory when the judge in Greensville County granted the temporary injunction.

“I think what the government did in SB971 was government overreach, because what it was doing was picking winners and losers,” Stanley said. “If you go to a Chuck E. Cheese and you play ring toss or Skee-Ball, or you play a video game and you put in a quarter, and if you are good enough you get free replays, that takes skill, and we have allowed those games to exist in Virginia forever. But the government is trying to do surgery with a hatchet rather than a scalpel and eliminate a certain type of skill game.”

One of the regulatory stickers. Photo by Markus Schmidt.

Sadler said that after the ruling, he received letters and emails from hundreds of businesses across Virginia, thanking him for his effort that allows them, for the time being, to continue to legally operate their machines.

“Most people just think it’s about Hermie and the Sadlers getting to operate their games and making a few dollars. But there are hundreds of small businesses, mostly mom and pop stores and little hole-in-the-wall bars that have just one machine, and the revenue from that machine keeps them afloat,” he said.

Mike Barley, chief public affairs officer at Pace-O-Matic, a skill games manufacturer headquartered in Duluth, Georgia, that operates about 5,500 games in the commonwealth, said that Virginia small businesses are already suffering from higher prices due to inflation and difficulties arising from hiring employees.

“Skill games are the main reason many small businesses can keep their doors open. During one year of regulation and taxation, skill games delivered nearly \$140 million in tax revenue for the commonwealth and localities,” Barley said. “We are eager to work towards a legislative solution to regulate and tax our games. Until then, we are awaiting the results of the current litigation.”

For Sadler, his fight got personal when Rosie’s Gaming Emporium announced its bid to come to Emporia. The local investor, Richmond-based Colonial Downs Group, has vowed to invest \$29 million in the city of under 6,000 residents. The groundbreaking took place last month, and Rosie’s is set to open in April 2023.

According to the website of Peninsula Pacific Entertainment, the company owning the franchise, Rosie’s will “provide great jobs, with more than 100 team members.” The Emporia Rosie’s will have “150 state-of-the-art slots like games and a stage for musical entertainment.”

Sadler believes that Rosie’s owners have joined forces with the big casinos to lobby in Richmond with the goal of shutting down skill games in Virginia because they want to eliminate all competition – even that as small as a local dive bar with one slot machine.

“Rosie’s has every right to expand and to come in with their casinos. But they are targeting us, and we’ve had skill games at our truck stops in Emporia since the 1980s. This only became an issue when the casinos started rallying their troops together to find an entry into Virginia,” Sadler said. “They want to get rid of the skill games in convenient stores, truck stops, restaurants and bars, so when they come in, they are the only show in town. It’s about power.”

According to VPAP, a nonprofit tracking money in Virginia politics, several gaming businesses and political actions committees have given money to lawmakers between 2019 and 2021, when the push for the expansion of gaming in the commonwealth gained more steam.

Howell, the state senator who sponsored SB971 banning skill games, in November received \$2,500 from Caesar’s Entertainment, a casino and hotel company based in Nevada. But she also accepted a \$10,000 donation from J&J Ventures Gaming, a video game terminal producer from Illinois, and, in October 2019, \$5,000 from Queen of Virginia Skill & Entertainment, an amusement machine supplier from Henrico County, her financial disclosures show.

A spokeswoman for Howell on Thursday said that the senator was “unable to comment” due to her role in the ongoing budget negotiations.



Sen. Tommy Norment, R-Williamsburg, the Senate minority leader and co-patron of SB971, and his Virginia Way PAC between 2019 and 2021 received a total of \$101,500 from Betting on Virginia Jobs, a PAC associated with Bristol-based businessman Jim McGlothlin, who has been spearheading an effort to bring the Hard Rock Hotel & Casino, a \$400 million resort, to the Bristol Mall. The Virginia Lottery Board has already issued a facility operator's license to Hard Rock Bristol to operate Virginia's first casino.

According to a story in the Richmond Times-Dispatch from April 22, 2020, Norment on the day of the Senate vote on the skill games ban said that "I absolutely deplore these machines," likening the skill gaming industry to "Ali Baba and the Forty Thieves."

A spokesman for Norment did not respond to emails asking for comment last week, and an assistant for McGlothlin did not return phone calls.

Lawmakers like Norment and Howell and the casinos have "a dog in the fight," Sadler said, "and we don't really know what it is. Why won't they figure out how to create a fair and equitable tax and regulation system for our games?"

In the meantime, Sadler and Stanley have asked the court for a continuation of their hearing initially scheduled for May 18 because of rumors that lawmakers might write something into the state budget trying to ban or overregulate skill games. "There were no bills in the General Assembly addressing the skill games issue, but we heard constantly that certain lawmakers wanted to either regulate or ban skill games through putting statutory language in the budget," Stanley said last week.

Stanley added that "all parties agreed that the trial date should be continued, so that we would not have to try the matter twice, thereby taking up the court's time unnecessarily on the same subject matter." All parties filed a consent motion to continue the case, he said.

The judge granted the motion, postponing the hearing until Nov. 2, while also prohibiting the government – for the time being – from enforcing the ban of the machines that were previously yellow-stickered by the VABC.

