

Skin in the Game: The Dangers Cosmetic Loot Boxes Pose Towards Minors and Their Violations of Gambling and Unfair Competition Laws

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INTRODUCTION

In 2023, a thirteen-year-old girl drained her parents' bank account in four months by using their debit card to pay for mobile games.¹ She spent \$17,000 on purchasing games, \$29,526 on in-app purchases, and thousands more to allow her classmates to buy the games themselves.² The girl made sure to delete all of the payment transactions to prevent her parents from finding out about her spending habits.³ After learning about her child's massive purchases, the mother tried to obtain refunds from the mobile game companies.⁴ She has yet to see the full amount returned to her account.⁵

While this example may seem like a crazy one-off story, unfortunately, it is not.⁶ There have been numerous accounts of children spending their parents' money on in-game purchases without permission.⁷ Exorbitant expenditures, even higher than what these children are spending,

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1. Rob Thubron, *A 13-Year-Old Spent \$64,000 of Her Parents' Money on Mobile Games Without Them Realizing*, TECHSPOT (June 7, 2023), <https://www.techspot.com/news/98980-13-year-old-spent-64000-parents-money-mobile.html> [<https://perma.cc/2NP5-7GEU>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*; Fiona Simmons, *Study: Young Gamers Steal Money from Parents to Buy Loot Boxes*, GAMBLING NEWS (Dec. 24, 2020), <https://www.gamblingnews.com/news/study-young-gamers-steal-money-from-parents-to-buy-loot-boxes/> [<https://perma.cc/HS9Y-CXUL>].

accumulate regularly on the internet.⁸ Some individuals spend thousands of dollars on websites to purchase virtual, randomly generated mystery prizes (i.e., “loot boxes”).⁹ They then film themselves opening the boxes for their viewers in either a livestream format or a pre-recorded video.¹⁰ These streamers post videos to platforms such as Twitch or YouTube, where anyone, including children, can watch them.¹¹ Streamers can influence their audience to purchase their own loot boxes, either by recommending they do so or because the viewers also want to obtain the prizes found in the loot boxes.¹²

In light of the weighty influence streamers can have on viewers’ purchasing habits, many states have tried proposing new legislation to regulate, and even ban, the use of loot boxes.¹³ Recently, a new bill has been introduced into Congress that would, among other things, regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products.¹⁴ This bill is widely known as the Protecting Children from Abusive Games Act (“PCAGA”).¹⁵ The PCAGA makes certain types of loot boxes illegal when they are offered for purchase in games played by and advertised to individuals under the age of eighteen.¹⁶ Interestingly, though, the PCAGA specifically excludes the regulation of *cosmetic* loot boxes¹⁷—loot boxes where the winnable items are customizations with no in-game value.¹⁸

8. See Amay Singh, *5 Streamers Who Spent Exorbitant Amounts of Money on Multiplayer Games*, SPORTSKEEDA (Aug. 26, 2023), <https://www.sportskeeda.com/esports/streamers-spent-exorbitant-amounts-money-multiplayer-games> [https://perma.cc/7LYL-MXTG].

9. See Cam Adair, *Loot Box Addiction: Dangers of Loot Boxes*, GAME QUITTERS, <https://gamequitters.com/loot-box-addiction/> [https://perma.cc/E63M-6623].

10. See Singh, *supra* note 8.

11. See *id.*

12. See Yaping Jiang et al., *The Effects of Live Streamer’s Expertise and Entertainment on the Viewer’s Purchase and Follow Intentions*, FRONTIERS PSYCH., Mar. 20, 2024, at 3.

13. See John Bennett, *Fake Loot, Real Money: The Uncertain Legal Future of Loot Boxes*, 39 ENT. & SPORTS L. 12, 16 (2023).

14. S. 1629, 116th Cong. (2019).

15. See Scott Goodstein, *When the Cat’s Away: Techlash, Loot Boxes, and Regulating “Dark Patterns” in the Video Game Industry’s Monetization Strategies*, 92 U. COLO. L. REV. 285, 293 (2021).

16. S. 1629 § 1.

17. *Id.* § 2(7)(B)(ii).

18. Patricia E. Vance, *What Parents Need to Know About Loot Boxes (and Other In-Game Purchases)*, ENT. SOFTWARE RATING BD. (July 12, 2023), <https://www.esrb.org/blog/what-parents-need-to-know-about-loot-boxes-and-other-in-game-purchases/> [https://perma.cc/GL6C-JZJR].

The PCAGA is a great start to protect children and families from the lure of purchasing expensive loot boxes. Indeed, studies have demonstrated a positive link between adolescent loot box purchases—i.e., amount of money spent and frequency of purchases—and whether they will develop or already have gambling problems.¹⁹ However, the PCAGA does not go far enough, and its scope must be extended to cover cosmetic loot boxes as well. Cosmetic loot boxes fit into the common statutory elements of gambling—chance, consideration, and prize or value—which children are prohibited from engaging in.²⁰ Furthermore, they violate the Federal Trade Commission Act (“FTCA”).²¹ They do so through unfair and deceptive practices affecting commerce, which are likely to cause injury to their minor consumers.²² This Comment argues that cosmetic loot boxes should not be marketed to and purchased by minors because they constitute gambling, violate the FTCA, and are psychologically dangerous to children.

Part I of this Comment provides background by defining loot boxes and their effects on minors. Part II explains the general statutory requirements of gambling, examines the current circuit split on loot boxes, and further discusses the FTCA. Part III continues by providing more information on the PCAGA. Part IV analyzes how loot boxes fall under the common statutory elements of gambling and the FTCA and ultimately proposes that cosmetic loot boxes be added to those regulated under the PCAGA. Finally, Part V argues for legislation against the use of all loot boxes in games played by minors.

I. BACKGROUND ON VIDEO GAMES

Recent reports have shown that 190.6 million Americans between the ages of five and ninety play video games, with the average player being thirty-six.²³ Around 24% of players are under the age of eighteen, meaning around 45,744,000 minors living in America play video games.²⁴ Video

19. David Zendle et al., *Adolescents and Loot Boxes: Links with Problem Gambling and Motivations for Purchase*, ROYAL SOC’Y OPEN SCI., June 19, 2019, at 14–15; Nerilee Hing et al., *Loot Box Purchasing Is Linked to Problem Gambling in Adolescents when Controlling for Monetary Gambling Participation*, 11 J. BEHAV. ADDICTIONS 396, 401–02 (2022).

20. For a more in-depth discussion of the statutory elements, see *infra* Section II.A.

21. For a more in-depth discussion on how cosmetic loot boxes violate the FTCA, see *infra* Section II.C.

22. See 15 U.S.C. § 45(a)(1), (n). For a more in-depth discussion, see *infra* Section II.C.

23. *2024 Essential Facts About the U.S. Video Game Industry*, ENT. SOFTWARE ASS’N, <https://www.theesa.com/resources/essential-facts-about-the-us-video-game-industry/2024-data/> [<https://perma.cc/HP9C-NYD5>].

24. *Id.*

games are experiencing unprecedented growth in popularity, attracting players across all demographics—including children.²⁵ The increase in gaming brings lawsuits and struggles to manage laws relating to video games.²⁶ This Part provides background on loot boxes, including important definitions and their effects on minors.

A. *Loot Boxes and Other Video Game Tech*

Video game jargon can be confusing for those unfamiliar with video game culture, mechanics, and trends. This Section breaks down commonly used video game terms, providing a clear and accessible overview of the video game landscape. In light of the psychological impacts loot boxes and video games can have on gamers, this Section also examines how loot boxes and video games are advertised to and affect minors.

