



GAMBLING

With court case stalled, skill-game industry keeps cash flowing to Virginia politicians

Some Queen of Virginia machines still wrongly imply money goes toward COVID-19 relief

BY: **GRAHAM MOOMAW** - JULY 5, 2023 12:03 AM



 A message displayed on a Queen of Virginia machine at a Hanover County convenience store inaccurately suggests money from the machines still helps with the state's COVID-19 response. (Graham Moomaw/Virginia Mercury)

Almost two years after Virginia lawmakers voted to ban so-called skill games, two of the colorful, slots-like machines were installed at a Richmond convenience store a block from the state Capitol, unmissable to legislators and political aides popping over for coffee or energy drinks.

Similar machines in at least two other Richmond-area convenience stores recently displayed a message saying some of their revenue goes toward Virginia's COVID-19 relief fund. It did once. But that claim hasn't been true since July 1, 2021, when the state stopped regulating and taxing the machines as they were formally declared illegal.

The industry is [fighting that ban in court](#), battling the state to a lengthy standstill that since December 2021 has allowed the machines to continue operating in a sort of legal limbo, with no oversight from regulators and no public revenue from gaming taxes. That uncertain status was meant to be temporary, but the litigation just hit the two-year mark with no clear end in sight and almost no forward movement in the first half of 2023.

The original court injunction that kept skill games running – and raised doubts about the constitutionality of treating them as illegal gambling – was set to expire in May of 2022, with an expectation the case could have been resolved by then. More than a year later, it's still unclear when and how clarity might come on an issue some see as an ongoing failure by the state to set a clear, enforceable and legally defensible policy.

Franklin City Manager Amanda Jarratt, one of several local government officials to voice frustration on the matter, said it's "imperative" that someone make a final decision on whether the machines are going to be legal or not.

"Having no clear direction on licensure, taxation, or regulation creates a frustrating position for localities," Jarratt said. "When citizen complaints are filed with the locality we find ourselves in a position not to be able to provide them with any guidance or resolution to their concerns."

In late 2021, then-Attorney General Mark Herring unsuccessfully tried to have the court injunction overturned. At the time, his office argued that instead of preserving the status quo while the lawsuit proceeded, what the lower court had done amounted to "an immediate and complete deregulation from the bench."

"It is now legal in Virginia for a child of any age to go to a corner store and gamble on so-called video skill games," the state wrote in its failed 2021 petition to have the Supreme Court of Virginia intervene to fix what the state described as an urgent problem.

Many skill machines still have stickers indicating minors are not allowed to play them, but it's unclear how strictly those rules are enforced by convenience store cashiers who are often the only ones in a position to supervise the machines.

During the last court hearing in the case in December, the retired judge who issued the injunction indicated proceedings in the Greenville Circuit Court would resume in April or May, once the legislative session was concluded. There's been little action since that hearing apart from the litigants arguing over what Judge Louis Lerner's last preliminary ruling meant. The two sides will be back before the judge for a status update on July 28.

Lerner has indicated he sees merit to the industry's contention the ban violates free speech by outlawing a particular type of video game due to its resemblance to traditional gambling. Skill-game proponents insist the games shouldn't count as gambling because they're based primarily on skill, not chance. Backers have also said if the state is going to allow casinos, it should give smaller businesses a chance to get in on a new industry.

Attorneys for the state have raised doubts about whether free speech concerns should even apply and have insisted the ban falls well within the state's powers to regulate and restrict gambling. Supporters of the skill-game ban note that, unlike other gambling interests, the industry aggressively moved into Virginia without asking the General Assembly for permission until the games started to draw attention.

The court records don't clearly indicate what might be delaying the lawsuit, and the office of Attorney General Jason Miyares said it can't comment on pending litigation.

