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HOUSE DEMOCRATIC POLICY COMMITTEE

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA

HOUSE DEMOCRATIC POLICY COMMITTEE HEARING

Topic: Video Game Terminals and Skill Games in PA

Ebensburg Borough Building – Ebensburg, PA

October 13, 2020

AGENDA

- 2:00 p.m. Welcome and Opening Remarks
- 2:10 p.m. Panel for the Pennsylvania State Police:
- Major Jeffrey Fisher, Director, Bureau of Liquor Control Enforcement (BLCE)
 - Captain James Jones, Administrative Division Director, BLCE
- 2:20 p.m. *Questions & Answers*
- 2:40 p.m. Panel for Video Gaming Terminals:
- Rich Teitelbaum
President, PA Video Gaming Association
Owner, Lendell Vending, Inc. and Lendell Gaming, Inc.
 - Brent Mayes
Secretary, PA Video Gaming Association
Owner, Venture Gaming/Pro ATM
 - Donna More
Partner at Fox Rothschild and Counsel to Triple Diamond Gaming
- 3:00 p.m. *Questions & Answers*
- 3:20 p.m. Panel for Skill Games:
- Del Guerrini
President, PA Amusement and Music Machine Association
 - Rick Goodling
Compliance Supervisor, Pace-O-Matic
 - Paul Myers
Owner, Myers Games & Amusements
- 3:40 p.m. *Questions & Answers*
- 4:00 p.m. Closing Remarks

Pennsylvania State Police Testimony
Electronic Gambling Devices
House Democratic Policy Committee
October 13, 2020



Presented by:
Major Jeffrey A. Fisher
Pennsylvania State Police

Good morning, Chairman Sturla, Representative Burns, and members of the House Democratic Policy Committee. I am Major Jeffrey Fisher of the Pennsylvania State Police (PSP), and I currently serve as the Director of the Bureau of Liquor Control Enforcement (BLCE). Joining me today is Captain James Jones, Administration Division Director. Thank you, once again, for the opportunity to appear before you today to discuss enforcement involving illegal electronic gambling devices, and to take part in the conversation about strengthening our ability to enforce prohibitions against illegal, unregulated gambling.

I would like to begin with some opening remarks and then I will be available for questions; however, I must note, we continue to have cases pending in multiple courts, so some of my responses may be limited.

If a game or activity, not specifically authorized by statute, involves consideration (money) to play or participate, a result determined predominately by chance, and a reward, it is unlawful gambling. The Commonwealth has legalized certain forms of gambling and gambling activities by statute, including the Gaming Act, the State Lottery Law, the Local Option Small Games of Chance Act, and the Bingo Law. The Pennsylvania State Police investigates all forms of unlawful gambling in Pennsylvania. The Pennsylvania Superior Court has held that the term “unlawful gambling,” as used in Section 5513 of the Crimes Code, refers to “gambling not specifically authorized by the Commonwealth.” *Commonwealth v. Betres*, 237 Pa. Super 361, 368 (1975).

As mentioned in previous testimony before the General Assembly, illegal gambling is growing in the Commonwealth, outside traditional venues of clubs, restaurants, and bars to conveniences stores, shopping malls, and store fronts, almost exclusively through

unlawful gambling devices. These illegal devices include so-called “skill games,” in which the element of chance outweighs any element of “skill” that the manufacturer programs into the machine’s software. These are NOT arcade or amusement devices – they are programmed to accept currency (not coins) in denominations of up to \$100, offering the player a chance to win more money than he or she wagered. They are illegal gambling devices, regardless of what nomenclature the manufacturers or vendors of these devices choose to call them.

These so-called “skill games” vary greatly in the elements they describe as “skill.” There is no set definition of what is being called a “skill game”, it is merely an industry term designed to market these devices as something other than a slot machine. There has been, and will continue to be, increased adaptation of alleged “skill” elements to traditional gambling activities. For example, we have already seen alleged “skill” elements put onto coin pusher machines, the “tweaking of software” in existing devices, and in the development of multi-player games. These machines attempt to mask illegal gambling by incorporating a required interaction and/or a difficult, laborious and low-reward secondary game. However, these machines are gambling devices and are illegal in Pennsylvania. The legal test is whether the element of “skill” predominates the element of chance in determining the outcome for the player. Otherwise, one could simply add a such a required interaction or secondary game in order to receive a payout from a roulette wheel or a craps table to avoid prosecution for unlawful gambling, which simply defies logic and would undermine the legislative intent.

Further, we have seen a trend among various manufacturers in that they are duplicating the characteristics, aesthetics, and features of a certain manufacturer’s

devices to exploit the perceived legality of those devices, perhaps to convince businesses that the games are standardized and, therefore, legitimate to place within their establishments. Regardless, the PA State Police has been consistent in its position that such devices are, in fact, unlawful gambling devices.

These gambling devices remain unregulated and unmonitored. The operation of these devices and the activities surrounding them are ripe for corruption. There is no consumer protection, via a minimum payout rate, or “return to player,” as you mandated through the Gaming Act for slot machines, skill slot machines, and hybrid slot machines at casinos, or video gaming terminals at truck stops. In addition, neither vendors nor operators of these devices are obligated to provide funding to address compulsive and problem gambling, as you required casinos to do under the Gaming Act. Moreover, there are no active safeguards to prevent minors from gambling, unlike the safeguards instituted within licensed casinos.

The Gaming Act provides significant safeguards in the background investigations of key employees, suppliers, vendors, ownership interests, pecuniary interests, etc. No such safeguards exist for the devices at issue. While devices at casinos are inspected and certified by the PA Gaming Control Board, there is no regulatory oversight over the illegal devices that have proliferated throughout the Commonwealth. Further, there is no funding mechanism for enforcement, as you established under the Gaming Act.

Unlike licensed casinos and operators of lawful video gambling terminals, operators of these so-called “skill games” do not pay a specifically enacted tax on proceeds derived from them. As a result, profit margins for operating these illegal devices are extremely attractive to their manufacturers, distributors, and to the licensees and

businesses that house them and allow patrons to play them. It should also be noted that the “payouts” on these devices are frequently structured in such a way that no individual payout exceeds the amount that would require the business to provide a completed W-2G form to the winner. Based on evidence obtained from various illegal devices, payouts on devices have exceeded \$10,000 on a single play. Therefore, neither the businesses operating these devices nor the customers playing them are paying appropriate taxes on the proceeds or winnings as they would if playing various forms of legalized gambling.

We conservatively estimate that these so-called “skill game” devices generate approximately \$500 per week per machine. This figure, multiplied by even 10,000 machines, would generate \$5 million dollars per week, or \$260 million dollars per year. One manufacturer of these devices testified last week before a Senate committee that it has 15,000 machines currently in operation in the Commonwealth. Let that sink in for a moment – one manufacturer, 15,000 devices operating in the Commonwealth. There are at least nine (9) known manufacturers of these types of devices in operation in Pennsylvania and we anticipate that number will continue to grow. Recognizing the dollar values involved in these cash transactions, we must also recognize the potential attraction to illegal activities surrounding the operation, placement, and use of this gambling equipment and their proceeds.