With the development of technology, video games have become increasingly prevalent.²⁷ People now play video games on consoles, computers, and even their cell phones.²⁸ As the gaming industry developed, online gaming on all platforms made it possible for more people to play downloadable content (“DLC”).²⁹ DLC allows gamers to pay for new expansions of games, such as new stories, characters, maps, and missions, after purchasing the main game.³⁰ From DLC came microtransactions, another way for game companies and developers to profit more from solely the release of a game.³¹ Instead of players paying a one-time purchase

25. *See id.*

26. *See generally Video Game Addiction Lawyers*, MILLER & ZOIS, LLC, <https://www.millerandzois.com/products-liability/video-game-addiction-lawyers/> [<https://perma.cc/VW9B-48GL>] (Dec. 12, 2025) (discussing product liability lawsuits against video game companies for addiction-related harm); Zachary Strebeck, *Video Game Laws in the US [Stay Compliant!]*, ZACHARY STREBECK (Apr. 20, 2023), <https://strebecklaw.com/game-laws-us/> [<https://perma.cc/9HXC-Q5FV>] (explaining the complex regulatory landscape governing video games in the United States).

27. Olivia Lowden, *The Video Game Industry Is Still Growing - But Why?*, BCC RSCH. (Aug. 25, 2023), <https://blog.bccresearch.com/video-games-industry-is-still-growing-but-why> [<https://perma.cc/X53Y-WXDB>].

28. *Share of Internet Users Worldwide Playing Games on Selected Devices as of 2nd Quarter 2025*, STATISTA (Nov. 27, 2025), <https://www.statista.com/statistics/533047/leading-devices-play-games/>.

29. *See* Mike Colagrossi, *Microtransactions in Gaming: Economic Impact & Revenue Strategies*, INVESTOPEDIA, <https://www.investopedia.com/articles/investing/022216/how-microtransactions-are-evolving-economics-gaming.asp> [<https://perma.cc/9SYB-HSMN>] (Nov. 19, 2025).

30. *Id.*

31. *See id.*

price—or no purchase price at all if the game was originally free-to-play—microtransactions allow players to choose to pay for multiple other in-game features that customize and sometimes further gameplay.³²

Game developers can include microtransactions for any feature in a game.³³ Some common microtransactions include new playable story lines, characters, maps, and outfits for one's characters.³⁴ Although these items, such as new outfits or characters, are not always a necessity to progress the game, some gamers feel that they are.³⁵ Players may feel these items are necessary because they want to seem better at the game or show that they have more commitment to playing and developing their skills.³⁶ In 2024, it was estimated that customers spent \$58.7 billion on video games, with \$50.6 billion being on in-game content (i.e., microtransactions) alone.³⁷ While these microtransactions cost consumers money, they generate enormous amounts of income for game developers, especially in games that are free to download and play.³⁸

Loot boxes are one popular form of microtransactions.³⁹ Loot boxes are in-game items that can be unlocked most commonly through purchase, but also through progression of the game.⁴⁰ The items to be unlocked are hidden behind a chest, present box, or package of some sort, depending on the game's design choices.⁴¹ These purchasable loot boxes are also randomized, so the individual purchasing the box does not know what they will receive before paying.⁴² Loot boxes go by many names and take different forms (e.g., prize wheels, treasure chests, card packs, etc.), but all maintain the same type of randomized purchase.⁴³

32. *Id.*

33. *See e.g., id.* (providing examples of microtransactions used by game developers for various in-game features).

34. *See id.*

35. *See id.*; Luke Dowling, *Gaming Safely: Understanding In-Game Purchases and Their Impact on Kids*, FAM. ONLINE SAFETY INST. (July 8, 2024), <https://www.fosi.org/good-digital-parenting/gaming-safely-understanding-in-game-purchases-and-their-impact-on-kids> [<https://perma.cc/3TKS-H5HV>].

36. *See* Dowling, *supra* note 35.

37. Press Release, Entertainment Software Association, U.S. Consumer Spending on Video Games Totaled \$58.7 Billion in 2024 (Jan. 23, 2025), <https://www.theesa.com/u-s-consumer-spending-on-video-games-totaled-58-7-billion-in-2024/> [<https://perma.cc/N6B2-R6KW>].

38. Colagrossi, *supra* note 29.

39. *See* Vance, *supra* note 18.

40. *Id.*

41. *See id.*

42. *Id.*

43. *Id.*

From this randomized purchase, players can obtain two different types of items—fundamental and cosmetic.⁴⁴ Fundamental items help to progress the gameplay.⁴⁵ Generally, you cannot progress in the game without obtaining these items.⁴⁶ Alternatively, cosmetic items in a game alter the game’s visuals, but they normally do not influence how the game is played or the level of one’s character.⁴⁷ These visuals can include a new outfit (or “skin”) for one’s character, a new pose for one’s character, and anything else that adds only visual value to the game.⁴⁸ For example, the image below shows both the original skin for a character (left) and a skin made available solely via a loot box (right) in the game *League of Legends*.⁴⁹ With these skins equipped, the character solely differs in cosmetic design and will continue to function the same in-game.⁵⁰

Figure 1. Example of Skin in *League of Legends*



44. Alex Huntly, *The Moral Issue with Gaming Loot Boxes*, MEDIUM (Sept. 19, 2018), <https://medium.com/lunar-works-lab/the-moral-issue-with-gaming-loot-boxes-b76ee2713ec4> [<https://perma.cc/W8Z3-ZDPH>].

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. See *Annie (League of Legends)*, FANDOM, <https://leagueoflegends.fandom.com/wiki/Annie/LoL> [<https://perma.cc/E2UA-2YV8>]; *Champion Skin*, FANDOM, https://leagueoflegends.fandom.com/wiki/Champion_skin#Legacy [<https://perma.cc/M9YR-S27P>] (July 8, 2025).

50. See *Annie (League of Legends)*, *supra* note 49.

Cosmetic items may not alter gameplay, but they can be extremely valuable nonetheless.⁵¹ These valuable skins can be sold for real-world money on various platforms depending on their value.⁵² Cosmetic loot boxes can be purchased for \$20 or more in some games.⁵³ Some skins found in loot boxes can be worth over \$15,000 USD on various gaming markets.⁵⁴ At the same time, players can get skins that are completely worthless and cannot be resold, so players are left with an item of little to no value.⁵⁵ Something even more sinister is that game developers create this environment purposefully.⁵⁶ Developers do this through a method called “artificial scarcity,” where they deliberately restrict the availability of items, making them seem “rare.”⁵⁷ This creates urgency in players to purchase the item and, consequently, assign more value to it due to the small quantity of the item.⁵⁸ In reality, the developers could be hiding how rare an item actually is or could easily program more into the game.⁵⁹

Another trick occurs when game developers create skins that do not explicitly contain in-game advantages, but still help the player in different ways.⁶⁰ The skin may make it difficult for other players to view certain abilities.⁶¹ It may also make the hitbox—the amount of area on the character that may be subject to an attack—appear smaller or larger than it actually is, confusing other players.⁶² In most cases, a reasonable player likely would

51. See Aubrie Cole, *The Kids Have Gambling Addictions, Mr. President!*, DAILY TROJAN (Oct. 24, 2023), <https://dailytrojan.com/2023/10/24/the-kids-have-gambling-addictions-mr-president/> [<https://perma.cc/L4TX-THSS>].

52. Dineen Annie, *Skin Gambling Law in USA*, CENTENNIAL2.0 (Feb. 14, 2024), <https://www.2020centennial.org/skin-gambling-law-in-usa/> [<https://perma.cc/3R63-X4NB>].

53. Cole, *supra* note 51.

54. *Id.*

55. *Id.* On a website used to sell *CS:GO* skins, the prices range from less than \$1 to over \$100,000. *Browse and Buy All CS2 Skins*, CSGOSKINS, https://esgoskins.gg/?query=&price_min=&price_max=&weapon=&color=&film=&association=&rarity_weapon=&type=&exterior=&extra=&tournament=&team=&order=highest_price [<https://perma.cc/38H3-2WJ4>].

56. Milijana Komad, *Artificial Scarcity and Perceived Value in Digital Systems*, MEDIUM (Aug. 10, 2023), <https://medium.com/@milijanakomad/product-design-and-psychology-the-application-of-artificial-scarcity-in-video-game-design-249b459fee7f> [<https://perma.cc/3TQZ-REX3>].

57. *Id.*

58. *Id.*

59. *See id.*

60. Youkatchadourian, *Understanding the Advantages of Specific Skins in Game*, DIGNITAS (May 17, 2022), <https://dignitas.gg/articles/understanding-the-advantages-of-specific-skins> [<https://perma.cc/R2DJ-E332>].