The General Assembly's recent habit of not passing a budget bill on time and the involvement of Sen. Bill Stanley, R-Franklin, in the case were factors previously cited in discussions over the case's timing. Retired judges are often brought in to handle cases involving a sitting lawmaker, and General Assembly members who work as lawyers have the power to postpone court hearings they're involved in while the legislature is in session. Stanley, who is representing skill game supporters challenging the ban, has not formally invoked those powers to postpone proceedings. However, Lerner [has indicated](#) Stanley's involvement requires the court to work around the General Assembly's calendar to some degree.

Georgia-based Pace-o-Matic, the parent company of prominent skill-machine brand Queen of Virginia, also declined to comment on why the litigation is taking longer than anticipated.

Asked why some Queen of Virginia machines inaccurately say some of the money players might lose will go toward the state's COVID-19 response, a spokesperson for Pace-o-Matic said the company's hands are tied by the terms of the court injunction that kept the machines running.

"Pace-O-Matic is operating 100% in compliance with the temporary injunction which states that we are not to make any updates to the software," said Christina Freundlich, a public relations consultant working with the company. "This includes any messaging featured on-screen."

The court injunction didn't explicitly say the company must freeze its software and screens in place, but Freundlich said that's how the company interprets a court order that only protected "those games" taxed and regulated before the 2021 ban took effect. Company representatives have also claimed the injunction allows for previously regulated Queen machines to be moved to new locations, which would explain why machines are showing up where they didn't exist before.

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Though the General Assembly's official stance is that skill games are a form of unsanctioned gambling, both Republican and Democratic politicians have continued to accept donations from skill-game companies as both sides scramble for campaign money in an important election year.

A PAC tied to Pace-o-Matic made \$141,750 worth of political donations to both parties in 2023 alone, according to the [Virginia Public Access Project](#). That included \$30,000 to House Majority Leader Terry Kilgore, R-Scott, after the influential Republican [sponsored an unsuccessful bill](#) to reverse the state's skill-game ban and restore a regulatory system for the machines. The PAC, Va Operators for Skill, gave to about 30 incumbent legislators this year, roughly evenly split between Republicans and Democrats.

Organizational paperwork the PAC filed with the state last year listed a Pace-o-Matic official as its treasurer.

Pace-o-Matic, which has contributed more than \$930,000 to Virginia political figures since 2018, also [donated \\$20,000](#) to Gov. Glenn Youngkin's PAC in March after contributing over \$100,000 to both Youngkin and former Democratic Gov. Terry McAuliffe during their 2021 gubernatorial matchup. The governor's office declined to comment on the status of the lawsuit.

The company also attempted to make a \$25,000 donation to the inaugural committee for Miyares in early 2022. However, that contribution was refunded after a slip-up led to the funds being deposited during the General Assembly session, when legislators and statewide officials are prohibited from fundraising.

In another indicator of the industry's political ties in Virginia, Pace-o-Matic recently confirmed that Democratic Party of Virginia Chairwoman Susan Swecker continues to work for the company as a paid consultant.

Swecker is not one of the company's registered lobbyists, but Pace-o-Matic now lists former Virginia public safety secretary Brian Moran, who held that law enforcement-focused role in the administrations of both McAuliffe and former Gov. Ralph Northam, as part of its lobbying team in the state.

Freundlich, a Democratic political operative who worked for McAuliffe's campaign in 2021, indicated the company is still hoping to work with the General Assembly to find a workable path forward in Virginia.

"It has been no secret that we are working with the General Assembly to formally regulate skill games in the Commonwealth," Freundlich said in an email. "Last session, the House Majority Leader carried legislation to regulate skill games, provide tax revenue to the Commonwealth and provide funding to law enforcement to root out illegal gambling. We look forward to our continued work together during next year's session."



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GENERAL ASSEMBLY 2023

GOVERNMENT + POLITICS

Can Virginia lawmakers find a way to fix the state's 'weird' weed laws?

