

1 **Senate Bill No. 491**

2 (By Senator Kessler, Ferns, D. Hall, Kirkendoll, Leonhardt, Mullins and Prezioso)

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4 [Introduced February 16, 2015; referred to the Committee on Finance.]  
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8 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
9 designated §29-22B-1108a, relating to creating a preference for certain limited video lottery  
10 current permit holders in bid process.

11 *Be it enacted by the Legislature of West Virginia:*

12 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
13 section, designated §29-22B-1108a, to read as follows:

14 **ARTICLE 22B. LIMITED VIDEO LOTTERY.**

15 **§29-22B-1108a. Additional preference for current permit holders during sealed competitive**  
16 **bids; operation of terminals pending contractual dispute.**

17 (a) For the purposes of this section, the following terms are defined as follows:

18 (1) "Contract" means a contractual agreement for an operator to lease video lottery terminals  
19 to a limited video lottery retailer that is on file with the commission at the time of a sealed  
20 competitive bid under this article.

21 (2) "Contracted retailer" means a retailer who is under contract with an operator.

1 (3) "Current permit holder" means a person who is a permittee, as defined in section 324 of  
2 this article, at the time of a sealed competitive bid under this article.

3 (4) "Location" means the physical address in which an operator's leased video lottery  
4 terminals are placed, pursuant to the terms of a contract with a contracted retailer and consistent with  
5 the definition contained in section 315 of this article.

6 (5) "New entrant" means a person who is not an operator or retailer at the time of a sealed  
7 competitive bid under section 1106 of this article.

8 (6) "Operator" means a person who is licensed as an operator, as defined in section 321 of  
9 this article, at the time of a sealed competitive bid under section 1106 of this article.

10 (7) "Permit" means the authorization, as defined in section 323 of this article, to own or lease  
11 a specified number of video lottery terminals.

12 (8) "Retailer" means a person who is licensed as a limited video lottery retailer, as defined  
13 in section 316 of this article, at the time of a sealed competitive bid under section 1106 of this article.

14 (b) Notwithstanding any other provision of this article, a current permit holder shall be  
15 awarded a permit that would otherwise be awarded to a new entrant as a result of a sealed  
16 competitive bid under this article, when the current permit holder exercises the option under this  
17 section. In order to do so, the current permit holder must match the bid price submitted by the new  
18 entrant, and pay an additional ten percent of that bid price, except that if the bid price submitted by  
19 the new entrant is less than the average of all bids submitted during that particular round of bidding,  
20 the current permit holder must pay the average bid price submitted during that round of bidding plus  
21 ten percent. If more than one current permit holder wishes to exercise the option under this section

1 with respect to a particular bid of new entrant, the right to determine which current permit holder  
2 may do so shall be chosen by lot.

3 (c) In order to be awarded a permit in lieu of a new entrant under this section, a current  
4 permit holder must:

5 (1) Have bid at least the minimum bid in the sealed competitive bid in which the new entrant  
6 participated;

7 (2) Inform the commission in writing within five business days of receipt of official notice  
8 of the bids received that the operator wishes to be awarded the permit or permits that would  
9 otherwise be awarded a new entrant; and

10 (3) Make full payment to the commission of the amount required under subsection (b) of this  
11 section, within thirty calendar days of receipt of the official notice of the bid received. Payment shall  
12 be made in a manner and form prescribed by the commission.

13 (d) If a current permit holder does not act to be awarded a permit under this section that  
14 would otherwise be awarded to a new entrant, either by choice, by failure to notify the commission,  
15 or by failure to pay in full, then the new entrant shall be awarded the permit.

16 (e) When a current permit holder exercises the option under this section to be awarded a  
17 permit that would otherwise be awarded to a new entrant, the commission shall refund the new  
18 entrant's bid bond in an amount reflecting the permit or permits awarded to the current permit holder  
19 that would otherwise have been awarded to the new entrant.

20 (f) A contracted retailer awarded a permit as a result of a sealed competitive bid may not use  
21 the permit to place a terminal in a location in violation of the contract with an operator. When the

1 commission determines that a contracted retailer and operator both win permits during the sealed bid  
2 and both wish to enable his or her own terminals in the contracted retailer's location, and there is a  
3 dispute over the validity of the contract, the commission shall continue to enable the operator's  
4 terminals until the operator releases the retailer from the filed contract and presents written evidence  
5 of the release to the commission, or a court of law issues an order requiring the commission to allow  
6 the retailer to place his or her own terminals in the location, or determines that the contract is invalid.  
7 Because permits are not location specific, a retailer in such circumstances may submit a written  
8 petition to the commission requesting that the ninety-day requirement in section 1113 of this article  
9 shall be held in abeyance until such time as a court of law makes a final determination on the validity  
10 of the contract.

11 (g) The commission may propose emergency and legislative rules for legislative approval in  
12 accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to  
13 fulfill the requirements of this section.

14 (h) The preference in this section is in addition to any other preference afforded in this article.

NOTE: The purpose of this bill is to provide an additional preference to a limited video lottery current permit holder in the rebid process. A current permit holder may obtain a permit in lieu of a new entrant by paying the amount bid by a new entrant plus 10 percent, or the average bid plus 10 percent, whichever is greater. A current retailer may obtain a permit by competitive bid and is not subject to the right to match by a current permit holder, but the retailer may not use a permit to place terminals in violation of a contract with an operator. In the event of a dispute between an operator and retailer over the validity of a contract, the operator's terminals shall remain operational until the operator and retailer agree otherwise or the contract is voided by a court of law, but a retailer may request a stay from the Lottery Commission of the usual 90-day requirement for placement of terminals pending the outcome of the dispute.

This section is new; therefore, strike-throughs and underscoring have been omitted.