The Virginia Mercury [reported last week](#) budget leaders in the Virginia General Assembly won't say if they're considering changing the state's contested ban through the budget. "Let's keep 'em guessing," House Appropriations Chairman Barry Knight, R-Virginia Beach, told the Mercury when asked for a response to the claim the budget could include a revised policy on skill games, either to tighten the existing ban or to lift it.

Gov. Glenn Youngkin hasn't taken a position on the issue until last week, when his spokeswoman Macaulay Porter said in an email that Youngkin is not opposed to the responsible expansion of skill gaming in the commonwealth, "as long as it is carefully regulated."

For Sadler, the delay of the hearing is another victory in his battle to overturn the ban. "Is anybody going to recognize the fact that because of this month's continuation small businesses across the commonwealth of Virginia are going to be able to continue to legally operate these games and get this revenue that has been a lifeline for them?" Sadler said.

While his fight isn't over yet, Sadler remains hopeful that he will win the war. "I'm proud of what we are doing, and we are going to fight until the very end, whenever that might be," he said.



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Michael Allen, operations manager at Sadler's truck stop. Photo by Markus Schmidt.

## ECONOMY

## Stores dedicated to unregulated 'skill game' machines proliferate in Bristol

*Skill games function like slot machines in casinos, but operators say they rely on a level of skill rather than chance. The city of Bristol planned to ask stores to cease operations prior to Monday, when a judge extended an injunction allowing games to continue.*



by **Susan Cameron** and **Markus Schmidt**

December 7, 2022



Georgia Johnson of Bristol in the store at 2118 Euclid Ave. Photo by Susan Cameron.

As electronic “skill game” machines continue to operate unregulated and untaxed in Virginia, they have proliferated in Bristol, where at least three stores — each filled with 25 to 30 of the machines — have popped up in recent months.

Previously, a few of the games could be found in convenience stores and truck stops, but the new storefronts are dedicated strictly to the games and appear to be mini casinos.

City officials are aware of the machines and were sending out letters to the operators asking them to cease operations by Jan. 31, City Manager Randy Eads said Tuesday. But the letter was drafted prior to a judge’s decision Monday to extend the injunction of the state’s ban on the machines, which allows them to

continue operating for at least a few more months.

Eads said that according to Virginia Code Section 18.2-325 et. seq., the games are illegal.

“From my understanding the order to extend the injunction has not been entered yet. Once the order is entered, I will review the order to determine how the city will move forward. The city will not violate the court’s order. However, if the court finds skill games are illegal, the city will be positioned to take legal action to force the skill game operators to cease operations,” Eads wrote in an email to Cardinal News.



The Lucky Arcade at at 1865 Euclid Ave. Photo by Susan Cameron.

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The stores are within a few blocks of each other, with two on Euclid Avenue, the Lucky Skill Arcade at 1865 Euclid Ave., another at 2118 Euclid Ave. that doesn't have a name on its storefront, and the Lucky Store, which is in a former bank building at 1419 W. State Street.

A small fourth shop, Andy's Store, has five skill machines and operates in a strip shopping center on Gate City Highway, within sight of the temporary Bristol casino at the old Bristol Mall property. A groundbreaking for the permanent Hard Rock Hotel & Casino Bristol is being held Wednesday.

Sometimes dubbed “gray machines,” because they mostly operate in a legally gray area, skill games function like slot machines in casinos. However, operators say they don't rely on chance, but require a level of skill for players to win and earn a payout. The machines, formally referred to as “unsanctioned gaming ventures” due to their unregulated status, have been a common sight in restaurants, taverns, convenience stores and other establishments around the commonwealth since the 1970s.

In 2019, the General Assembly passed legislation authorizing the development of resort-style casinos in five localities – Bristol, Danville, Norfolk, Portsmouth and Richmond – if approved by voters.



The legislature then directed the Virginia Joint Legislative Audit and Review Committee to review the casino gaming laws in other states, evaluate the commonwealth's current and potential gaming governance structures and project potential revenues from expanding legal forms of gaming.

The [JLARC study](#) projected that casinos in these five locations would flood the state's coffers with millions of dollars in gaming tax revenue, which lawmakers decided to use to fund Virginia's dire school construction and modernization needs. The study also found that skill games were already generating a similar amount in revenue.

Because some lawmakers were concerned that the electronic betting machines could pose a threat to the profitability of the planned casinos, the legislature in 2020 passed legislation banning the devices effective July 1 of that year.

But after the coronavirus pandemic shuttered thousands of businesses, lawmakers agreed to a one-year reprieve for operations of the electronic skill games and tasked the Virginia Alcoholic Beverage Control Authority with regulating about 6,000 of the estimated 8,000 machines in the state, labeling each with a yellow sticker.

In the fall of 2021, Hermie Sadler, a former NASCAR driver and entrepreneur from Emporia who is currently seeking the Republican nomination in the newly created 17th state Senate District, challenged the ban in court, arguing that it violates free speech. For his suit, Sadler teamed up with state Sen. Bill Stanley, R-Franklin County, an attorney.