Bills on retail sales, hemp regulation to be taken up in 2023 session

BY: **GRAHAM MOOMAW** - JANUARY 16, 2023 12:05 AM



📷 With marijuana still illegal to sell for recreational use, hemp-derived products are filling the void and catching the attention of state policymakers. (Graham Moomaw/Virginia Mercury)

At a sleek new store called Cannabist in Richmond's Carytown shopping district, anyone with an easy-to-obtain medical cannabis card can buy a full range of marijuana products strongly regulated by the Virginia Board of Pharmacy.

Right across the street, a vape shop has a sign advertising largely unregulated delta-8, which also gets users high but doesn't run afoul of current marijuana laws because it's derived from hemp plants.

A grocery store a short distance away offers a variety of milder CBD products that don't have intoxicating effects but also come from hemp.

For those who prefer a more DIY approach, it's now legal to grow up to four marijuana plants at home. You just have to find seeds, which remain illegal to sell.

And even though it's now legal to possess small amounts of pot, there's still no way to legally buy real-deal marijuana for purely recreational use.

Even in the eyes of many legislators who write the state's laws, Virginia's stance on cannabis is more than a little bit confusing and illogical.

"I think by and large most of the people would like to get it straight. We haven't done it," said Senate Majority Leader Dick Saslaw, D-Fairfax. "It's weird that it's legal to possess it but you can't sell it."

Clearing up Virginia's stance on marijuana is expected to be a major topic of discussion in the General Assembly session that began last week, but it's unclear if the two parties, which are sharing power in the state's divided government, will come to any major agreements. There are also unanswered questions about whether Republican Gov. Glenn Youngkin, a devout Christian widely thought to be considering a presidential run, has any interest in signing legislation that might allow future opponents to tag him as a legal weed guy.

Asked last week whether he would sign a bill creating a retail marijuana market in Virginia, Youngkin dodged.

"Right now we're very focused on making sure the enforcement and consumer protection laws are straightened out with regards to hemp and delta-8, and we're seeing products on shelves that are being mislabeled, and we're seeing products that are targeted towards children," Youngkin told reporters at the Capitol. "That's the bill I'm most focused on. I haven't seen any other bills."

JM Pedini, executive director of pro-legalization group Virginia NORML, said the legislature can either find a way forward on retail sales for adult use or "choose to continue ceding control of cannabis in the commonwealth to unlicensed, unregulated operators."

"If public safety is an actual priority for either chamber, then they will approve legislation to begin sales at licensed dispensaries as soon as possible," Pedini said.

'Left with this mess'

Multiple Republican legislators have filed bills to establish retail marijuana sales starting in 2024 or 2025, but House of Delegates Speaker Todd Gilbert, R-Shenandoah, says he's not sure what the General Assembly will do.

Gilbert blamed Democrats, who couldn't agree on the rules for a retail market when they legalized marijuana in 2021 a few months before losing much of their policymaking power in that year's elections, for doing a sloppy job.

"They just legalized it and walked away and said, 'Oh, we'll come back and do that later.' Which is just an absurd way to go about making public policy," Gilbert said. "And here we are left with this mess."

Gilbert said House Republicans will continue discussing the issue, but he said they're wary of rushing forward with a poorly thought-out bill.

"The main thing for me is whether we're going to spend a lot of time churning through this issue if we don't know what the governor would intend to do with it," the speaker said.

When Democrats were discussing how to set up legal marijuana sales, one point of contention was to what extent the state should make amends to minority communities most impacted by aggressive police enforcement of drug laws.

Progressive lawmakers and activists are [particularly concerned](#) about the optics of allowing big companies to dominate the retail market at the expense of smaller entrepreneurs, particularly Black Virginians who have been disproportionately impacted by marijuana prohibition. Democratic lawmakers envisioned "social equity licenses" that would help Black Virginians, particularly those convicted of misdemeanor marijuana offenses, get a piece of the new legal market.



📷 A medical marijuana dispensary in Carytown in Richmond. (Graham Moomaw / Virginia Mercury)

At a news conference last week, the Virginia Legislative Black Caucus said one of its priorities is finishing the legalization of marijuana in a “socially responsible way.”