If the General Assembly is considering expanding legalized gambling, beyond the recent expansion of licensed casinos and video gambling terminals in truck stops, we would respectfully ask that you consider the number of varying types of businesses that would be involved (e.g., restaurants, bars, social clubs, gas stations, convenience stores, strip malls, shopping malls, etc.), the impact on municipalities which may oppose an

expansion of gambling within their jurisdictions, and the logistics of enforcement in thousands of new gambling parlors throughout the Commonwealth. Further, consideration should be given regarding background checks and a careful examination of the businesses and individuals who may have a financial interest in the operation of the devices – the manufacturers, suppliers, vendors, and technicians who produce, program, operate, place, and have the ability to manipulate the devices.

Many of the concerns associated with this type of illegal gambling – regulating and policing of activities, strict monitoring and enforced control, limiting access, preventing unlawful activities, financial monitoring, safeguarding the public interest, and guarding against the actual or appearance of corruption from large campaign contributions, etc. – you have already considered and codified in Section 1102 of the Gaming Act, related to legislative intent.

You may have heard arguments that these devices are necessary to help support clubs and organizations. The Local Option Small Games of Chance Act specifically authorizes qualified organizations and clubs to operate specific small games of chance, allowing them to generate significant proceeds which can be used for public interest purposes and club operations, with a 60/40 split respectively. Further, the law requires adherence to various recordkeeping requirements for the purchase and sale of games and proceeds received, reporting guidelines, and prize limits to protect consumers and reduce corruption of the games and their organizations.

To illustrate the point, the Local Option Small Games of Chance Act restricts weekly prize amounts (the amount of cash paid out) to \$35,000 per week. In the last couple of years, the Bureau of Liquor Control Enforcement issued citations to

approximately twenty (20) club licensees for exceeding the maximum weekly prize amounts. Of those licensees, one had 96 weeks in a row in which it paid out weekly prize amounts in excess of \$70,000. Another licensee had 136 weeks in a row in which it exceeded the maximum payout. Of those 136 weeks, 135 of them exceeded the payout by at least double the maximum amount allowed by law. In some instances, the maximum weekly payout amount exceeded \$105,000.00, more than triple the amount permitted by law. In other words, there is currently a lawful way for clubs and organizations to support not only their own operations but also local charities and public interest groups, all within the structure of regulated, legislatively-approved forms of gambling.

We anticipate continued market expansion of these unlawful gambling devices, to seemingly promote their legitimacy through their widespread existence and operation. Clearly, based upon the expansion in the number of these devices and the diversity of the venues in which they are placed, there is a growing economic loss to the Commonwealth. Not only is the Commonwealth missing out on substantial tax revenue on the proceeds and payouts of these devices, given that consumers only have a finite amount of money to spend on gambling purposes, the operation of these devices are impacting upon the revenue produced by lawful forms of gambling, including the PA Lottery, gambling authorized at casinos, and through approved video gambling terminals.

The Pennsylvania State Police, Bureau of Liquor Control Enforcement has been contacted by law enforcement agencies and prosecutors from across the United States. Multiple jurisdictions are experiencing an impact from gambling devices alleging varying degrees of “skill” to present some form of legitimacy or avoidance from enforcement.

Our request to the General Assembly remains consistent. We respectfully ask for prompt clarity in the law regarding these types of devices, as this will facilitate compliance by business owners and licensees and provide law enforcement with a more efficient means to prosecute those who continue to violate the law. We have and are continuing to prosecute persons and organizations who engage in illegal activities. These prosecutions are lengthy, and expensive, but we will continue to investigate and prosecute these crimes.

House Democratic Policy Committee hearing on VGTs/Skill Games

Comments by the Pennsylvania Gaming Control Board

October 13, 2020

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

Video gaming at licensed truck stops¹ was authorized through amendments to the Act enacted in 2017. The structure of VGT regulation is thorough and involves the licensing of terminal operators, truck stops as well as manufacturers and suppliers of video gaming terminals. Employees of these entities are also subject to backgrounding and review.

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

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

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

VGT gross terminal revenue varies by each individual licensee with a high of \$152,498 per month and a low of \$7,839 per month. Tax revenue

generated for Fiscal Year 2020/21 are state tax of \$1,592,351.83 and \$379,131.39 Local Share Assessment.²

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

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

Turning to the issue of skill games which have proliferated throughout the state: Earlier this year, the Board and the casino industry have both filed Motions to Intervene in litigation between the Pennsylvania State Police (“PSP”), the Department of Revenue (“DOR”) and POM of Pennsylvania, LLC (“POM”).

In this litigation, POM argues that it operates skill-based amusement devices throughout the Commonwealth whereas the PSP and the DOR assert that these games are illegal gambling devices as a matter of law. The Commonwealth Court recently scheduled a hearing on the intervention petitions for October 29, 2020.

In short, the Board’s argument boils down to the fact that the Board believes that when the General Assembly legalized commercial gambling in the Commonwealth, it did not intend to create different classifications of gaming: one that is regulated, and one that is unregulated; or slot machines in licensed casinos, and slot machines in unlicensed storefronts. The General Assembly was very clear in the statute that it intended all slot machines only to be in licensed casinos; that it takes very seriously the effective regulation of gambling, help for people who suffer from a problem gambling addiction, the

inability of people under the age of 21 to gamble in regulated facilities, and the ability to account for all gambling revenues in the Commonwealth.

The Board's Motion to Intervene and position that the General Assembly intended all slot machines to be in licensed casinos takes into account the following arguments:

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

machines can only be in a PGCB-licensed facility and that slot machines operated outside such a facility are illegal.

5. Slot machines are required to be tested and certified by the Board's gaming laboratory.
6. Slot machines are required to have a connection to the Central Control Computer System.
7. Slot machines shall pay a minimum payout of 85% and no one under the age of 21 shall play a slot machine.
8. There are no protections in place to ensure the integrity of skill games, to assure the collection of tax revenue produced by those machines which are operated outside of licensed facilities, or to provide compulsive and problem gambling prevention strategies, funding and treatment.

In summary, VGT gaming as it currently exists in truck stops is a steady, but small, gaming activity in the Commonwealth. Expanding the eligible entities which can hold a VGT license can be implemented by the Board if the General Assembly and the Governor determine to implement a policy determination that would expand VGT gaming. Furthermore, the skill games that have proliferated the unregulated market fall within the definition of slot machines in the Act and therefore should only be offered to the gaming public

by licensees vetted and approved by the Board, which is the intent of including skill slot machines in the 2017 legislation. Any current legal ambiguity on this issue should be cleared up. We thank you for the opportunity to provide this brief statement.



**TESTIMONY
Of The
PENNSYLVANIA VIDEO GAMING ASSOCIATION (PaVGA)**

**Presented to:
The House Democratic Policy Committee**

**Presented by:
Mr. Rich Teitelbaum, President and member, PaVGA
Owner, Lendell Gaming and Lendell Vending**

**Mr. Brent Mayes, Secretary and member, PaVGA
Owner, Venture Gaming**

Tuesday, October 13, 2020

Rich Teitelbaum

Good afternoon Chairman Sturla, Representative Burns and members of the PA House Democratic Policy Committee. Thank you for allowing us the opportunity to address the committee today. My name is Rich Teitelbaum and I am the owner of Lendell Gaming and Lendell Vending, a family-owned business, which has operated a location route run business for over 20 years. I work with PA fraternal organizations, bars and restaurants and have owned and operated ATMs, amusements and jukeboxes in these locations. I currently serve as the President of the Pennsylvania Video Gaming Association and have been advocating over the past three years for regulated gaming in fraternal organizations and licensed liquor establishments. PaVGA is the statewide trade association representing operators, distributors, and manufacturers of video gaming terminals. PaVGA's membership represents a broad cross-section of the VGT industry, including many small, family owned Pennsylvania-based amusement operators who see the authorization of VGTs in fraternal organizations and licensed liquor establishments as a logical and necessary next step in legalized, fully regulated gaming in Pennsylvania.