61. *Id.*

62. *Id.*

not believe this type of skin has a competitive advantage—only a highly competitive or professional player would be likely to observe that detail.⁶³ *League of Legends*'s game developers are known to have employed this tactic before.⁶⁴

One popular game among all ages that contains loot boxes is *Fortnite*.⁶⁵ In this game, players can obtain “V-Bucks” either by earning them through gameplay or purchasing them with real-life currency.⁶⁶ V-Bucks are *Fortnite*'s form of premium in-game currency, which can be used to purchase “loot llamas”—*Fortnite*'s version of loot boxes.⁶⁷ Loot llamas contain randomized in-game items, such as different skins and new weapons for the player's character.⁶⁸ Recently, *Fortnite*'s developer, Epic Games, has been subject to a lawsuit challenging its loot llamas as violating consumer protection laws by misrepresenting the value of items and not allowing minors to exercise their contractual disaffirmation rights.⁶⁹ The class action settled, and Epic Games changed *Fortnite*'s loot llamas to be see-through—meaning the individual knows which item they are receiving before purchasing the loot llama—as a part of the settlement in 2021.⁷⁰

Although some enjoyed purchasing loot llamas before they became see-through, Epic Games still decided to change its practices.⁷¹ This change in

63. See Rafael Reyes, *The “Banned” Skins in League of Legends Competitive Play*, BALLERS.PH (Sept. 1, 2020), <https://ballers.ph/esports/the-banned-skins-in-league-of-legends-competitive-play> [https://perma.cc/K9AG-UYR6] (noting that in lower ranks, subtle skin advantages “don't actually matter much” because players must master basic mechanics “before making great use of these visual tricks”); S. 1629, 116th Cong. § 2(7) (2019).

64. See Youkatchadourian, *supra* note 60.

65. Colagrossi, *supra* note 29.

66. *Id.*

67. Makena Kelly & Nick Statt, *Epic Games Will Settle Fortnite Loot Box Lawsuits in V-Bucks*, VERGE (Feb. 22, 2021), <https://www.theverge.com/2021/2/22/22295676/epic-games-fortnite-loot-box-lawsuit-settlement-rocket-league-v-bucks> [https://perma.cc/P856-ZXV9].

68. *Id.*

69. Katherine Webster, *Fortnite Maker Epic Games Reaches \$26.5M Class Action Settlement over In-Game Purchases*, TOP CLASS ACTIONS (Feb. 22, 2021), <https://topclassactions.com/lawsuit-settlements/consumer-products/video-games/fortnite-maker-epic-games-reaches-26-5m-class-action-settlement-over-in-game-purchases> [https://perma.cc/4AG9-EBSU]. The class action lawsuit is *Zanca v. Epic Games Inc.*, No. 21-CVS-534 (N.C. Super. Ct. Wake Cnty.). *Id.* Furthermore, the contractual disaffirmation rights referred to here give minors the right to end or get out of a contract that they had previously entered into. *Tags: Disaffirmance*, SHANNONWEB, <https://www.shannonweb.net/lbr/tag/disaffirmance> [https://perma.cc/2MVX-8E6Y]. Those rights will not be discussed further as they are beyond the scope of this Comment.

70. *Fortnite: Save the World Loot Llama Purchasers to Receive 1,000 V-Bucks*, EPIC GAMES (Feb. 22, 2021), <https://www.fortnite.com/news/fortnite-save-the-world-loot-llama-purchasers-to-receive-1000-v-bucks> [https://perma.cc/5WLD-L75T].

71. *Id.*

practice may be able to provide protection for child gamers against the harmful effects of loot boxes.

B. Minors are Vulnerable Customers

Children (i.e., individuals under the age of eighteen) purchasing loot boxes has become a real issue.⁷² Often, children feel pressured to spend money on loot boxes to avoid being seen as “uncool.”⁷³ Children can also become subjected to pressure from peers or fellow gamers to seem more experienced at the game than they really are.⁷⁴ This pressure comes from the toxic culture that players are often exposed to in online gaming lobbies.⁷⁵ Because of the behind-the-screen nature of these games, players frequently name-call and harass others for being “bad” at the game.⁷⁶ Due to this, many gamers, including children, may feel the need to purchase loot boxes to obtain “skins” and make their playable characters look cooler and more experienced.⁷⁷

Recent studies have found that purchasing loot boxes negatively affects children.⁷⁸ Two studies found a positive correlation between the purchase of loot boxes by adolescents and their problem gambling severity.⁷⁹ One study found a positive correlation between loot box spending in sixteen- to eighteen-year-olds and current problem gambling behaviors.⁸⁰ The correlation found was of moderate to large magnitude.⁸¹ More specifically, adolescents who purchased loot boxes within the past month had more than double the rate of high problem gambling severity compared to those who had not.⁸² Furthermore, and perhaps most illustrative of the issue central to this Comment, this correlation was higher than that measured in adults.⁸³

72. See Thubron, *supra* note 1.

73. See Dowling, *supra* note 35.

74. See *id.*

75. See Jess Weatherbed, *Pressure to Be Good at Games Is Ruining My Ability to Enjoy Them*, TECHRADAR (Sept. 19, 2021), <https://www.techradar.com/news/pressure-to-be-good-at-games-is-ruining-my-ability-to-enjoy-them> [<https://perma.cc/5VPS-HTBK>].

76. *Id.*

77. Dowling, *supra* note 35.

78. Zendle et al., *supra* note 19; Hing et al., *supra* note 19.

79. Zendle et al., *supra* note 19; Hing et al., *supra* note 19.

80. Zendle et al., *supra* note 19, at 1.

81. *Id.*

82. *Id.* at 14.

83. *Id.* at 1.

This supports the proposition that loot boxes have a more severe effect on adolescents than they do on adults.⁸⁴

Although loot boxes have been shown to negatively affect children, some may argue that these games are not made for children in the first place.⁸⁵ This could not be further from the truth. For example, the following five games contain purchasable loot boxes: *Fortnite*, *Overwatch*, *League of Legends*, *Apex Legends*, and *Rocket League*.⁸⁶ The corresponding ratings for each of these games are as follows: *Fortnite*,⁸⁷ *Overwatch*,⁸⁸ and *League of Legends* are rated T for Teen,⁸⁹ *Apex Legends* is rated T (Teen 13+),⁹⁰ and *Rocket League* is rated E for Everyone.⁹¹ Each of these ratings allows children under the age of eighteen to play these games.⁹² This contradicts any argument that video games involving loot boxes are not being played or should not be played by children. Even assuming that these games were rated in a way that excludes players under the age of eighteen, ratings are not actually enforced against consumers, meaning children can play higher-rated games by lying about their age online.⁹³

84. *Id.* Another study affirmed the positive correlation between adolescent loot box spending and problem gambling while controlling for monetary gambling participation. Hing et al., *supra* note 19, at 1.

85. This is shown by parents' lack of knowledge that their children are spending thousands of dollars on in-game purchases. See *Loot Boxes Aren't Free. They're Costing Parents Thousands of Dollars.*, PAUSE BEFORE YOU PLAY (Nov. 4, 2024), <https://pausebeforeyouplay.org/2024/11/loot-boxes-arent-free-theyre-costing-parents-thousands-of-dollars> [<https://perma.cc/F8P9-23CW>].

86. *Most Popular Games to Buy Loot Boxes for According to Console Gamers in the United States in 2019*, STATISTA (Nov. 27, 2025), <https://www.statista.com/statistics/1219771/gaming-loot-crate-top-games-usa/>.

87. Patricia E. Vance, *A Parents' Guide to Fortnite*, ENT. SOFTWARE RATING BD. (Oct. 9, 2024), <https://www.esrb.org/blog/a-parents-guide-to-fortnite> [<https://perma.cc/6HC3-JMRY>].

88. *Overwatch*, ENT. SOFTWARE RATING BD., <https://www.esrb.org/ratings/34210/overwatch> [<https://perma.cc/DSP6-NLVQ>].

89. *League of Legends*, ENT. SOFTWARE RATING BD., <https://www.esrb.org/ratings/27518/league-of-legends> [<https://perma.cc/R7NE-TGZG>].

