



**VIRGIN ISLANDS DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

December 11, 2023

Honorable Diane T. Capehart  
Senator  
35<sup>th</sup> Legislature of the Virgin Islands  
3022 Estate Golden Rock  
Christiansted, St. Croix, VI 00820

Honorable Angel L. Bolques, Jr.  
Senator At Large  
35<sup>th</sup> Legislature of the Virgin Islands  
Capitol Building  
Charlotte Amalie, USVI 00804

***Re: Bill No. 35-0179 – Amendments to 14 V.I.C. § 61 and 32 V.I.C. § 13 to Strengthen the Enforcement Tools Against Illegal Gambling and Lottery***

Dear Senators Capehart and Bolques:

The Office of the Attorney General appreciates the opportunity to comment on Bill No. 35-0179. Bill No. 35-0179 seeks to amend Title 14 of the Virgin Islands Code, Chapter 61 and Title 32 of the Virgin Islands Code, Chapter 13. The purpose of this bill is to strengthen the enforcement tools against illegal gambling and lottery by increasing possible fines and jail sentences, providing an avenue for forfeiture of property and establishing protocols for enforcement. The Department of Justice has done a preliminary review and offers the following comments.

Gambling is legal under federal law, but heavily restricted as each state and territory is allowed to regulate the activity within its borders. States decide what types of gambling to allow, if any, and the penalties associated with breaking gambling laws. The three main types of gambling

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*Letter to Honorable Diane T. Capehart*

*Honorable Angel L. Bolques, Jr.*

*Re: Bill No. 35-0179 – Amendments to 14 V.I.C. § 61 and 32 V.I.C. § 13 to Strengthen the Enforcement Tools Against Illegal Gambling and Lottery*

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in the United States are casino gambling, sport betting and the lottery. At least 24 jurisdictions allow casino gambling, 36 allow sport betting and 45 states plus the District of Columbia, Puerto Rico and the Virgin Islands allow lottery. Only two states, Hawaii and Utah, do not permit any form of gambling.

In states with legal gambling, the penalties for illegal gambling range from misdemeanor charges to felonies. In Nevada and California, a violation of the gambling laws is a misdemeanor, and is punishable by up to six months in jail and a fine up to \$1,000.<sup>1</sup> In Virginia, illegal gambling is a Class 3 misdemeanor punishable by a fine up to \$500 and a criminal record.<sup>2</sup> Florida classifies illegal gambling as a second-degree misdemeanor punishable by up to 60 days in jail and a \$500 fine.<sup>3</sup> In Ohio, illegal gambling is a first-degree misdemeanor, unless the defendant has a previous gambling conviction; in that case, the violation is charged as a fifth-degree felony.<sup>4</sup>

The proposed legislation seeks to protect revenue generated by the Virgin Islands Lottery and curb violent crime by increasing possible fines and jail sentences for illegal gambling activity. While the Department of Justice does not object to increasing penalties, there is some concern whether the full intent of the bill can be accomplished.

Virgin Islands Code limits the classification of crimes to either a felony, a crime or offense which is punishable by imprisonment for more than one year, or a misdemeanor, a crime or offense punishable by up to one year in jail. Currently, most gambling violations in the Virgin Islands are classified as misdemeanors. Bill No. 35-0179 stops short of clarifying two explicit categories for illegal gambling (i.e. either a misdemeanor or felony) but proposes felony-level punishment for all illegal gambling charges without distinction to the particularity of unauthorized conduct. While the proposed legislation creates consistent penalties throughout Title 14, Sections 1221-1225, the effect of the amendments is that every violation of the statute would be a felony without an option for a lesser included offense. As proposed, the bill does not match behaviors to penalties; the proposed law would benefit from a lesser included offense provision, including misdemeanor punishment, especially for first time offenders.

Additionally, Section 3 of the proposed bill aims to increase enforcement capabilities by establishing a “division with the responsibility, authority and powers to enforce the provisions” of Title 14, Sections 1221-1228. Again, the Department of Justice has no concern as to the

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<sup>1</sup> See NRS 465.092, NRS 465.093 and Cal. Stat. § 330

<sup>2</sup> See Va. Code § 18.2-326

<sup>3</sup> See Fla. Stat. §§ 849.08, 775.082 and 775.083

<sup>4</sup> See Ohio Rev. Code § 2915.02

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Legislature's authority to expand punishment for violations of our territorial laws, but we are concerned with the practical aspects of enforcement. Are Virgin Islands Police Department or Virgin Islands Lottery officers going to be responsible for citing individuals and businesses for illegal gambling activities? Does VIPD or VI Lottery have the workforce and resources to assume the additional responsibilities? Mandates without proper funding will have no real effect and the goal of curbing illegal gambling cannot be effectively achieved.

Currently, Title 14, Section 1222(b) of the Virgin Islands Code states, "notwithstanding the provisions...of this section, the Police Commissioner may permit raffles in good faith." Are these permitted raffles the only "gambling" sanctioned outside of codified law? If so, do churches, civic organizations, non-profit charities and sporting leagues run the risk of violating the law for casino night fundraisers, organized bingo, drawings and sports pool boards?

With that being said, the following changes would strengthen and clarify proposed Bill No. 35-1079:

First, I would consider classifying gambling violations as misdemeanors or felonies. Establishing misdemeanor and felony-level conduct can help connect the action to the penalty based on the seriousness of the crime. This will also help ensure punishments are applied fairly.

Second, I would consider what resources, human and otherwise, are needed to enforce the new legislation. Simply increasing penalties without implementing a plan of action will not deter illegal gambling.

Third, I would consider including protections for community organizations. These groups often depend on games of chance to raise funds and promote social events. At the very least, there should be specific consideration given to determine whether VIPD or VI Lottery should oversee the issuing of raffle permits or other permissions for occasional games of chance not sanctioned by VI Lottery or regulated by the Casino Control Commission. This will help community organizations understand how and where to apply for permits.

Finally, Bill No. 35-0179 proposes amending Title 32, Chapter 13, Section 246 to add subsection (l). I would also consider adding this forfeiture language to Title 14, Chapter 61, under proposed Section 1227, as this section describes the process for forfeiture of property due to illegal gambling.

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This communication reflects the Virgin Islands Department of Justice, Office of the Attorney General's comments and concerns regarding Bill No. 35-0179. If you have any questions, please do not hesitate to contact either myself or Solicitor General Pamela Tepper.

Sincerely,



Ariel M. Smith

U.S. Virgin Islands Attorney General