The debate over VGTs is not new to Pennsylvania. In fact, as part of Act 42 of 2017, the General Assembly authorized VGTs to operate in truck stops in Pennsylvania as part of what is sometimes referred to as a pilot program. The success of VGTs in truck stops to date – as I will highlight below – is only one of the reasons why PaVGA believes the General Assembly should act this year to allow these games into licensed liquor establishments.

PaVGA continues to advocate for the three-tier VGT model which directly benefits the Commonwealth, the game operators and the establishments in which the machines are located. We know from experience in other states that expanding VGTs under this model will grow businesses, create jobs and substantially increase revenues to the Commonwealth. The financial impact to the state will go well beyond the upfront gaming tax. This is the same model which has been in operation in Illinois since 2012. In 2019, after only seven years in operation, VGTs in Illinois generated over \$1.6 billion dollars in net revenues with the State of Illinois, and local municipalities, collecting nearly \$478 million dollars. This success, from VGTs alone, occurred without the City of Chicago participating, as the city has an old law on the books that prohibits gambling which their legislature has yet to address.

Now, I fully understand that policy makers in Pennsylvania don't necessarily want to make decisions for the Commonwealth just because something was successfully implemented in another state. So, fortunately, we have the ability to look at the truck stop data to date to take our cues for what further VGT operations will mean for Pennsylvania. There are currently 180 machines in operation in 36 locations across Pennsylvania. The total VGT revenue to the Commonwealth for the first two months of the fiscal year for these 180 machines was \$1.97 million dollars. Now, due to a variety of reasons, including the hours of operation of the establishment, the amount of play, and county and municipal opt-outs, PaVGA doesn't believe revenue in liquor licensed establishments will be quite as high as the revenue in truck stop establishments.

However, our estimates indicate that VGTs in licensed liquor establishments could bring as much as \$400-500 million dollars in new revenue to the Commonwealth.

One of the main opponents of this idea, and of expanded gaming in general, is Pennsylvania's casino industry. Primary among their concerns is the impact that the COVID-19 shutdowns had on casino revenues. Ironically, while they cite the revenue losses for brick and mortar operations, nowhere do the casinos mention the record-breaking revenues they are receiving as a result of their online gaming operations and sports betting operations. In fact, according to Gaming Control Board reports, the year-over-year revenues for July 2020 and July 2019 actually showed an increase in total gaming revenues. Not all casinos were in favor of the General Assembly authorizing online gaming in 2017. Yet today, most, if not all casinos have online play and are reaping the significant financial rewards for doing so.

Also, the casinos cite the potential for 85,000 machines in Pennsylvania and the possibility that "...bars, restaurants, clubs, grocery stores, gas stations, convenience stores, golf courses, microbreweries and a variety of other businesses could all potentially become miniature casinos." Not only are these statements awash in hyperbole, but they are patently false. As I mentioned previously, based on the number of licensed liquor establishments which would be eligible to host VGTs, we anticipate approximately 30,000 VGTs in operation in Pennsylvania once fully implemented. PaVGA supports limiting the number of games in each establishment to 5, which is a far cry from your corner tavern morphing into a miniature casino.

Keep in mind that casinos, pre-COVID-19, employed 18,000 Pennsylvanians while bars and taverns claim over 140,000 employees. If COVID closes only 25% of bars & taverns, the state loses 35,000 jobs, which is almost double the number of casino employees. And this could be higher according to the PA Tavern Association's testimony during a hearing with the Senate Community Economic and Recreational Development Policy Committee.

Ironically, despite testifying in opposition to VGTs in licensed liquor establishments at a Senate hearing last week, Penn National Gaming is a licensed VGT operator in Pennsylvania and is operating games in 21 of the 36 licensed truck stops across the Commonwealth. Not only is this an example of where a casino is benefitting from the 2017 decision to allow VGTs in the Commonwealth, but it is also an example of the hypocrisy of the casinos' position when it comes to VGTs.

Furthermore, it has been advocated by one VGT operator – and I would agree with this assessment – that any purported revenue impact on casinos has already happened as a result of the tens of thousands of unregulated games being operated in bars, restaurants, gas stations and convenience stores across the state. Therefore, we don't view this as an expansion of gaming in the Commonwealth, but, instead, as an opportunity to regulate and tax an existing unregulated industry.

Before I turn this over to Brent Mayes, I would like to point out the urgency in moving forward and passing legislation for my business partners, the fraternal organizations, bars and restaurants since they are not here today to advocate for themselves. Their industry had been struggling long before the COVID pandemic. The smoking bans, DUI laws, and recent liquor law changes have continued to erode their profits. With the pandemic, these locations have been devastated, and to say the least, they are no doubt one of the hardest hit industries. Many of my customers, whom I have 15-20 year relationships with, do not know if their businesses will survive. I have already had many customer locations close for good, and many more that still haven't re-opened and they are not sure if they ever will. Granting this industry an additional, stable, and recurring regulated revenue stream may be the only thing that saves it. I want to remind you they have stated they employ around 140,000 Pennsylvanians. Pennsylvania cannot afford to lose 20, 30, 40, or more percent of those jobs.

At this time, I'll turn it over to Brent Mayes who serves on the PaVGA Board of Directors with me.

Brent Mayes

Good afternoon, Chairman Sturla, Representative Burns and members of the PA House Democratic Policy Committee. My name is Brent Mayes and I am the owner of Venture Gaming and serve as the current secretary of the Pennsylvania Video Gaming Association or PaVGA. Thank you for your time today.

As Rich has outlined, we anticipate significant new revenues flowing to the Commonwealth when VGTs are allowed in fraternal organizations and licensed liquor establishments. However, that is only one of the reasons why PaVGA supports this concept. VGT operation has been a significant and reliable source of job creation in states where they've been implemented.

For those of you not familiar with VGTs and the way the industry functions, it is companies like mine and the other operator-members of PaVGA who are responsible for all aspects of the operation of VGTs. Operators will purchase and service the machines. We will help locations prepare their gaming area. We will coordinate with regulators for the approval and set up of the equipment. We will provide redemption terminals and the funds to inventory them, collections, repairs and the distribution of revenue to the locations and the Commonwealth. We also work with the establishments to provide all the necessary security to ensure the safe and equitable operation of the machines.

Because we have full operational responsibility, it means our industry will need to hire new employees to support the growth of the industry in Pennsylvania. These are well-paying jobs which come with a significant amount of responsibility. And, it is not just the operators who will experience job growth, as licensed trades will need to be employed to construct the build out of locations and to wire the facilities to support the necessary electronics and security.

The fact of the matter is that small business supports small business. If I am helping a location with expanding their facilities, I'm going to recommend another small business to do that work. We all work together and cooperatively, which means more revenue for small businesses, like mine, in the Commonwealth.