90. Max Jay, *What Parents Need to Know About Apex Legends*, ENT. SOFTWARE RATING BD. (Aug. 23, 2022), <https://www.esrb.org/blog/what-parents-need-to-know-about-apex-legends> [<https://perma.cc/M4YA-8QMT>].

91. *Rocket League*, ENT. SOFTWARE RATING BD., <https://www.esrb.org/ratings/34414/rocket-league> [<https://perma.cc/Z53S-BRZU>].

92. See the ratings and their meanings on ESRB's website. *Ratings Guide*, ENT. SOFTWARE RATING BD., <https://www.esrb.org/ratings-guide> [<https://perma.cc/Y3FN-4SYB>].

93. *Entertainment Software Rating Board (ESRB)*, VIDEO GAMES, L. & PARTICIPATION, <https://gamingpublics.wordpress.com/entertainment-software-rating-board-esrb> [<https://perma.cc/7ZMB-UBNK>].

On top of allowing children to play these games, game companies arguably target children with their advertisements.⁹⁴ The tactics that game companies use are frequently employed by other companies to market adult products to children and date back to the last century.⁹⁵ Take, for example, Joe Camel—a cartoon character in a 1980s to 1990s cigarette advertising campaign.⁹⁶ Joe Camel, created by the cigarette brand R.J. Reynolds, often sported a tuxedo, surrounded by colorful backgrounds containing items such as cars, boats, and cityscapes.⁹⁷ Studies found that Joe appealed more to teenagers and young adults—who thought he was “cool”—than those actually of age to smoke cigarettes (i.e., individuals at least eighteen years old).⁹⁸ This campaign induced many minors to begin smoking, even though they were not yet of age to be able to buy and smoke cigarettes.⁹⁹ The Federal Trade Commission (“FTC”) found that this advertising violated federal law as an unfair practice under Section Five of the FTCA because the cigarette company knew that the Joe Camel campaign targeted minors.¹⁰⁰

Joe Camel is not a stand-alone anecdote. Alcopops, which are alcoholic drinks that are sweet and carbonated to mimic the taste and feel of sodas, serve as another example.¹⁰¹ Mike’s Hard and Four Loko beverages are types of Alcopops.¹⁰² These drinks often come in brightly colored cans and are advertised with animations, animal characters, humor, and popular

94. See Complaint at 8–12, *United States v. Cognosphere*, No. 2:25-cv-447 (C.D. Cal. Jan. 17, 2025) (arguing that Cognosphere advertises its game to minors through different promotional and in-game elements).

95. See *infra* text accompanying notes 96–112.

96. See *Collection: Joe Camel Cartoons*, STAN. RSCH. INTO IMPACT TOBACCO ADVERT., <https://tobacco.stanford.edu/cigarettes/cartoons/joe-camel-cartoons/> [<https://perma.cc/PYS6-U4JX>].

97. *Id.*

98. *Id.*

99. Press Release, Federal Trade Commission, *Joe Camel Advertising Campaign Violates Federal Law, FTC Says* (May 28, 1997), <https://www.ftc.gov/news-events/news/press-releases/1997/05/joe-camel-advertising-campaign-violates-federal-law-ftc-says> [<https://perma.cc/DPE5-8QZ5>] [hereinafter Press Release, FTC]; Press Release, Campaign for Tobacco-Free Kids, *New Research Shows Marlboro, Camel Campaigns Will Be Responsible for 600,000 Tobacco-Related Deaths* (Aug. 3, 1998), https://www.tobaccofreekids.org/press-releases/id_0041 [<https://perma.cc/NC6T-JEJY>] [hereinafter Press Release, Campaign].

100. Press Release, FTC, *supra* note 99; Press Release, Campaign, *supra* note 99.

101. Destiny Bezrutczyk, *Alcohol Industry Markets to Teens with Sweet, Fizzy Alcopops*, ALCOHOL HELP, <https://www.alcoholhelp.com/blog/alcohol-industry-markets-to-teens-with-sweet-fizzy-alcopops> [<https://perma.cc/A79Q-5NY7>] (June 4, 2025).

102. *Id.*

music.¹⁰³ These tactics are used to market these drinks to minors, as shown by a string of adolescent deaths from the drink Four Loko.¹⁰⁴

A more recent example is e-cigarette devices, specifically vapes.¹⁰⁵ Vapes have been marketed with celebrity endorsements, cartoons, and animation.¹⁰⁶ In stores, e-cigarette companies use colorful packaging and sweet flavors to display their product.¹⁰⁷ These advertising tactics appeal to minors, as 2.4 million middle and high school students were reported by the Centers for Disease Control (“CDC”) to regularly use e-cigarettes in 2014.¹⁰⁸

All these examples have something in common: they advertise their products with “exciting” features, such as bright colors and animations. These bright colors have been shown, through these companies’ practices, to promote their products to children and adolescents, products illegal for them to have and partake in.¹⁰⁹ Video games and loot boxes can easily be analogized to these examples. Loot boxes and video games in general are often animated and contain bright colors.¹¹⁰ These colors and animations, as seen in previous examples, appeal to children. Colors and animation entice them and provide a dopamine spike for them while the loot boxes are being opened.¹¹¹ This makes children want to buy more loot boxes, even though they are engaging in gambling behaviors that they are not of age to participate in.¹¹² Furthermore, a study has shown that 31.6% of all children ages thirteen to fourteen had purchased loot boxes in 2022, displaying the

103. *Id.*

104. *Id.* The advertising methods of Alcopops is similar to that of the gaming industry. The gaming industry has advertised games with animated characters, child-like cartoon characters, and colorful displays. *See* Complaint, *supra* note 94, at 8–12. If these promotion tactics can persuade minors to break laws by drinking underage, then it likely follows that they can persuade minors to play free-to-play, legal games.

105. *Marketing to the Youth of America: How E-Cigarette Companies Target Young People*, ADDICTION PREVENTION COAL., <https://apcatham.org/marketing-to-the-youth-of-america-how-e-cigarette-companies-target-young-people> [<https://perma.cc/RC8T-A89D>].

106. *Id.*

107. *Id.*

108. *Id.*

109. *See supra* notes 96–108 and accompanying text.

110. Zaid Khalid, *The Psychology of Loot Boxes: How Game Developers Exploit Human Behavior for Profit*, MEDIUM (Sept. 12, 2023), <https://medium.com/@Zaid-Khalid/the-psychology-of-loot-boxes-how-game-developers-exploit-human-behavior-for-profit-5e7afcc6d861> [<https://perma.cc/MZ4B-SSQK>].

111. *Id.*

112. *Id.*

effectiveness of these games' advertising towards children.¹¹³ This statistic is worrying if loot boxes can be seen as gambling under common statutory definitions.

II. HIGH STAKES AND HIDDEN TRICKS: GAMBLING AND DECEPTIVE PRACTICES IN VIDEO GAMES

About 85% of U.S. adults have gambled at least once.¹¹⁴ In 2022, 33.7% of North American children were estimated to have engaged in gambling or gambling-like behaviors.¹¹⁵ Gambling has obvious prevalence in the U.S., as even children are joining in, likely because some form of legalized gambling is present in 48 states.¹¹⁶ This Part examines the general statutory requirements of gambling—consideration, chance, and prize or value—under various state statutes, and the circuit split on how loot boxes are treated under each of those elements will be explained. Finally, loot boxes and how they interact with the FTCA will be introduced.

A. Gambling

Although states have varying statutory requirements,¹¹⁷ forty-eight states have enacted laws attempting to regulate gambling, while two states—Utah and Hawaii—outlaw gambling entirely.¹¹⁸ All fifty states tend to include the same three elements in their definition of gambling: (1) consideration, (2) chance, and (3) prize or value.¹¹⁹

Even in states that use the same elements, the interpretation of those elements varies.¹²⁰ Nevada, the state considered to have the most favorable

113. Whitney DeCamp & Kevin Daly, *Loot Box Consumption by Adolescents Pre- and Post- Pandemic Lockdown*, PEERJ, Nov. 13, 2023, at 1, <https://peerj.com/articles/15287> [<https://perma.cc/F538-AF25>].