Agreeing with the plaintiffs, a judge in Greenville County last December issued a temporary injunction blocking enforcement of the ban. While the injunction is in place, however, Virginia is not collecting tax revenue on legal skill games.

Sadler's family currently operates two convenience stores in Southside, plus a racetrack-themed restaurant and a truck stop. They began offering skill games in the mid-1980s and operate a total of 41 machines today, including different variations of card-, fantasy-, strategy- sports- and role-playing games, among others.

Sadler doesn't own the machines, but commissions them from distributors like Pace-O-Matic, a skill games manufacturer headquartered in Duluth, Georgia, that operates about 5,500 games in the commonwealth.

After the expiration of the ABC's regulatory oversight ended June 30, businesses across Virginia have been operating skill games in murky legal territory. A spokeswoman for the ABC last week declined to comment, citing the pending litigation.

The state Attorney General's Office, state Sen. Todd Pillion, R-Washington County, and casino officials also declined comment due to the lawsuit.

A trial date scheduled for last month was continued until next year, and on Monday, a judge in Greenville County again declined to dismiss Sadler's suit and, because of Stanley's involvement in the case, extended the injunction until after the 2023 legislative session wraps at the end of February.

## Timeline of skill games in Virginia

### March 2020:

The Virginia General Assembly passed legislation banning skill games in the commonwealth effective July 1, 2020.

### April 2020:

Because of the economic impact of the COVID-19 pandemic on small businesses, the General Assembly backed a plan by then-Gov. Ralph Northam to grant a one-year reprieve for the operations of electronic skill games in Virginia, pushing the ban back to July 1, 2021. During this one year extension, the legislature tasked the Virginia Alcoholic Beverage Control Authority with adopting regulations to govern the industry.

### July 1, 2021:

Virginia's skill games ban went into effect. That month, a Norfolk Circuit Court judge denied a request from a group of Virginia business owners for an injunction that would allow the continued operation of skill games at their establishments, stating that the plaintiffs failed to prove that they had been "irreparably harmed" by the ban.

### Dec. 7, 2021:

A judge at the Greenville County Circuit Court issued a temporary injunction blocking the enforcement of the ban after former NASCAR driver and Emporia business owner Hermie Sadler filed a suit against Northam, Mark Herring, then the attorney general, and the Virginia ABC, arguing that the ban violates free speech by seeking to classify a particular type of video game as illegal gambling. Since, businesses in Virginia were once again permitted to operate skill games, although without regulatory oversight and taxation by the state.

### Dec. 5, 2022:

The same Greenville County judge who issued the temporary injunction once again declined to dismiss Sadler's suit. Because Sen. Bill Stanley, R-Franklin County, represents Sadler in his effort in trying to overturn the ban, the judge extended the injunction until after the 2023 General Assembly session wraps in late February.



Michael Barley, a spokesman for Pace-O-Matic, applauded the court's ruling.

"We are pleased that legal skill games will continue operating in Virginia and providing much-needed revenue to small business owners across the state," Barley said in an email.

"We anticipate the final court decision will uphold the legality of skill games in the commonwealth. However, without further regulation and additional taxation, taxpayers are missing out on nearly \$100 million in tax revenue that could have gone toward critical projects along with curbing illegal games that are proliferating in Virginia communities."

According to the State Corporation Commission, Lucky Skill Arcade in Bristol is registered under the entity Shiv9 Inc. under agent Arvind Patel with its registered office address in Emporia, Virginia. It was formed on March 14, 2022.

Lucky Store is registered under Juan Services LLC under agent Juan E. Guzman Corchado with its primary office address in Chattanooga, Tennessee. It was formed on Dec. 28, 2021, according to the SCC.

Neither Patel nor Corchado could be reached for comment.







The windows of each store are covered with posters featuring images of games including Rakin' Bacon, Dragon Link, Ultimate Fire Link and Ocean King 3 Plus Crab Avengers. All offer ATM machines.

Many of the skill games have bets ranging from 25 cents to \$2.

Last Wednesday afternoon, few people were playing the games. At the shop at 2118 Euclid Ave., Georgia Johnson of Bristol, Tennessee was the sole customer, playing one of the “fish tables,” where the player tries to shoot fish for money.

Georgia Johnson playing the fish game. Photo by Susan Cameron.

She said it's her favorite game because it requires some skill whereas many of the other games are mostly luck.

Johnson, who said she plays the skill games three or four times a week, said she likes to have a strategy when she plays and she added that it's not hard to win \$100-\$200 at the fish tables.

She said it's easy to see how some people could get into trouble playing the games, so she takes \$5-\$10 when she goes in and she stops playing when the money runs out.

Occasionally, she said she plays games at the casino, but she said she prefers the small stores because the casino doesn't have the fish game.

Over at the Lucky Store at around 4 p.m., three people were playing, including Nick Holden, of Bristol, Tennessee. While playing the Ultimate Fire Link game, Holden won \$14. He said he's won big a couple of times, but he wouldn't say how much.

Holden said he prefers the small stores because “there's just too much to choose from” at the nearby casino.