All of this is in addition to the increase in revenues to establishments which are struggling to make it through to the other side of the COVID-19 pandemic. By implementing the three-tier model we've discussed, establishments will receive a percentage of the gross terminal revenues for the machines at their location. Again, using the Pennsylvania Gaming Control Board revenue reports for the first two months of the current fiscal year, VGTs in truck stops produced \$3.79 million dollars in gross terminal revenue. That breaks down to approximately \$10,500 dollars in gross terminal revenue per machine per month. As Rich noted, there is no question that these locations will be infused with hundreds of millions of dollars each year to their bottom lines.

These monies are greater than any stimulus package either the state or federal governments could provide to the industry, will be sustainable, and will absolutely be a lifeline to the thousands of establishments currently wondering what tomorrow will bring. Moreover, these anticipated amounts are multiples of what a location is currently receiving if they participate in skill games.

Pace-O-Matic's Chief Administrative Officer, Paul Goldean, testified during the Senate Community, Economic and Recreational Development Committee hearing last week that skill games will produce \$100 million dollars for the state. Please note that VGT expansion, fully implemented, could bring over \$500 million dollars to the Commonwealth. Moreover, where Pace-O-Matic pays taxes to the state as any business entity does; regulation will produce additional revenue to the state through a gaming tax.

PaVGA supports eliminating the confusion surrounding skill games in Pennsylvania and ensuring such devices are only offered to the public by operators vetted and approved by the Pennsylvania Gaming Control Board and that such devices are similarly under the authority of the Board. This approach allows for more competition in the industry and better consumer choice while ensuring all the consumer protections of a fully regulated gaming operation. During the recent Senate hearing, testimony was provided by John Getz, State Adjutant/Quartermaster of the PA State VFW, who stated that VFW members are looking to the General Assembly to pass a law to make clear the regulation of these machines in their establishments.

Thank you again for the opportunity to appear before the Committee today and for your consideration of my testimony. PaVGA looks forward to working with you to move this legislation forward and to responsibly expand gaming in the Commonwealth.

Rick Goodling– Pace-O-Matic:

Good Morning Chairman and members of the Committee. As Tom said, my name is Rick Goodling and I serve as the Director of state Compliance for Pace-O-Matic in Pennsylvania. Prior to joining Pace-O-Matic, I served as a Pennsylvania State Trooper for nearly 27 years rising to the rank of Corporal, where I worked in patrol, as a supervisor in patrol, in criminal investigations, as a trooper attached to the bureau of Liquor Control Enforcement's C.A.G.E. Unit (Compliance, Auditing and Gambling Enforcement) and as the Supervisor of the C.A.G.E. Unit. There I was tasked with investigating large scale illegal gambling investigations, which included investigating gambling devices.

Considering my past roles, you may be asking what led me to work for Pace-O-Matic and Pennsylvania Skill. As someone who spent a career in law enforcement, I want to make sure you understand that Pennsylvania Skill amusement devices are legal and have been adjudicated by the Court of Common Pleas in Beaver County. This case was not appealed by the Pennsylvania State Police, with the understanding that the Pennsylvania State Police would abide by the court's decision.

I believe in this product and I have witnessed firsthand the positive impact it has had on our communities... countless jobs that have been created, the small businesses which have been saved, the clubs, VFWs, Legions and Volunteer Firefighter halls which have gone from bankruptcy to thriving due to our legal Pennsylvania Skill amusement devices. Even better, these amusement devices are manufactured right here in Pennsylvania, by Miele Manufacturing, and nearly all of the parts and materials are sourced from the United States...mostly from Pennsylvania, including, the cabinets, steel, wires, etc. Miele Manufacturing went from about a dozen employees to well over one-hundred employees. While it has been alleged that we do not pay taxes, I want to be clear that our company pays tens of millions in taxes. Pace-O-Matic also understands the importance of diversity and is therefore developing a diversity program to ensure a more inclusive industry.

I want to be very clear on this point, I am here to speak about Pace-O-Matic's legal, adjudicated, Pennsylvania Skill machines. There have been efforts to lump us in with the tens of thousands of illegal machines and that is unfair. Again, I am testifying about Pace-O-Matic's product, Pennsylvania Skill, not the scores of other illegal gambling devices.

For those of you concerned about illegal machines, we share those concerns. We must weed out the illegal in the market and further cement the marketplace for legal skill machines, help small businesses, clubs, VFWs, American Legions, local fire halls and fraternal clubs and provide tax revenue to the Commonwealth.

As part of my efforts with Pace-O-Matic, Miele Manufacturing and Pennsylvania Skill, I oversee a compliance team in Pennsylvania comprised of former Troopers and Liquor Enforcement Officers that is tasked with visiting our customers and we help to weed out illegal gaming machines that should not be in the marketplace. We have contacted the Pennsylvania State Police about illegal machines and often have been successful in getting small businesses, VFWs,

American Legions, firehalls and other clubs to switch out their illegal games to Pennsylvania Skill amusement devices.

We currently have about 15,000 amusement devices in small businesses, VFWs, Legions, firehalls and other clubs across the Commonwealth. Only adults, 18 and over, may play our Pennsylvania Skill amusement devices. During my service with the State Police and as the Director of Compliance, I have never witnessed a minor playing a Pennsylvania Skill amusement device.

Many of our games are in locations where those customers must be 21 or over to enter the premises. We work with our Manufacturer, Operators and Locations to ensure they are compliant, and our amusement devices are being utilized properly as outlined in our service agreement and Code of Conduct.

As we have met with many legislators, nearly every one of you asked about the difference between a game of skill and a VGT or a game of chance. The main difference is that our devices require interaction and predominate skill to play. With a Pennsylvania Skill device, you must think and take action to win. On a VGT or slot machine, a player simply pushes the button and hopes that the machine will eventually pay out. A person with Patience and Skill can win at our game EVERYTIME.

With our Pennsylvania Skill amusement devices, our basic game is tic-tac-toe, where the player must select a wild or open spot in order to complete a line. You win points depending on the type of images you are able to line-up. If you are not successful, you get to play a "Follow Me" game. This is a memory game where the user must follow a series of colored balls in a specific order. Again, if you are skillful enough, you can win every time and win 105% of your game play every time.

Our amusement devices operate on fill license system and are not connected to the internet. When a device is empty and has no additional credits left, an operator must call up Miele Manufacturing and purchase a new fill license. Once purchased, an operator will enter a code and renew a license. This is a system we have set-up deliberately and allows us to track how each device is performing and ensure that we pay taxes on every dollar spent and collected.

As a former State Trooper, I have seen the bad actors and how they utilize illegal machines to take advantage of the system, avoid taxes and hurt the entire industry. That is one of the many reasons I believe in the Pennsylvania Skill product. We have a model that is transparent and really benefits the entire Commonwealth.

I would now like to call on Del Guerrini, the President of PAMMA to make a few remarks.

Del Guerrini, President of the Pennsylvania Amusement and Music Machine Association:

My name is Del Guerrini and I serve as the President of Pennsylvania Amusement and Music Machine Association (PAMMA). A position I have had the honor of holding for the past four years. Additionally, I am the owner of Frank Guerrini Vending Amusement Devices, a company

my father began in 1939. We lease and maintain coin-operated amusement devices such as internet jukeboxes, arcade games and Pennsylvania Skill games to businesses across the Commonwealth.

Currently, PAAMA has over eighty coin-operator members. Many of these are small family businesses in Pennsylvania. Like mine, some have been passed down from one generation to the next.

I am here to report that many of these operators, who were struggling just years ago, are thriving since the introduction Pennsylvania Skill games.