114. *FAQs: What Is Problem Gambling?*, NCP GAMBLING, <https://www.ncpgambling.org/help-treatment/faqs-what-is-problem-gambling> [<https://perma.cc/5RLN-JVDX>].

115. Lucy T. Tran et al., *The Prevalence of Gambling and Problematic Gambling: A Systematic Review and Meta-Analysis*, 9 LANCET PUB. HEALTH 594, 601 (2024).

116. *FAQs: What Is Problem Gambling?*, *supra* note 114.

117. Webster Lupton, *States with Online Casinos in the US*, ONLINE U.S. CASINOS, <https://www.onlineunitedstatescasinos.com/states> [<https://perma.cc/ET9A-UY5J>] (Feb. 28, 2026).

118. *Id.*

119. Bennett, *supra* note 13, at 16–17.

120. *See id.* (explaining the different interpretations of common statutory elements based on the state).

gambling laws,¹²¹ has a statute that uses the term “gambling game.”¹²² Gambling game is defined by statute as “any game played with cards, dice, equipment or any mechanical or electronic device or machine for money, property, checks, credit or any representative of value.”¹²³ Under this statute, the element of consideration can be seen in the words “game played with . . . any representative of value,” as something of value must be staked on a game to fall under consideration.¹²⁴ The element of chance can be seen in the same words as consideration, as something is being staked or risked.¹²⁵ Finally, the word “value” is explicitly mentioned in the statute’s definition of gambling game.¹²⁶

Utah, as the state with the most restrictive gambling laws,¹²⁷ defines “gambling” as:

risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome:

(i) is based on an element of chance . . .

. . . .

. . . and

(ii) is in accord with an agreement or understanding that someone will receive anything of value in the event of a certain outcome.¹²⁸

This statute uses the term value explicitly, and through its use of the word “risking” also clearly lays out an element of chance.¹²⁹ The element of consideration is displayed through the term “risking anything of value.”¹³⁰

Washington’s statute is somewhere in between Nevada’s and Utah’s; it does not expressly prohibit gambling but regulates it cautiously.¹³¹ Washington’s statute defines “gambling” as “staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, upon an agreement or

121. *Id.* at 16.

122. NEV. REV. STAT. § 463.0152 (2024).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. Bennett, *supra* note 13, at 16–17.

128. UTAH CODE ANN. § 76-9-1401 (West 2025).

129. *Id.*

130. *Id.*

131. Bennett, *supra* note 13, at 17.

understanding that the person or someone else will receive something of value in the event of a certain outcome.”¹³² Again, this statute uses the value element explicitly and lays out chance as “staking or risking.”¹³³ Finally, consideration is displayed clearly through the term “staking or risking something of value.”¹³⁴

Notwithstanding their subtle differences, all three of these statutes outlaw gambling for minors.¹³⁵ Although that seems to make minors’ purchases of loot boxes blatantly illegal, statutes have been applied to loot boxes differently based on the state.¹³⁶ And while the definitions in the above three statutes differ, one can see a pattern begin to form. The common elements of gambling being presented are “consideration,” “chance,” and “prize” or “value.”¹³⁷ Consideration is when “players stake or risk something of value.”¹³⁸ Chance is considered to be a “lack of control over events,” including some sort of risk.¹³⁹ Finally, “prize” is greatly dependent on what “something of value” is defined as under the consideration element.¹⁴⁰ Although these states are in agreement on the common elements, circuits split on what falls under “something of value” and “risk.”¹⁴¹

B. Circuit Split on the Elements of Gambling

Currently, jurisdictional standards for the chance element would be satisfied by loot boxes.¹⁴² But, jurisdictions are particularly split over what constitutes “something of value” and “risk” under the consideration and prize or value elements.¹⁴³ Thus, loot boxes may not be considered gambling depending on the jurisdiction.¹⁴⁴

132. WASH. REV. CODE § 9.46.0237 (2005).

133. *Id.*

134. *Id.*

135. Nevada and Washington outlaw gambling for minors or, more specifically, those under the age of eighteen. NEV. REV. STAT. § 463.745(2) (2024); WASH. REV. CODE § 9.46.228 (2005). Utah outlaws gambling for everyone, including minors. UTAH CODE ANN. § 76-9-1402 (West 2025).

136. For a more in-depth discussion, see *infra* Section II.B.

137. Bennett, *supra* note 13.

138. 38 AM. JUR. 2D *Gambling* § 2 (2025).

139. *See id.*

140. *See* Bennett, *supra* note 13, at 17, 19–20.

141. *Id.* at 17.

142. *Id.* at 19.

143. *Id.* at 17, 19–20.

144. *Id.*

1. Something of Value

In all jurisdictions, consideration is an offer of payment or something of monetary value.¹⁴⁵ In a majority of jurisdictions, “something of monetary value” is conservatively construed when determining if consideration exists.¹⁴⁶ The Alabama Supreme Court in *Yellow-Stone Kit v. State* found consideration to include any payment of direct or indirect value.¹⁴⁷ Under this view, a loot box would have to be purchased with real-world currency to be considered “something of value” under the consideration analysis.¹⁴⁸

In other jurisdictions, “something of value” under the consideration analysis is construed more broadly.¹⁴⁹ The Ninth Circuit, in *Kater v. Churchill Downs Inc.*, found that virtual chips that could be used to play more casino games within a mobile game were a form of credit and were therefore “something of value.”¹⁵⁰ Under this view, a loot box could be purchased with either real-world or in-game currency (purchased with real-world money) to be considered “something of value.”¹⁵¹

Finally, in a minority of jurisdictions, “something of value” is construed in a similar way to consideration under contract law.¹⁵² This includes “any right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.”¹⁵³ Under this view, a loot box could be purchased with either real-world or in-game currency (gained through gameplay or purchased with real-world currency) to be considered “something of value.”¹⁵⁴

With respect to the prize or value element, some federal courts interpreting state gambling laws, including gambling laws in Washington and Maryland, have addressed whether a virtual item is “something of value.”¹⁵⁵ The Ninth Circuit in *Kater*, applying Washington law, held that virtual chips that could be exchanged for free plays in-game were a “thing of value.”¹⁵⁶ Under this view, virtual items found in loot boxes are likely to

145. *See* *Yellow-Stone Kit v. State*, 7 So. 338, 338 (Ala. 1890); *see also* Bennett, *supra* note 13, at 17.

146. Bennett, *supra* note 13, at 17.

147. 7 So. at 338.

148. Bennett, *supra* note 13, at 17.

149. *Id.*

150. *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 787–88 (9th Cir. 2018).

151. Bennett, *supra* note 13, at 17.

152. *Id.*

153. *Id.* (citation omitted).

154. *Id.*

155. *Id.* at 19–20.

156. *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 787–88 (9th Cir. 2018).

be considered a prize.¹⁵⁷ Furthermore, the Fourth Circuit held that under Maryland law, virtual currency was not considered “money,” which is Maryland’s element of value.¹⁵⁸ Under this view, virtual items found in loot boxes are less likely to be considered a prize.¹⁵⁹ Although loot boxes may be considered something of value in some jurisdictions, they still must meet the “something risked” element of consideration to be considered gambling.

2. Risk

Courts have yet to determine whether something is risked or staked when players always receive some item of random value for their consideration.¹⁶⁰ There have been only a few rulings on this issue.¹⁶¹ The Supreme Court of New Mexico has previously held that a guaranteed prize does not eliminate the chance or risk element.¹⁶² The Tenth Circuit¹⁶³ and Supreme Courts of North Dakota,¹⁶⁴ Wyoming,¹⁶⁵ and Nebraska¹⁶⁶ have followed similar analyses. Although there have been some cases interpreting the elements of gambling, there still seems to be a lack of analysis involving loot boxes.¹⁶⁷ Where this analysis lacks, another analysis of loot boxes fills in the gaps by looking to regulation under the FTCA.

C. Federal Trade Commission Act

The FTCA seems to have recurring appearances in the loot box discussion, whether that be in the judiciary or legislature.¹⁶⁸ The FTCA is an

157. *See id.*

158. *Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 320 (4th Cir. 2017).

