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*Via Email and Regular Mail*  
*jbutler@maryland.gov*

James B. Butler  
Assistant Deputy Director, Chief of Staff  
Maryland Lottery and Gaming Control Agency  
1800 Washington Boulevard, Suite 330  
Baltimore, Maryland 21230

**Re: Public Comment - Skills-Based Amusement Devices**  
**Proposed Regulation Change - COMAR 36.08.04**

Dear Mr. Butler:

This firm is counsel to Dave & Buster's Entertainment, Inc. ("Dave & Buster's"). On behalf of Dave & Buster's, we write in opposition to the proposed regulation published by the Maryland Lottery and Gaming Control Agency ("Agency") on November 15, 2024 in the Maryland Register, Volume 51, Issue 23. The proposed regulation at issue ("Proposed Regulation") would amend COMAR 36.08.04 to prevent operators of skills-based amusement devices, such as Dave & Buster's from allowing customers to accumulate tickets to obtain prizes with a wholesale value above the established minimal value of \$30.00 (as they are currently permitted to do). As explained below, the Proposed Regulation is wholly unnecessary, reverses the Agency's consistent policy that has been in place for at least the past eight (8) years, and would destroy Dave and Buster's business model to the point that it would likely cease all operations in the State of Maryland.

Dave & Buster's is a publicly traded, successful restaurant and entertainment business with more than 150 locations across the United States. Founded in 1982, each Dave & Buster's location contains a full-service restaurant, full bar, and a large video arcade and gaming center. With respect to the video arcade, customers purchase chips on a rechargeable "Power Card" to use on arcade games in an effort to accumulate tickets to exchange for prizes, ranging from pieces of candy to electronic devices. Dave & Buster's currently maintains five (5) locations in the State of Maryland:

- White Marsh, Maryland (Baltimore County)
- Hanover, Maryland (Anne Arundel County)
- Capitol Heights, Maryland (Prince George's County)
- Silver Spring, Maryland (Montgomery County)
- Gaithersburg, Maryland (Montgomery County)

Dave & Buster's also operates one "Main Event" location in Columbia, Maryland (Howard County), which utilizes a similar business model as the traditional Dave & Buster's brand. Collectively among the six Maryland locations, Dave & Buster's employs over 600 Marylanders and pays approximately \$5,000,000 to the State of Maryland in taxes each year.

Pursuant to Md. Code, Crim. Law § 12-301(3)(vii), which took effect on June 1, 2016, a "skills-based amusement device that awards prizes of minimal value approved by the [Agency] through regulation" is exempted from the definition of an illegal "slot machine" under Maryland law. Accordingly, on January 1, 2017, seven months *after* the statute came into effect, the Agency duly enacted COMAR 36.08.04(A)(1), which provides that a skills-based amusement device is legally operated if the "merchandise prizes, tickets, token, or other objects awarded *per play*" do not exceed "minimal value" ("Existing Regulation"). The Agency simultaneously set the minimal value (*e.g.* the maximum prize value that could be won on a single play) at \$30.00 ("Minimal Value").

The Existing Regulation expressly and unambiguously permits arcade participants, including customers at Dave & Buster's, to accumulate tickets won on numerous turns, and over multiple visits, and exchange them for a prize in excess of the Minimal Value. *See* COMAR 36.08.04.01(B) ("The merchandise, prizes, tickets, tokens or other objects that are awarded by a skills-based amusement device *may be accumulated and exchanged* for non-cash merchandise or prizes of value that is similar to the *cumulate value of the items exchanged.*") (emphasis added).

If enacted, the Proposed Regulation promulgated by the Agency would strike the unambiguous "per play" language in subsection (A)(1) and cap the value of prizes won by accumulation of tickets at the Minimal Value, a far less amount than the value of the largest prizes offered by Dave & Buster's. The Agency's sudden change in policy would radically reverse the entire structure of Dave & Buster's long-standing business practices and established revenue model.

There is simply no basis for such a drastic shift in the Agency's policy after nearly eight years in effect, especially without any precipitating event or identified harm caused by the Existing Regulation. There is no evidence, of which Dave & Buster's is aware, that the accumulation of tickets over many days, weeks, months, or even years, has any negative effect on health, safety, or welfare of Maryland residents, or causes any detrimental effects to the Maryland economy or quality of life. Rather, the ability of customers to accumulate tickets to win larger prizes in excess of the Minimal Value encourages brand loyalty, increases the likelihood of more frequent customer business, and adds to Dave & Buster's overall revenue. In turn, the successful current model allows Dave & Buster's to expand its operations in Maryland, employ more Maryland residents at its six locations, and ultimately pay more in taxes to the State. For the past eight years, Dave & Buster's has relied upon the Agency's own regulations and accompanying guidance regarding the ability of its customers to accumulate tickets in deciding to continue operating in Maryland, as well as developing and implementing its standard business model, consistent with all other Dave & Buster's locations across the nation.