Before Pennsylvania Skill amusement devices, Operators were still marketing their core amusement devices, jukeboxes, pool tables and dart boards and we still do. However, the other half of our businesses have or are in the process of collapsing... video games. With the introduction of gaming on smart phones, the arcades have disappeared. In many ways our struggles are tied to the same struggles many of our malls and retailers are facing with the push to online shopping. Operators have had a hard time buying new equipment and maintaining old equipment. Their vehicle fleets were aging and they were unable to pay existing employees or bring on new ones.

Worse yet, the struggles the operators were facing mirrored the struggles that many bars, taverns, VFWs, American Legions and other clubs were facing. Many of these locations counted on support from the Operators. Operators couldn't support these locations, so the locations started to cut hours. That meant less revenue for the Operators and the entire industry was failing.

However, now that Pennsylvania Skill amusement devices have been introduced to the market things have improved dramatically. These games have given our consumers a reason to stop in and stay longer at our locations. Prior to the Covid-19 pandemic, our locations expanded hours again, hired more employees and made much-needed improvements to their establishments, from fixing roofs to replacing floors.

That success had a direct impact on our Operators. Operators are now able to purchase new equipment and hire additional employees to help with the increased demand. For the first time in decades, things are looking up for our industry.

The one concern is the lack of regulation and stability in the market. Our Operators would like to see the industry regulated. We would like to see the illegal machines removed from the market and the legal skill game market given more stability. This will allow our Operators to plan long term for the future.

Pace-O-Matic, who develops the software, along with Williamsport-based Miele Manufacturing, who manufactures Pennsylvania Skill games, are investing heavily in efforts to lobby for legislation that will regulate and tax the industry. According to an economic survey completed by Dr. Peter Zaleski, head of economics at Villanova University, the state is already receiving tens of millions of dollars in taxes from skill games annually. If an additional tax is assessed, the Commonwealth could gain hundreds of millions of dollars in recurring tax revenue immediately.

I would add that we know those numbers are sound, because our games are already in the marketplace. We also know that while we have had over 15,000 games in the market, the lottery and casino revenues were not impacted. Meanwhile, the introduction of any other form of gaming device would take years to get established and produce real revenues for the Commonwealth.

The worst thing that could happen to our industry is to ban legal skill games. If they are banned, operators, locations, like clubs and taverns, would go from barely making it due to the economic recession created by the Covid-19 pandemic to closing their doors permanently.

Pennsylvania Skill games have been a lifeline to many struggling family businesses in our industry and we would encourage you to regulate the industry, apply additional taxes to the games, and implement strong enforcement measures.

Thank you.

House Democratic Policy Committee hearing on VGTs/Skill Games

Comments by the Pennsylvania Gaming Control Board

October 13, 2020

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

Video gaming at licensed truck stops¹ was authorized through amendments to the Act enacted in 2017. The structure of VGT regulation is thorough and involves the licensing of terminal operators, truck stops as well as manufacturers and suppliers of video gaming terminals. Employees of these entities are also subject to backgrounding and review.

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

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

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

VGT gross terminal revenue varies by each individual licensee with a high of \$152,498 per month and a low of \$7,839 per month. Tax revenue

generated for Fiscal Year 2020/21 are state tax of \$1,592,351.83 and \$379,131.39 Local Share Assessment.²

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

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

Turning to the issue of skill games which have proliferated throughout the state: Earlier this year, the Board and the casino industry have both filed Motions to Intervene in litigation between the Pennsylvania State Police (“PSP”), the Department of Revenue (“DOR”) and POM of Pennsylvania, LLC (“POM”).

In this litigation, POM argues that it operates skill-based amusement devices throughout the Commonwealth whereas the PSP and the DOR assert that these games are illegal gambling devices as a matter of law. The Commonwealth Court recently scheduled a hearing on the intervention petitions for October 29, 2020.

In short, the Board’s argument boils down to the fact that the Board believes that when the General Assembly legalized commercial gambling in the Commonwealth, it did not intend to create different classifications of gaming: one that is regulated, and one that is unregulated; or slot machines in licensed casinos, and slot machines in unlicensed storefronts. The General Assembly was very clear in the statute that it intended all slot machines only to be in licensed casinos; that it takes very seriously the effective regulation of gambling, help for people who suffer from a problem gambling addiction, the

inability of people under the age of 21 to gamble in regulated facilities, and the ability to account for all gambling revenues in the Commonwealth.

The Board's Motion to Intervene and position that the General Assembly intended all slot machines to be in licensed casinos takes into account the following arguments:

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

machines can only be in a PGCB-licensed facility and that slot machines operated outside such a facility are illegal.

5. Slot machines are required to be tested and certified by the Board's gaming laboratory.
6. Slot machines are required to have a connection to the Central Control Computer System.
7. Slot machines shall pay a minimum payout of 85% and no one under the age of 21 shall play a slot machine.
8. There are no protections in place to ensure the integrity of skill games, to assure the collection of tax revenue produced by those machines which are operated outside of licensed facilities, or to provide compulsive and problem gambling prevention strategies, funding and treatment.

In summary, VGT gaming as it currently exists in truck stops is a steady, but small, gaming activity in the Commonwealth. Expanding the eligible entities which can hold a VGT license can be implemented by the Board if the General Assembly and the Governor determine to implement a policy determination that would expand VGT gaming. Furthermore, the skill games that have proliferated the unregulated market fall within the definition of slot machines in the Act and therefore should only be offered to the gaming public

by licensees vetted and approved by the Board, which is the intent of including skill slot machines in the 2017 legislation. Any current legal ambiguity on this issue should be cleared up. We thank you for the opportunity to provide this brief statement.



Testimony Before the House Democratic Policy Committee
Drew Svitko, Executive Director
Pennsylvania Lottery
Tuesday, October 13, 2020

Chairman Sturla, Representative Burns, and members of the committee, thank you for the opportunity to provide testimony for today's public hearing on the proposal to legalize so-called "Games of Skill" while also drastically expanding video gaming terminals, otherwise known as VGTs, in bars, taverns, social clubs and other establishments throughout Pennsylvania. I'd like to start my testimony by saying the Pennsylvania Lottery is opposed to this proposal, including the recently introduced Senate Bill 1256, due to the extreme negative impact that Games of Skill currently have on the Pennsylvania Lottery, and the potential for even greater harm if that specific bill were to become law. As of today, the Lottery estimates that Games of Skill machines, which have been operating illegally in the commonwealth for years, are located in nearly 28 percent of the Lottery's network of more than 9,600 retailers. Each day these machines are taking in money that would otherwise be directed to Pennsylvania Lottery games. These are lost sales that could help generate funds for the critical senior programs and services that are funded by the Lottery. Instead, we are facing direct and effective competition from illegal gambling machines that have undercut the public purpose of state-sanctioned games available through the Lottery.

To understand the issue, we first have to consider what Games of Skill are and what they look like. At first glance, these machines may resemble Pennsylvania Lottery machines and give the impression they are sanctioned by the commonwealth, but neither is the case. Rather, they are video gambling machines that use various reel spins and graphical themes to interact with the user. Put simply, the machines are unsanctioned slot machines that have been operating in violation of Pennsylvania law, according to the Pennsylvania State Police. And though the Lottery recognizes the legislation that is currently being considered by the General Assembly seeks to legalize these machines so that the commonwealth may benefit from increased gaming revenue, approving this legislative proposal would undoubtedly give greater strength to a significant threat the Lottery has faced for years. By extension, that would directly harm the older Pennsylvanians who annually benefit from the programs the Lottery funds. Approving this legislation would also reward the manufacturers of these machines who have been operating illegally for several years during a period of time when they have not paid any gaming taxes on their machines or licensing fees.