159. *See id.*

160. *See, e.g., id.*

161. *See id.*; *Kater*, 851 F.3d at 787–88.

162. *State v. Apodoca*, 251 P. 389, 389 (N.M. 1926).

163. *Boynton v. Ellis*, 57 F.2d 665, 667 (10th Cir. 1932).

164. *Midwestern Enters., Inc. v. Stenehjem*, 625 N.W.2d 234, 237–38 (N.D. 2001).

165. *See State v. Branney*, 160 P.2d 972, 977–78 (Wyo. 1945).

166. *See Mueller v. Wm. F. Stoecker Cigar Co.*, 131 N.W. 923, 925 (Neb. 1911).

167. *See Bennett*, *supra* note 13, at 17–20. A lack of decisions involving loot boxes may be contributed either to a lack of cases making it far enough into the judiciary to get a proper analysis or a lack of claims being brought under illegal gambling laws. Maybe another type of claim has been more successful, such as one brought under consumer protection laws.

168. *See infra* text accompanying notes 174–85.

antitrust and consumer protection law.¹⁶⁹ It gives the FTC power to prosecute violations of the FTCA.¹⁷⁰

The section most often applied to loot box cases is Title 15 U.S.C. § 45(a).¹⁷¹ FTCA § 45(a)(1) declares “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce” unlawful.¹⁷² The FTC can declare these practices unlawful if they “cause[] or [are] likely to cause substantial injury to consumers . . . not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁷³ The PCAGA would be enforced by the FTC under this language,¹⁷⁴ and a recent case against loot boxes has brought claims under this section as well.¹⁷⁵

In early 2025, the FTC filed suit against Cognosphere, the company owning *Genshin Impact*, a popular game containing loot boxes.¹⁷⁶ The FTC alleged that Cognosphere engaged in deceptive practices by advertising loot boxes as having higher odds of containing certain items than was actually the case.¹⁷⁷ The FTC also alleged that, when Cognosphere advertised their loot boxes, they misrepresented the amount of money needed to obtain certain items.¹⁷⁸ Specifically, Cognosphere’s advertised amount was lower than it was in reality.¹⁷⁹ These two allegations are misrepresentations and/or omissions, and therefore fall under unfair practices regulated by the FTCA.¹⁸⁰ As these allegations were a violation of § 45(a), the FTC sought to further allege that Cognosphere was causing or was likely to cause harm to consumers who could not reasonably avoid it.¹⁸¹ To do this, the FTC alleged that Cognosphere was selling these bundles of in-game currencies—used to obtain loot boxes—and the loot boxes themselves to minors.¹⁸² The case

169. *A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM’N (July 2025), <https://www.ftc.gov/about-ftc/mission/enforcement-authority> [https://perma.cc/2J9D-HTUU].

170. *Id.*

171. *See, e.g.*, Complaint at 32, *United States v. Cognosphere, LLC*, No. 2:25-cv-447 (C.D. Cal. Jan. 17, 2025).

172. 15 U.S.C. § 45(a)(1).

173. *Id.* § 45(n).

174. S. 1629, 116th Cong. (2019).

175. Complaint at 3–4, *United States v. Cognosphere, LLC*, No. 2:25-cv-447 (C.D. Cal. Jan. 17, 2025).

176. *Id.* at 2–3.

177. *Id.* at 33.

178. *Id.* at 33–34.

179. *Id.*

180. *Id.* at 32.

181. *Id.* at 34–35.

182. *Id.*

likely would have presented clarity on the law surrounding loot boxes but Cognosphere ultimately decided to settle, agreeing to a \$20 million fine and to block children under sixteen from making purchases in-game without parental consent.¹⁸³

Individual plaintiffs, instead of the FTC, have brought claims in the Ninth Circuit alleging violations of California's Unfair Competition Law, which is very similar to the FTCA.¹⁸⁴ The lawsuits have yet to see success in court because they either fail to allege certain facts pertinent to their claims or are settled.¹⁸⁵ Illegal gambling claims do not seem to fare much better.¹⁸⁶ A piece of legislation explicitly connecting the use of loot boxes by minors to the FTCA may prove successful in the face of the failures of these various lawsuits.

III. PROPOSED LEGISLATION

As loot boxes have continued to become more controversial, different entities have worked hard to regulate them.¹⁸⁷ Many countries, including Japan, the Netherlands, Belgium, and China, have increased regulations on different types of popular loot boxes.¹⁸⁸ In the United States, many states have also proposed legislation regulating loot boxes, but this legislation is still in its beginning stages and has not yet been subject to vote.¹⁸⁹ However, one bill has recently been introduced into Congress: the PCAGA.¹⁹⁰ This

183. See *Genshin Impact Game Developer Will Be Banned from Selling Lootboxes to Teens Under 16 Without Parental Consent, Pay a \$20 Million Fine to Settle FTC Charges*, FED. TRADE COMM'N (Jan. 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/genshin-impact-game-developer-will-be-banned-selling-lootboxes-teens-under-16-without-parental> [<https://perma.cc/J6NQ-D4Z5>].

184. *Mai v. Supercell Oy*, No. 23-15144, 2024 WL 2077500, at *1 (9th Cir. May 9, 2024); *Coy v. Lilith Games (Shanghai) Co.*, No. 19-cv-08192-JD, 2022 WL 3214320, at *1 (N.D. Cal. Aug. 9, 2022); see CAL. BUS. & PROF. CODE § 17200 (West 2021).

185. *Mai*, 2024 WL 2077500, at *1 (failed to allege specific injury); *Coy*, 2022 WL 3214320, at *2, *3 (failed to allege plausible facts and relied on speculation); see also Complaint, *United States v. Cognosphere*, No. 2:25-cv-447 (C.D. Cal. Jan. 17, 2025); see also FED. TRADE COMM'N, *supra* note 183 (settled).

186. See *supra* Section II.A.

187. Alan Gonzalez, *The Growing Issue of Unregulated Gambling: Loot Boxes*, FLA. STATE UNIV., <https://law.fsu.edu/growing-issue-unregulated-gambling-loot-boxes> [<https://perma.cc/FKV3-DK4J>].

188. *Id.*

189. See H.B. 2727, 29th Leg., Reg. Sess. (Haw. 2018); H.B. 4460, 90th Leg., Reg. Sess. (Minn. 2018); S.B. 6266, 65th Leg., 2018 Reg. Sess. (Wash. 2018).

190. S. 1629, 116th Cong. (2019).

Part takes a deeper dive into the PCAGA and what it means for loot boxes and video game companies.

The PCAGA attempts to regulate microtransactions and loot boxes in minor-oriented video games.¹⁹¹ The PCAGA defines “minor-oriented” as any game targeting individuals under the age of eighteen, as shown by various factors, including but not limited to subject matter, visual content, animated characters, and language used.¹⁹² It defines “loot boxes” as randomized items that unlock a feature of the game where the feature is not known until after the transaction is made.¹⁹³ It lists under § 2(7) many “pay-to-win microtransactions” that would be prohibited by the Act but excludes loot boxes containing solely cosmetic items from that list.¹⁹⁴ So, the PCAGA considers cosmetic loot boxes that do not, “from the perspective of a reasonable user, provide the user with a competitive advantage over other users who do not make such transaction,” as legal.¹⁹⁵

Oddly enough, the PCAGA is not regulated under any illegal gambling laws, but under “Unfair or Deceptive Acts or Practices” under the FTCA.¹⁹⁶ Although no explanation has been given for this, one could predict that loot boxes would be easier to regulate under the FTCA than under illegal gambling laws. It could be easier since it would set a nationwide standard. Further, it might be thought that only the FTC is sophisticated enough to make these claims on a federal level, and therefore suit must be brought under the FTCA by the FTC. Nonetheless, the PCAGA still covers some forms of loot boxes, which, depending on the jurisdiction, can also be seen as a form of gambling.¹⁹⁷ Therefore, the PCAGA should continue on its course and make all types of loot boxes illegal among minors.