“Our position on marijuana has been the same from the beginning: We need to legalize marijuana in the right way,” said Sen. Jennifer McClellan, D-Richmond. “There’s this war on equity because they don’t know what it means.”

Republican marijuana bills filed in the House strip out the social equity concept but include language promoting a role for “historically economically disadvantaged communities” in the retail market. A [retail sales bill](#) filed by Sen. Adam Ebbin, D-Alexandria, uses the same term.

Another key question raised by the various retail marijuana bills filed for the 2023 session is whether to allow the state’s four licensed medical cannabis companies to begin “transitional” recreational sales as the state works to set up a new retail licensing process. Some bills would allow medical dispensaries to become regular dispensaries as early as this year, but critics contend that would give a few major players an unfair head start in the retail market.

Virginia’s regulatory system for cannabis remains jumbled, and some bills attempt to create a more streamlined approach.

Bills sponsored by Del. Roxann Robinson, R-Chesterfield, and Sen. Barbara Favola, D-Arlington, would transfer oversight of the state's medical cannabis program away from the Board of Pharmacy and put it under the newly created Virginia Cannabis Control Authority. Ebbin's bill would also put "regulated hemp products" under the purview of the Cannabis Control Authority, moving them away from the food safety sphere overseen by the Virginia Department of Agriculture and Consumer Services.

'The sky isn't falling'

A hemp task force led by the Youngkin administration recently recommended creating a registration system for businesses that sell hemp products. Legislation has been introduced to do just that, requiring businesses to pay \$1,000 to register and creating the possibility of \$10,000 fines for retailers who break the rules.

That proposal has come under strong criticism from some in the hemp industry.

"This puts every single retail operation in Virginia that wants to sell hemp products in a very precarious situation and a lot of risk, quite frankly," said Jason Amatucci, president of the Virginia Hemp Coalition. "It's overbearing for a problem that is not as dire or as extreme as they make it out to be. The sky isn't falling, no matter what they want to tell you."

Sen. Emmett Hanger, R-Augusta, who's sponsoring an administration-backed hemp regulation bill, said the proposal "is not onerous."

"It's just a matter of registering properly," Hanger said. "That's the real essence of what we're trying to do, just having a systematic way of making sure all is good."

A [hemp regulation bill](#) filed by House Majority Leader Terry Kilgore, R-Scott, broadens the state's definition of marijuana to cover all products that contain a certain amount of naturally occurring or synthetic THC, drawing a clearer regulatory line between cannabis products that get users high and those that don't.

Delta-8 products have come under heightened scrutiny after [a Spotsylvania County boy died](#) after allegedly eating a large amount of delta-8 gummies containing THC. In October, numerous ambulances [were sent](#) to a Fairfax County middle school after more

than half a dozen students said they had gotten sick from delta-8 gummies.

In response to concerns about child safety, Amatucci said there are countless other legal products that can be harmful to children if not stored properly, including alcohol and over-the-counter drugs.

“Just because a kid got into something that they shouldn’t have doesn’t mean we need to take the whole industry down,” Amatucci said.

[Legislation](#) filed by Del. John McGuire, R-Goochland, calls for a tougher crackdown than what the Youngkin administration prefers by banning the sale of delta-8 products altogether.

If Youngkin or the Republican-led House decides not to support a retail sales proposal, it’s possible the main cannabis-related change of the 2023 session will be the state getting tougher on delta-8 and hemp with no movement toward legal sales of marijuana.

Marijuana legalization wasn’t a major campaign issue in Virginia’s 2021 elections. But General Assembly members could be asked to explain their positions to voters in the high-stakes legislative elections this fall that will decide partisan control for the final two years of Youngkin’s term.“

“Governor Youngkin’s lack of direction on this issue has created a near-immovable obstacle for House Republicans,” said Pedini, the head of Virginia NORML. “While it’s reasonable to assume that he’s aware voters on both sides of the aisle overwhelmingly support legalization, his recent statements have left Virginians, including his supporters, scratching their heads.”