According to the Agency, the stated “purpose” of the Proposed Regulation is to “[c]larify that the value of skills-based amusement device prizes may not be accumulated and exchanged for prizes of more than the defined minimal value consistent with statute.” While the Agency’s stated purpose may appear on its face to be somewhat logical, it is not. There is no need to enact the Proposed Regulation for the sake of “consistency” because the applicable statute (Md. Code, Crim Law § 12-301) unequivocally delegates all rule-making authority to the Agency, including with the respect to the Minimal Value and how such an amount is determined. The statute is notably silent on whether the Minimal Value applies only to “per play” or “accumulation.” When a statute is silent on such details, and in fact expressly delegates such authority to the Agency, the Agency is permitted to exercise its discretion in crafting such rules and methods of implementation. The Agency did so eight years ago, without any noted issues or concerns, in line with its authority and the legislature’s directive.

Simply put, the Existing Regulation is **entirely consistent with Maryland law** and requires no amendments in order to comply with Crim. Law § 12-301. The Existing Regulation is clear, and represents an appropriate and authorized exercise of the Agency’s powers granted to it statutorily by the legislature. In the absence of a legitimate reason to dramatically change course after nearly a decade in effect without issue, it should not now be disturbed.

The Proposed Regulation would only affect *one business* in the entire State of Maryland, as no other skills-based amusement device operators (outside of Worcester County) offer prizes with a value in excess of the Minimal Value. Thus, this regulation appears to be targeted at a single business that employs over 600 people in the State, maintains 6 locations in Maryland (and is looking to add more), and pays millions of dollars in various taxes each year to the State. As noted above, Dave & Buster’s business model (for more than forty years) has relied upon the concept of customers returning on multiple occasions to win more tickets, accumulate them over time, and then exchange such tickets for larger prizes.

Even worse, if the Proposed Regulation comes into effect, Maryland would be the *only* jurisdiction in the United States where customers could not accumulate tickets at Dave & Buster’s in order to obtain more valuable prizes. The Proposed Regulation would therefore force Dave & Buster’s to abandon its nationwide business model, in which it has invested hundreds of millions of dollars over the course of more than 40 years in operation. If faced with this scenario, where Maryland is operating in a manner contrary to the other 49 states, Dave & Buster’s would certainly cease opening any new locations in Maryland and likely close some or all of its existing locations. The harm to Maryland and its citizens would be devastating, all for no legitimate benefit whatsoever, whether economic, legal, or moral.

To the extent that the Agency now is relying on a public policy argument regarding the propriety of accumulating tickets for larger prizes, rather than the clearly non-existent “inconsistency” in the law, we note that Md. Code, State Gov’t § 9-1B-02 already carves out an exception for Worcester County, allowing arcade operators to award prizes of up to \$599.00 *per play*. *Id.* (“A family entertainment center that holds an amusement gaming license issued under this section may operate . . . (ii) up to 10 skills-based devices that award noncash prizes with a minimal wholesale value that does not exceed \$599.”).

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If the legislature believes that it is permissible in Worcester County to allow a *single skill-based amusement device to award a prize up to \$599 on a single play* (which effectively operates almost identically to an actual slot machine for gambling), then it should certainly be acceptable for Dave & Buster's customers to accumulate tickets over time (not on a single play) for a prize above \$30.00. What is safe and legal for the citizens of Worcester County should also be safe and legal for the citizens of Baltimore, Anne Arundel, Howard, Montgomery, and Prince George's Counties.

While the Proposed Regulation may be proposed by the Agency in good faith, it is a solution to a problem that simply does not exist, especially in the absence of any "inconsistency" between the applicable statute and the Existing Regulation. The regulation is not broken, and therefore there is no need to fix it after eight years.

We appreciate your consideration of these comments and look forward to the Agency reversing its ill-founded decision to drastically change the Existing Regulation. Please feel free contact me at 410-727-6600 or [jlichtstein@rosenbergmartin.com](mailto:jlichtstein@rosenbergmartin.com) if you wish to discuss this matter further.

Sincerely,



Jeffrey M. Lichtstein

cc: Scott Rosuck, Associate General Counsel, Dave & Buster's (*via email*)  
Jonas Jacobson, Perry White Ross Jacobson (*via email*)