IV. ANALYSIS

Cosmetic loot boxes are a form of gambling when analyzed under the common statutory elements but can still possibly run into jurisdiction-specific interpretation issues. They also violate the FTCA even though there has been a lack of precedent from the courts on that issue. The PCAGA has taken a legislative approach to combating the negative side effects that loot

191. *Id.*

192. *Id.* § 2(5).

193. *Id.* § 2(8).

194. *Id.* § 2(7).

195. *Id.* § 2(7)(B)(ii).

196. *Id.* § 3(a)(2).

197. *See infra* Section IV.B.

boxes have on minors through the use of the FTCA and consumer protection laws. Where the PCAGA fails is in its regulation of cosmetic loot boxes, or lack thereof. This Part proposes that the PCAGA incorporate cosmetic loot boxes into its regulatory regime.

A. Loot Boxes Present a Current and Pressing Issue

As discussed in Section I.B., minors are vulnerable consumers of video game content.¹⁹⁸ Game companies are using bright colors and animations to draw in younger consumers.¹⁹⁹ This method of advertising has been shown, time and time again, to appeal to children.²⁰⁰ After luring these children into the game, game developers further employ these advertising methods, through colorful present boxes, to coerce children into purchasing their loot boxes.²⁰¹ Loot boxes have been shown to increase problem gambling behaviors in children, as studies show that children who spend just \$16.08 on loot boxes engage in behaviors that classify them as problem gamblers.²⁰² Loot boxes also cause children to take money from their parents so they can continue gambling it away on these boxes, as many stories show that minors are spending thousands of dollars.²⁰³ And game developers want these actions to continue, as it puts more money into the pockets of a billion-dollar gaming industry.²⁰⁴

Even if these loot box practices are gambling and deceptive under the FTCA,²⁰⁵ game developers will continue to employ these practices if nothing is done about it. At the moment, game companies face no risks to using loot boxes, such as lawsuits threatening to not settle or legislation regulating their practices. Without any of that, these game developers solely see a dollar sign, and they will not stop until they are told to, even if they know that what they are doing is coercing and allowing minors to engage in gambling.

198. *See supra* Section I.B.

199. *See* Khalid, *supra* note 110.

200. *See supra* Section I.B.

201. *See* Khalid, *supra* note 110; *supra* Section I.B.

202. *See supra* Section I.B; Zendle et al., *supra* note 19, at 10.

203. *See supra* text accompanying note 1–7.

204. ENT. SOFTWARE ASS'N, VIDEO GAMES IN THE 21ST CENTURY: THE 2024 ECONOMIC IMPACT REPORT 5 (2024), <https://www.theesa.com/resources/2024-economic-impact-report/> [<https://perma.cc/NZ9Y-4V4M>].

205. *See infra* Sections IV.B–C.

B. Cosmetic Loot Box Transactions Are Gambling

As discussed above, the elements of gambling are (1) consideration, (2) chance, and (3) prize or value.²⁰⁶ Jurisdictions are currently split over what constitutes “something of value” and “risk” under the consideration and prize or value elements.²⁰⁷ Under the majority view, a loot box would have to be purchased with real-world currency to be considered “something of value” under the consideration analysis.²⁰⁸ Another frequent view finds that a loot box could be purchased with either real-world or in-game currency (purchased with real-world money) and be considered “something of value.”²⁰⁹ Finally, under the minority view, a loot box could be purchased with either real-world or in-game currency (gained through gameplay or purchased with real-world currency) and be considered “something of value.”²¹⁰ Unfortunately, only the minority view encompasses all methods of purchasing loot boxes. When it comes to children, however, they commonly use their parents’ real-world money to buy loot boxes.²¹¹ Thus, many loot box purchases by children are going to fulfill the “something of value” element of consideration in every jurisdiction.

One may argue that the statutory element of prize or value does not apply to cosmetic loot boxes because in-game skins are not in the form of real-world currency or credit, like other gambling games. Looking at the issue superficially, this argument makes sense. One must delve deeper into the world of cosmetic loot boxes to understand the real value they hold.

Cosmetic loot boxes, as discussed earlier, can be purchased for \$20 and sometimes more, depending on the game.²¹² The skins found in these loot boxes can be worth \$15,000 or perhaps nothing at all.²¹³ Since certain skins can hold monetary value, they should fall under the value element of gambling. If skins do hold monetary value, not selling those skins can constitute credit for real money. They can hold their value until they are sold, and when they are sold their real-world value is realized. Furthermore, these skins can also be of great value to the player. The player may be happy with their skin and attribute emotional value to it.²¹⁴ This potential

206. Bennett, *supra* note 13, at 17.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *See supra* text accompanying notes 1–7.

212. Cole, *supra* note 51.

213. *Id.*

214. While currently no statutory analysis has provided for emotional value, this would be a positive addition to the argument.

emotional and monetary value is enough for a cosmetic loot box's earnings to constitute a prize or value under the statutory elements of gambling.

On top of that, cosmetic items contain a wide range of value and can be defined as "risky." An individual can spend exorbitant amounts of money in their attempts to gain something of extreme value but could end up obtaining no value at all.²¹⁵ Most loot boxes are based on a random percentage assigned to each item by the game developers, giving players a lack of control over the items they may obtain from loot box purchases.²¹⁶ The lack of skill and control over the value of an item a player may receive constitutes complete risk.

Although this analysis is straightforward, the circuit split does not allow for the prohibition of all forms of loot box transactions. Specifically, only a minority of states would cover loot boxes purchased with in-game currency. New York has been among a minority of states to bring suit, doing so against the creator of *Counter-Strike*, Valve.²¹⁷ New York Attorney General Letitia James writes in her Complaint against Valve that "[they have] designed and developed software that enables users to risk or stake something of value in exchange for the opportunity to activate a loot box and win a virtual item, the identity of which is determined entirely by chance."²¹⁸ As James would put it, these loot box transactions are gambling.²¹⁹ They look like gambling, they sound like gambling, so they should be treated as gambling, no matter the form. Even worse is that game companies are more than willing to advertise their gambling games to minors through unfair and deceptive practices that violate the FTCA.

C. Game Developers' Advertisement to and Use of Cosmetic Loot Box Transactions on Their Minor Consumers Violates the FTCA

As discussed above, loot boxes violate the FTCA.²²⁰ They do so through unfair and deceptive practices affecting commerce, which are likely to

215. See Cole, *supra* note 51.

216. Bennett, *supra* note 13, at 13.

217. See *Attorney General James Sues Game Developer for Promoting Illegal Gambling Through Video Games*, OFF. OF THE N.Y. STATE ATT'Y GEN. (Feb. 25, 2026), <https://ag.ny.gov/press-release/2026/attorney-general-james-sues-game-developer-promoting-illegal-gambling-through> [<https://perma.cc/8J3H-G648>]; Complaint, People of the State of N.Y. v. Valve Corp., (filed Sup. Ct. N.Y. Feb. 25, 2026) (available at <https://ag.ny.gov/sites/default/files/court-filings/new-york-v-valve-corporation-complaint-2026.pdf>).

218. See Complaint, *supra* note 217, at 43.

219. *Id.* at 1.

220. For a more in-depth discussion, see *supra* Section II.C.

cause injury to their minor consumers.²²¹ Game developers have been shown to use misrepresentations of data to advertise loot boxes to minors.²²² One example of this is advertising that prices to obtain certain cosmetic loot box items are lower than they are in reality.²²³ Another deceptive advertising practice is the use of colorful animations to lure in vulnerable consumers, compelling them to purchase loot boxes and be irresponsible with their parents' money.²²⁴ By using these advertising techniques, game companies are deceiving their minor consumers psychologically. They make them think the game is for children and involves fun presents, when in reality it is a gambling game. This causes substantial injury to children psychologically by increasing their problem gambling behaviors.²²⁵ Furthermore, the FTCA aims to protect consumers from injury, even adults. Therefore, it makes even more sense to protect minor consumers from injury as they are even more vulnerable to these deceptive practices.