To further explain the impact of these machines, I'll return to a point that I made earlier in my testimony. As of today, nearly one in three lottery retailers are offering at least one Games of Skill machine, and that number continues to grow each week. To this point, in the past year, the number of lottery retailers that operate Games of Skill machines has increased by more than 100 percent. To make the matter worse, these machines are often deliberately placed near our products, confusing players who may think they're playing a Pennsylvania Lottery game. In reality, they're playing an illegal Games of Skill machine without knowing the difference.

To provide further context, one must also consider that Games of Skill have made it difficult to recruit Pennsylvania Lottery retailers to offer the Lottery's monitor games, which include Keno and Xpress

Sports. Retailers that operate Games of Skill often tell our Lottery sales representatives that they receive a larger commission from these illegal gambling machines. As a result, Lottery retailers are opting against adding Keno and Xpress Sports.

Here's why that's important: After being authorized by Act 42 of 2017, Keno and Xpress Sports were launched in 2018 to help the Lottery expand its products portfolio and remain competitive in an increasingly competitive and crowded business environment. Our goal is to stay vigilant in launching new products that our players want so that we can continue to generate funds for vital senior programs. Games of Skill are undoubtedly proving to be a significant source of competition when it comes to ensuring these new products are successful.

The same concept also applies to proposals such as SB 1256 that would authorize VGTs in additional establishments throughout Pennsylvania. Doing so will allow further gaming options and make it increasingly more difficult for the Lottery to fulfill its mission of responsibly generating profits for the programs that benefit older Pennsylvanians. Also, as I touched on above, offering VGTs in bars and similar establishments will make it very hard for the Lottery's sales representatives to convince our retailers they should offer Keno and Xpress Sports, the games the Lottery is attempting to grow to ensure a diversified business portfolio. Put simply, approving a further expansion of VGTs would undercut the very intent that members of the General Assembly had in 2017 when they significantly increased gaming options available in the commonwealth with the passage of Act 42 of 2017.

I would also like to reintroduce a point that I've made in prior testimony before both chambers of the General Assembly. The reality is that no one has yet had the opportunity to fully study the impact of the gaming expansion that was authorized by Act 42 of 2017. This legislation created many new gaming options that are available to consumers throughout Pennsylvania, and many of those options are still being rolled out as I provide testimony to members of the committee today. This means that we do not have a full understanding of how the additional gaming options that are available will affect the market in Pennsylvania. Before we have that knowledge in hand, it would be incredibly risky to authorize even more gaming that would be available to Pennsylvania consumers. It's very difficult to estimate just how much revenue additional gaming would generate for the commonwealth without considering whether we would be cannibalizing the options that are already available, including the games offered by the Pennsylvania Lottery.

Impact of Pennsylvania Lottery

I would also like to take this opportunity to stress the importance of the Pennsylvania Lottery and its mission. We remain the only state lottery to direct all proceeds to programs that benefit older Pennsylvanians. Since ticket sales began in 1972, our Lottery has contributed more than \$31 billion to fund property tax and rent rebates, transportation, care services, prescription assistance, and local services including senior centers and meals. In the 2019-20 Fiscal Year, the Lottery generated more than \$1 billion to support older Pennsylvanians for the ninth consecutive year. Here are some other important facts to consider (data comes from the 2018-19 fiscal year, the most recent data available):

- The Lottery contributed more than \$283 million to Area Agencies on Aging in Pennsylvania. Among other services, these funds helped to provide 8.9 million meals served at senior centers and delivered to homes. Lottery funds helped to provide more than 24,400 meals for older Pennsylvanians, every day.

- More than \$162 million in Lottery funds provided for over 33.6 million free transit rides and 3.3 million shared rides. On average, Lottery funds helped to provide more than 101,000 free and reduced-fare shared rides for older Pennsylvanians, every day.
- The Lottery provided more than \$368.8 million for care services delivered to more than 38,000 residents. On average, the Lottery funded more than \$1 million in care services, every day.
- Lottery support for the prescription programs totaled more than \$139.4 million. Enrollees received more than 5.53 million prescriptions, and Lottery funding helped to fill nearly 15,200 prescriptions for older Pennsylvanians, every day.
- Lottery and slots revenue provided more than \$253.6 million in property tax and rent rebates to more than 531,900 households.

Please know that funding for these important programs and services are being threatened every day by illegal Games of Skill. We also know that there is the potential for hundreds of millions of dollars in future harm if these machines are legalized and Games of Skill remain a competitor to the Lottery in the retail environment. That's why we need to take action to protect the Lottery and prevent further damage to the funding stream for older Pennsylvanians.

We can do that by supporting proposed legislation, such as House Bill 931, proposed by Representative Ed Neilson, and Senate Bill 710, proposed by Senator Tommy Tomlinson. Both bills would address illegal Games of Skill and protect funding for senior programs. House Bill 931 strengthens the Crimes Code for law enforcement to confiscate illegal gambling devices and skill machines, while Senate Bill 710 further strengthens the existing law by making it a criminal offense for anyone to knowingly make, assemble, maintain, lease or sell Games of Skill. We feel strongly that Senator Tomlinson's and Representative Neilson's respective legislative proposals will crack down on these illegal machines and preserve hundreds of millions of dollars that help seniors afford prescriptions, transportation, meals and more.

Thank you for the opportunity to provide testimony on behalf of the Pennsylvania Lottery.

PENNSYLVANIA
DEPARTMENT OF AGING
COUNCIL ON AGING

EST. 1973

Faith Haeussler, Executive Director
Mickey Flynn, Chair
Pennsylvania Council on Aging

House Democratic Policy Committee
Public hearing on Video Gaming Terminals and Skill Games in Pennsylvania
October 13, 2020

Thank you Representative Burns, participating members, and staff for the opportunity for the Pennsylvania Council on Aging (PCoA) to submit written testimony on the topic of video gaming terminals and skill games. The PCoA represents older adults in Pennsylvania and is obligated by statute to make recommendations to the Secretary of Aging, General Assembly, and Governor around services and programs that impact older adults. We submit the following testimony to underscore the importance of the Pennsylvania Lottery in the provision of critical services that older adults receive.

Since the very first ticket was sold in 1972, the Pennsylvania Lottery has generated more than \$30 billion to benefit older Pennsylvanians. In fiscal year 2018-2019, the Lottery Fund was able to provide vital supports and services:

- Contributing more than \$283 million to Pennsylvania's local Area Agencies on Aging. Among other services, these funds helped to provide 8.9 million meals served at senior centers and delivered to homes. That breaks down to more than 24,400 meals for older Pennsylvanians, every day.
- More than \$162 million to provide over 33.6 million free transit rides and 3.3 million shared rides. On average, Lottery funds helped to provide more than 101,000 free and reduced-fare shared rides for older Pennsylvanians, every day.
- Over \$368.8 million for care services delivered to more than 38,000 residents. On average, the PA Lottery funded more than \$1 million in care services, every day.
- Supporting prescription programs totaling more than \$139.4 million. Enrollees received more than 5.53 million prescriptions, and PA Lottery funding helped to fill nearly 15,200 prescriptions for older Pennsylvanians, every day.
- Providing more than \$253.6 million in property tax and rent rebates to more than 531,900 households. This funding was generated by the PA Lottery and slots revenue.