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GAMBLING GENERAL ASSEMBLY 2023

Virginia lawmakers consider restoring part of tax deduction for sports betting apps

Proposal would bring back write-off for free-bet promotions

BY: **GRAHAM MOOMAW** - MARCH 14, 2023 12:01 AM



 A billboard in Richmond for DraftKings, one of the major sports betting platforms operating in Virginia. (Graham Moomaw/Virginia Mercury)

When Virginia stopped letting sports betting companies deduct free-bet promotions from their taxable revenue last year, the state saw a [significant bump](#) in tax dollars.

The industry wasn't happy with the change, arguing policymakers were inhibiting the long-term potential of legal betting platforms by making it harder to attract new bettors and keep existing ones.

That pushback led to legislation being taken up this year that would restore the tax deduction for free-bet promos while capping it at 1.75% of total wagers.

“We are not here asking for all of our promotional deductions back,” lobbyist Bea Gonzalez, who represents a group of sports betting companies called the Virginia Sports Betting Alliance, told lawmakers at a committee hearing in January. “We’re asking for a portion of it back.”

The proposal would retain an existing rule allowing the promotions to be deducted from tax liability during a company’s first 12 months of operation in Virginia, a rule meant to give new licensees the same opportunity to establish themselves that the initial wave of sports betting platforms had.

[The legislation](#) that would partially restore the tax deduction passed the state Senate 31-7-1, but it was blocked twice by the House of Delegates Appropriations Committee. The fight’s not over yet, however, because the same language was included in the budget plan approved by the Senate. Lawmakers are still negotiating a final budget, meaning there’s still a chance the policy change could be included in the final version.

Betting apps use a variety of free-bet bonuses to entice people to gamble on sports, often offering hundreds of dollars’ worth of bonus bets to new users who make a small initial bet. Many apps use the promos and bonuses to encourage gamblers to make riskier parlay bets, promising a refund of sorts if a long-odds wager loses. Parlays are a combination of multiple bets, offering the possibility of higher payouts and a higher likelihood of failure.

Virginia legalized sports betting in 2020, setting a 15% tax rate on adjusted gross revenue. The law initially allowed sports betting companies to deduct any money spent on free-bet promotions from that amount.

“When we first passed the sports betting bill, which I helped write and was very proud of, we had the promotion deduction in order to get players from the illegal market to the current market,” Gonzalez said at the legislative hearing earlier this year.

The Virginia Sports Betting Alliance, which Gonzalez represents, includes FanDuel and DraftKings, the top two sports betting platforms operating in Virginia.

The exemption frustrated some lawmakers, who were surprised to learn some companies were paying almost no state gambling taxes. The state budget approved last year included a provision to close what some legislators considered to be a loophole that essentially meant the state was subsidizing industry efforts to promote sports betting.

At a committee hearing this year, Del. Mark Sickles, D-Fairfax, noted that other states have enacted much higher tax rates on sports betting with no deductibility for free-bet promos.

The big sports betting companies, Sickles said, “really don’t want to pay their 15%.”

After leading last year’s push to end the tax deduction, Sickles has touted the resulting boost to state revenues.

In January of 2022, Virginians wagered a total of \$485.5 million through licensed sportsbooks, according to monthly reports from the Virginia Lottery. The \$18.2 million in adjusted gross revenues that month produced \$2.8 million in tax revenue for the state.

In the same month this year, total wagers clocked in at \$513.1 million, a 6% increase from 2022. Without the free-bet deduction, that translated to \$42.1 million in adjusted gross revenues and about \$6.3 million in taxes.

State officials estimated the partial restoration of the tax deduction would cost the state about \$12.6 million in annual tax revenue, while noting sports betting revenue overall is running well ahead of projections.

Through January, the state had collected nearly \$44.8 million in sports betting taxes for the fiscal year that ends July 1.



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