If that is not enough, the FTC itself has already shown that they find loot boxes to be a violation of the FTCA.²²⁶ They specifically find advertisements to and the purchase of loot boxes by minors as deceptive and harmful.²²⁷ The FTC has even gone so far as to bring claims against Cognosphere for their loot box and advertising practices.²²⁸ Therefore, the marketing surrounding cosmetic loot boxes and their sales is necessarily deceptive and violative of the FTCA. As this claim is evidently already backed by the FTC, it only makes sense that legislation would enforce loot box prohibition under the FTCA.

D. The PCAGA

Through the PCAGA, Congress has recognized that children are vulnerable to loot box transactions generally, despite not having included cosmetic loot boxes specifically. The PCAGA provides a good background for protecting minors from these harmful transactions. Its language is

221. 15 U.S.C. § 45(a)(1), (n). For a more in-depth discussion, see *supra* Section II.C.

222. See *supra* Section I.B.

223. See Kevin Dong, *Lessons to Learn from the FTC Complaint Against Cognosphere and Genshin Impact - Part III: Deceptive and Unfair Practices Surrounding Loot Boxes*, ODIN L. & MEDIA (Feb. 28, 2025), <https://odinlaw.com/lessons-to-learn-from-the-ftc-complaint-against-cognosphere-and-genshin-impact-part-iii-deceptive-and-unfair-practices-surrounding-loot-boxes/> [<https://perma.cc/L9XL-GYML>].

224. See *supra* Section I.B.

225. *Supra* Section I.B.

226. See *supra* Section II.C.

227. See *supra* Section II.C.

228. *Supra* Section II.C.

thorough and will provide ample protection against the implementation of loot boxes in games. The pitfall in its language shows itself in the form of an exclusion of cosmetic loot boxes. In light of the gambling nature and FTCA violations associated with cosmetic loot boxes, Congress must update the PCAGA to adequately protect child gamers.

E. Amending the PCAGA is the Solution to This Pressing Loot Box Issue

Having established above that cosmetic loot boxes should be treated as gambling and violations of the FTCA, this Comment proposes that the PCAGA be amended to specifically address them. The PCAGA does not go far enough because it does not address cosmetic loot boxes, specifically leaving them out of the type of loot boxes to be regulated. Considering that loot boxes are gambling, violate the FTCA, and are dangerous to minors, they should be added to the proposed legislation.²²⁹

The PCAGA should take out the “cosmetic alterations” exclusion and add cosmetic loot boxes under the definition of “pay-to-win microtransactions.” This should be done by adding language under (7)(A)(i) providing that: “(A) The term ‘pay-to-win microtransaction’ means an add-on transaction to an interactive digital entertainment product that—(i) . . . —(V) allows the user to customize their character or in-game environment that is or is not otherwise available through in-game play or purchase; . . .”²³⁰

This added language would ensure that cosmetic loot boxes are regulated and deemed illegal to be advertised to and purchased by minors. Although this seems to be a step in the right direction, cosmetic loot boxes may have been excluded from the proposed legislation because they were seen as less of an issue and could wait on legislation while bigger issues were solved. This argument does not take into account loopholes that video game companies would likely be willing to jump through to advertise and sell their loot boxes to minors. As mentioned previously, certain games contain skins that inexplicitly give the player different in-game advantages.²³¹ It would require minimal software edits for games to make these minor changes to skins, causing them to have some beneficial in-game effects. This would completely avoid regulation under the PCAGA, as a reasonable

229. *See supra* Sections IV.B–C.

230. The beginning language of the section was taken from the PCAGA. S. 1629, 116th Cong. § 7(A) (2019).

231. Youkatchadourian, *supra* note 60.

player or person likely would not be able to understand that the skin has a competitive advantage—only a highly competitive or professional player would be likely to observe that detail.²³²

Furthermore, the negative psychological effects of these loot boxes have already been realized.²³³ Vulnerable populations are being targeted and marketed to openly.²³⁴ These children deserve protection from the harmful side effects of games containing loot boxes, including those that are cosmetic. This is not an issue the public can sit and wait on, as these gambling adjacent behaviors could quickly turn into actual sports gambling through easy-to-use apps such as FanDuel or DraftKings. Further, since legislation is already in the process of being developed, it would make little sense to not act now.

The PCAGA's regulation method will serve as good protection for children against game companies who target them with loot boxes. Regulating loot boxes as "Unfair or Deceptive Acts or Practices" under § 45 of the Federal Trade Commission Act²³⁵ avoids many arguments about states being the authorities meant to regulate gambling. This means that the PCAGA will receive few objections from states that want to have the power to regulate gambling themselves. Hopefully, and most likely, this will make the bill easier to pass and become law.

One argument may be that even if game companies put an eighteen plus age restriction on their games, children can simply lie about their age and still be able to purchase these loot boxes. This argument does not take into account the fact that game companies will likely still want to have children purchase and play their game, as that is a decently sized part of their consumer base. So, instead of having to ban children from the game—or risk their parents finding out about it and banning it themselves—they will remove the loot boxes all together. The game developers seem to risk less of their consumer base that way. Relatedly, parents should not be the ones having to bear the burden of extensively researching the games their children play so they can ban the ones that contain gambling. The game companies committing the wrongs should be the ones forced to change their practices.

On top of that, if loot boxes are regulated federally, then jurisdictional and circuit splits would be less common. State gambling laws, subject to differing language and analysis, will not have to be analyzed because claims

232. S. 1629 § 7(A).

233. *See supra* Section I.B.

234. *Supra* Section I.B.

235. S. 1629 § 3(a)(2).

will be brought under federal law and in federal courts by one entity, the FTC. This would set a nationwide federal standard, combating game developers' potentially strategic avoidance of jurisdiction-specific laws. Therefore, the only issue left is to encompass all forms of loot boxes to avoid loopholes and more negative effects on minors. The PCAGA should continue in its current form, except it should specifically ban all forms of loot boxes, including cosmetic ones, when targeted towards minors through the use of the previously proposed language.

If the PCAGA does not end up passing or ends up passing without the suggested language, one solution could be to bring more claims.²³⁶ Bringing more claims could cause the legislature to act with more urgency in continuing their work on legislation outlawing loot boxes for minors. If claims are being brought, one might want to consider bringing claims both under gambling laws and consumer protection laws, as doing both seems to cover all the potential common pitfalls based on jurisdiction.²³⁷

V. CONCLUSION

As one YouTuber said while opening loot boxes, “This is legitimately fun . . . but I guess the whole thing of putting real money into loot boxes [is that] it is kind of gambling.”²³⁸ Loot boxes pose a danger to children, as they encourage unsafe and unrestrained gambling behaviors. Leaving these loot boxes and video game companies unregulated will only benefit companies, leaving minors worse off than they originally were. Targeting minors to engage in bad behaviors, for the future gain of big companies, seems to be a recurring theme in recent times. These companies must be regulated and forced to stop advertising to minors and encouraging them to develop behaviors that will negatively impact their future. The PCAGA must be passed and signed into law with cosmetic loot boxes to be included, but even more important is that loot boxes become a conversation in the household, so parents can avoid their children developing these gambling adjacent behaviors.

236. As some individuals have done by filing a class action complaint against Valve for their use of loot boxes in their games. Complaint, *Flauto v. Valve Corp.*, 2:26-cv-00788 (W.D. Wash. Mar. 9, 2026). This complaint alleges that the loot boxes are a form of illegal gambling under Washington State law. *Id.*

237. *See supra* Sections II.B–C.

238. Markiplier, *EVERYONE'S GETTING RICH EXCEPT FOR YOU | I Can't Believe It's Not Gambling*, YOUTUBE (Jan. 24, 2018), <https://www.youtube.com/watch?v=bv9hBddB77M> [<https://perma.cc/6F9R-ZJL7>].

If the PCAGA and the judiciary fail to outlaw loot box advertisements to and use by minors, work must be done on the individual level. Game companies must respond to their consumers as to not go out of business. If parents do not allow their children to play games containing loot boxes, game companies may be forced to respond with harsher restrictions or even the elimination of loot boxes all together. No matter the result under federal law, citizens should stay informed of these practices so they can protect their children. And video game companies should stop advertising to minors and programming loot boxes into their games to save the reputation of the video gaming industry as one for enjoyment and relaxation, not for fostering gambling behaviors.