It is clear that older adults in Pennsylvania rely heavily on the health of the Pennsylvania Lottery to maintain independence and age in place with dignity. However, there are threats to the PA Lottery, namely illegal skill games and video gaming terminal (VGT) expansion.

Currently, there are about 18,000 Pennsylvania skill games operating illegally throughout the Commonwealth. Around 28% of these machines are housed in retailers alongside PA Lottery games. Wherever these games co-exist, PA Lottery sales are siphoned off and sales are depleted. Last year, the PA Lottery was reduced around \$200 million due to these illegal games and the unlawful competition that has developed.

While illegal skill games are an active threat to the Pennsylvania Lottery, VGT expansion is a looming threat. VGTs are part of a regulated system overseen by the Pennsylvania Gaming Control Board and only permitted to be housed in truck stops. Recently, there has been a strong

legislative interest in expanding the environments where the VGTs can operate. The PCoA has grave concerns about the implications of this proposed expansion and its toll on the fiscal health of the lottery.

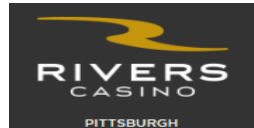
As a state that expanded VGTs several years ago, Illinois can be seen as a harbinger for the potential outcome of VGT expansion. Their Legislators forecasted billions in revenue that never materialized. Unexpected costs associated with regulation, litigation, and public services greatly reduced the anticipated revenue. Specifically, Illinois' state lottery system revenue was affected so severely that they were forced to cut \$70 million in programming that was supported by their lottery. These cuts were a direct result of the VGT expansion. We cannot allow this to happen in Pennsylvania.

While we appreciate the effort to consider services for older adults in legislation to expand VGT markets, these offerings pale in comparison to the steady, reliable, and necessary funding stream provided by the PA Lottery.

Our three million-plus older adults have worked hard and helped build the Pennsylvania we all enjoy. They have raised families and continue to nurture grandchildren. They are the fabric of our communities, keepers of our most cherished traditions, and models for our own futures as we all age. They have earned and deserve peace of mind. We can give them that by rejecting legislation that will harm one of our commonwealth's best programs -- our Pennsylvania Lottery.

We implore the General Assembly to save our Lottery and continue to support the services and program by not supporting the expansion of the VGT market.

Thank you for the opportunity to comment on the impact of VGTs and illegal skill games on older Pennsylvanians. The PCoA is always an available resource to help answer questions and provide insight, and we look forward to maintaining the partnership toward the common goal of supporting older adults.



**Pennsylvania House of Representatives
Democratic Policy Committee**

**Public Hearing to Receive Testimony on Gaming Expansion
October 13, 2020**

Written Testimony of:

Harrah’s Philadelphia – Hollywood Casino at Penn National Race Course – Lady Luck Casino Nemacolin – Live! Casino & Hotel Philadelphia – Live! Casino Pittsburgh – The Meadows Racetrack & Casino – Mohegan Sun Pocono – Mount Airy Casino Resort – Parx Casino – Presque Isle Downs & Casino – Rivers Casino Philadelphia – Rivers Casino Pittsburgh – Wind Creek Bethlehem

Members of the House Democratic Policy Committee:

While Pennsylvania’s licensed Casino Gaming Industry was not invited to participate in the Committee’s October 13, 2020 hearing, we, the above-listed casinos, respectfully request that you consider this written testimony on the topic of gaming expansion in Pennsylvania through the widespread dissemination of Video Gaming Terminals (“VGTs”) and the games commonly referred to as “skill games.”

In these exceedingly difficult times, Pennsylvania’s casinos have united with a single voice to ask that you *actively and forcefully* oppose any expansion of gaming in Pennsylvania, including Senate Bill 1256 which is currently pending in the State Senate. Simply stated:

1. Gaming expansion will result in substantial losses of gaming tax revenue for the state and revenue for the Lottery, will result in lost jobs for Pennsylvanians and will put at risk hundreds of millions of dollars *annually* in investment in the Commonwealth, revenues for thousands of local businesses, and local share dollars for counties and local communities.
2. Gaming expansion is *not* necessary to help bars, taverns, restaurants and social clubs recover from the Covid-19 pandemic. The General Assembly has proposed many non-gaming relief measures for those businesses/organizations, which our industry supports, and they themselves have a 14 point relief plan that *does not include* gaming.
3. Gaming expansion will *not* solve the Commonwealth's budget deficit. Gaming expansion is a zero sum game, with any new lower-taxed VGT or skill game revenue being offset by losses in higher-taxed casino gaming tax revenue and Lottery revenue. Further, properly regulated gaming expansion, that is fully connected to the central control computer, will take years to implement and tens of millions of dollars of expense to the state before the Commonwealth sees one dime of revenue.

Whether gaming expansion takes the form of permitting thousands more video gaming terminals ("VGTs") or legalizing so-called "skill games," the real winners in the equation would be VGT and skill game operators, who have made no investment in Pennsylvania and created no jobs here, but stand to benefit from entering Pennsylvania's tightly regulated and highly successful gaming industry through the side door and without paying the requisite cover charge. Indeed, as recently as June 11, 2020, Charles Protell, President of Golden Entertainment, boasted to investors and financial analysts about his optimism for full-scale VGT expansion in Pennsylvania.

We submit that it is never the right time to flood Pennsylvania with slot machines, placing them up and down every Main Street in the Commonwealth, but it is particularly true that now is not the right time for expansion. The COVID-19 pandemic has caused unprecedented economic damage and uncertainty in Pennsylvania and the United States of America. Our casinos have borne the full brunt of that harm. Nationally, only the passenger airline industry has suffered greater losses than the gaming industry as a result of the novel coronavirus.

From closing our doors in mid-March to partially reopening in mid to late June, the cost to our casinos in terms of lost revenue was approximately \$968.8 million from slot machines and table games, \$424.2 million of which would have been payable to the Commonwealth in taxes. This lost revenue amounts to nearly 30 percent of last year's total. As the recipient of substantial portions of our revenue, including nearly 57% of slot machine revenue, the Commonwealth has shared in these losses with us. Furloughs and layoffs have also ravaged our workforce which, prior to the pandemic, numbered nearly 18,000 employees, approximately 90% of which were Pennsylvania residents. As of June 30, the industry had no choice but to separate over 6,000 of those individuals from their employment. Our goal is to bring back those jobs – but gaming expansion would make that virtually impossible.

The reopening of Pennsylvania’s casinos, however, was not the end of the financial harm caused by the pandemic. Even upon reopening, we would impress upon this committee that being “open” does not look like it did before the coronavirus pandemic began. Our industry has been a leader in making sure that our facilities are safe for our employees and our customers. However, we must recognize that occupancy limitations, social distancing and masking requirements, and other protocols mandated by the Department of Health have meant, a gradual return to business and financial health. Meanwhile, compliance with those same mandates has necessitated that we invest additional millions of dollars into our facilities to implement the required protocols.

With all of this in mind, we are shocked that the Committee is considering an expansion of gaming to include both broad-based VGT gambling throughout Pennsylvania and the legalization of thousands of currently illegal skill game slot machines that are illicitly operated outside of our licensed facilities.

Just three years ago, the General Assembly rejected similar proposals to put slot machines on every Main Street in the Commonwealth. The Legislature determined that such broad-based gaming expansion would have had a devastating impact on both Pennsylvania’s casinos and the Pennsylvania Lottery. This is even more true today.

Collectively, the gaming industry has made a tremendous investment in Pennsylvania. Our casinos have paid more than \$1.1 billion to the Commonwealth in licensing fees. We have generated over \$17 billion in gaming tax revenue. We have invested tens of billions of dollars to build, renovate, maintain and expand our casinos. We have generated many thousands of direct jobs and supported too many local businesses to count. We encourage this Committee to invite some of these employers to share just how important our industry has been to their businesses and their employees.

Our investment continued and increased with the passage of Act 42 of 2017. We paid the Commonwealth hundreds of millions of dollars in licensing fees, and are generating new sources of recurring tax revenue from interactive gaming and sports betting. Pennsylvania is now on track to have 18 casinos across the state, with five new Category 4 casinos in the works. The Category 4 casinos produced \$137 million in license fees and will entail hundreds of millions of dollars in construction spend and hundreds of additional direct jobs for Pennsylvanians.

Our industry is a tremendous economic driver in this state. We made these investments in reliance on Pennsylvania’s gaming laws and landscape – and in the reasonable belief that, as a nearly 57% stakeholder in our business, the Commonwealth would be a good faith partner.

Expanding VGTs to liquor licensees would result in as many as 85,000 gambling machines being added to the state – more than five times the current number of slot machines in *all* of Pennsylvania’s casinos *combined*. Similarly, legalizing (and thereby rewarding) the currently illegal skill game slot machines that are prevalent in bars, convenience stores, gas stations and other businesses would cause tremendous damage to our industry and the nearly 18,000 Pennsylvanians we are proud to employ when at full capacity.

This legislation will negatively impact the Pennsylvania Lottery and every taxpayer. Expanding VGTs or legalizing skill games would put at risk all of the following benefits that have been delivered by Pennsylvania's casinos like clockwork:

- Nearly \$1.5 billion in annual gaming tax revenue to the State;¹
- \$500 million in annual spending at Pennsylvania businesses for goods and services;
- Nearly \$150 million in annual Local Share Assessment payments to Counties, Municipalities, public safety agencies, volunteer fire companies, community based non-profits and other recipients;
- Over \$140 million in annual support for economic development and infrastructure projects;
- A return to our nearly 18,000 pre-pandemic direct living wage jobs;
- Over 17,000 indirect jobs; and
- Nearly two billion in annual wages, benefits and tips associated with the referenced direct and indirect jobs.

The Pennsylvania Lottery has also publicly testified about the dramatic losses it would experience as a result of additional gaming expansion. In 2017, the Lottery projected that broad-based VGT expansion would cost the state nearly \$600 million/year in funding for programs supporting older Pennsylvanians. More recently, the Lottery testified that it estimates losing more than \$300 million in scratch-off sales in just two years due to the proliferation of illegal "skill games."

Gaming expansion will also drain revenues from the Commonwealth, at a time when this legislature is confronting a projected budget deficit of \$5 billion in the next two years. We encourage this Committee to study the experience in Illinois, where lawmakers approved legislation to add VGTS across the state. In 2012, the taxes imposed on the Illinois casinos generated \$548 million. Since the advent of VGTs, this amount fell to \$454 million in FY 2019, representing ***a seven-year decline of 17.2%*** with the state collecting almost \$100 million less in tax revenue. In fact, Illinois' independent, bipartisan Commission on Government Forecasting and Accountability has concluded that the operation of VGTs in that state is the ***largest driver of losses in casino revenue.***

In addition to the devastating financial impact, Illinois lawmakers and others recognized after the fact that it is just not possible to properly regulate and supervise these machines. Aaron Jaffe,

¹ This figure does not include the \$310.5 million in license fee and auction revenue received by the Commonwealth in 2018-2019 in connection with Act 42 of 2017.

former chairman of the Illinois Gaming Board, has said he opposed video gambling, in no small part because he felt there was no way to regulate the industry. “It’s just too big of a job,” Jaffe said. “In order to regulate it, you need a bigger board and more people. ***It’s absolutely ridiculous to think you can do a proper job with the resources available.***” *ProPublica*, The Bad Bet (January 16, 2019).

This concern regarding VGTs echoes testimony by the Pennsylvania State Police regarding the impact of illegal skill games in communities across our state. These “games” entice children to gamble and are ripe for corruption, according to PSP. All skills games, no matter the manufacturer, are slot machines – period – and the operation of slot machines is permissible only in licensed, regulated, and supervised casinos.² Whether skill games or VGTs, gaming expansion legislation, like that proposed in Senate Bill 1256, will inflict these same challenges on every community in the state if it becomes law.

We recognize that bars, taverns, clubs and restaurants have been hit hard by the pandemic because, again, we have suffered the same harm. We want these businesses to succeed – but expanded gaming is not the recipe for that success.

It is crystal clear that gaming expansion plans, like Senate Bill 1256, are not designed to aid bars, restaurants and clubs. Indeed, the Pennsylvania Licensed Tavern and Beverage Association has issued a 14 point plan to aid its members, and not a single provision involves expanded gambling. We support that 14 point plan. Gaming expansion, to the contrary, is designed to help VGT and skills games operators who will not make any meaningful investment in our state. They will not create close to 20,000 jobs. They will not pump \$500 million a year into businesses across this state. They will not generate over \$1.5 Billion in tax revenue for Pennsylvania.

Regardless, under gaming expansion proposals like Senate Bill 1256, bars, restaurants, clubs, grocery stores, gas stations, convenience stores, golf courses, microbreweries and a variety of other businesses could all potentially become miniature casinos with the General Assembly’s blessing. That’s bad policy and bad for Pennsylvanians. The Legislature offered these businesses and clubs tavern gaming, but it was shunned as too expensive and requiring too much oversight. The Legislature, again, offered legal gaming options, like Keno and Xpress Sports that would benefit the Pennsylvania Lottery, in Act 42 of 2017. However, the vast majority of liquor licensees have yet to take advantage of these tools – with less than 5% of licensees offering these new games. Rather than contemplate yet another major expansion of gaming, we urge you to work with liquor licensees to help them take advantage of the opportunities that have already been provided.

² In the matter of *POM of Pennsylvania, LLC v. Com. of Pennsylvania, Dept. of Revenue and City of Philadelphia*, No. 418 M.D. 2018 (Opinion issued November 20, 2019) (“*POM of PA*”), the Court found that “skill game” machines are slot machines, as defined under the Gaming Act. *POM of PA* at 11. Critically, the Pennsylvania Crimes Code is explicit that only entities licensed by the PGCB may operate any slot machines in the Commonwealth. 18 Pa.C.S. § 5513(a)(1)-(4). Unlicensed and unregulated persons – such as skill game operators – who offer slot machines for play to other persons do so in criminal violation of §5513(a).

In closing, we respectfully submit that the Commonwealth should support the economic engine that is its casino gaming industry. Working together, we can restore \$1.5 billion in annual tax revenue for the Commonwealth, get thousands of Pennsylvanians back to work, and provide a lifeline to hundreds of local and small businesses that transact with our casinos.

We call on all Committee members to oppose any further expansion of gaming in the Commonwealth, and instead to work with Pennsylvania's licensed Casino Gaming Industry to build on our successful partnership in the months and years to come.