

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 116**

BY SENATORS KESSLER AND BEACH

[Originating in the Committee on the Judiciary;

reported on February 8, 2016.]



1 A BILL to amend and reenact §29-22B-1101 and §29-22B-1408 of the Code of West Virginia,  
2 1931, as amended, relating to increasing number of limited video lottery terminals allowed  
3 at retail locations; requiring Lottery Commission to conduct bid only open to current permit  
4 holders prior to September 1, 2016, for permits expiring June 30, 2021; establishing  
5 procedure for bid process; and setting commission's share of net terminal income at fifty  
6 percent effective July 1, 2016, regardless of average daily gross terminal income per  
7 terminal.

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

1 That §29-22B-1101 and §29-22B-1408 of the Code of West Virginia, 1931, as amended,  
2 be amended and reenacted, all to read as follows:

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

PART 11. ALLOCATION AND DISTRIBUTION OF VIDEO LOTTERY TERMINALS.

**§29-22B-1101. Limitation on number and location of video lottery terminals.**

1 (a) The Lottery Commission may not authorize the placement of more than nine thousand  
2 video lottery terminals in restricted access adult-only facilities in this state.

3 (b) No person may directly or indirectly operate more than seven and one-half percent of  
4 the number of video lottery terminals authorized in this section, which ~~shall~~ may only be located  
5 ~~only~~ in restricted access adult-only facilities.

6 (c) No licensed limited video lottery retailer may be authorized to have on the premises for  
7 which the license was issued more than ~~five~~ seven video lottery terminals except that a fraternal  
8 society or veteran's organization that is: (A) A fraternal beneficiary society that is exempt from  
9 federal income tax under Section 501(c)(8) of the Internal Revenue Code of 1986, as amended;  
10 (B) a domestic fraternal society that is exempt from federal income tax under Section 501(c)(10);  
11 or (C) a veterans' organization that is exempt from federal income tax under Section 501(c)(19)  
12 of the Internal Revenue Code may be authorized to have on the premises for which the license  
13 was issued not more than ~~ten~~ twelve video lottery terminals.

14           (d) To help accommodate the change in the number of terminals authorized by the  
15 amendment to this section, enacted during the 2016 regular session of the Legislature, the  
16 commission shall conduct a bid no later than September 1, 2016, for permits expiring June 30,  
17 2021, which bid is open to current permit holders only and which shall be conducted in accordance  
18 with sections one thousand one hundred six, one thousand one hundred seven and one thousand  
19 one hundred nine of this article.

**§29-22B-1408. Distribution of state's share of gross terminal income.**

1           (a) The state's share of gross terminal income is calculated as follows:  
2           (1) The commission shall deposit two percent of gross terminal income into the State  
3 Lottery Fund for the commission's costs and expenses incurred in administering this article. From  
4 this amount, not less than \$150,000 nor more than \$1,000,000 per fiscal year, as determined by  
5 the commission each year, shall be transferred to the compulsive gambling treatment fund  
6 created in section nineteen, article twenty-two-a of this chapter. In the event that the percentage  
7 allotted under this subsection for the commission's costs and expenses incurred in administering  
8 this article generates a surplus, the surplus shall be allowed to accumulate to an amount not to  
9 exceed \$250,000. On a monthly basis, the director shall report to the Joint Committee on  
10 Government and Finance of the Legislature any surplus in excess of \$250,000 and remit to the  
11 State Treasurer the entire amount of those surplus funds in excess of \$250,000 to be deposited  
12 in the fund established in section eighteen-a, article twenty-two of this chapter: *Provided*, That at  
13 the close of each of the fiscal years ending June 30, 2006, 2007, 2008, 2009, 2010 and 2011, the  
14 portion of the two percent allowance for administrative expenses provided in this subdivision that  
15 remains unspent for costs and expenses incurred in administering this article, not to exceed  
16 \$20,000,000 in any fiscal year, shall be transferred to the Revenue Center Construction Fund  
17 created by subsection (l), section eighteen, article twenty-two of this chapter for the purpose of  
18 constructing a state office building.

19           (2) Gross profits are determined by deducting the percentage described in subdivision (1)  
20 of this subsection from gross terminal income.

21           (3) The commission shall receive thirty percent of gross profits as defined in subdivision  
22 (2) of this subsection except as otherwise provided in this subdivision. On June 1, 2002, the  
23 commission shall calculate the aggregate average daily gross terminal income for all operating  
24 video lottery terminals during the preceding three month period. Thereafter, the commission shall  
25 make the calculation on the first day of the month preceding the months of October, January, April  
26 and July of each year. So long as the aggregate average gross terminal income per day for the  
27 operating video lottery terminals does not exceed \$60, the commission's share of gross profits  
28 shall continue to be thirty percent for the succeeding quarter of the year beginning July 1.  
29 Beginning on July 1, 2002, and the first days of October, January, April and July in 2002 and  
30 thereafter, if the commission's calculation of aggregate average daily gross terminal income per  
31 video lottery terminal yields an amount greater than \$60, one of the following schedules apply: If  
32 the amount is greater than \$60 per day but not greater than \$80 per day, the commission's share  
33 of gross profits for the ensuing quarter beginning the first day of the quarter of the year described  
34 in this subdivision shall be thirty-four percent; if the amount is greater than \$80 per day but not  
35 greater than \$100 per day, the commission's share of gross profits for the ensuing quarter  
36 beginning the first day of the quarter of the year described in this subdivision shall be thirty-eight  
37 percent; if the amount is greater than \$100 per day but not greater than \$120 per day, the  
38 commission's share of gross profits for the ensuing quarter beginning the first day of the quarter  
39 of the year described in this subdivision shall be forty-two percent; if the amount is greater than  
40 \$120 per day but not greater than \$140 per day, the commission's share of gross profits for the  
41 ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall  
42 be forty-six percent; if the amount is greater than \$140 per day, the commission's share of gross  
43 profits for the ensuing quarter beginning the first day of the quarter of the year described in this  
44 subdivision shall be fifty percent. This amount shall be known as net terminal income: Provided,

45 That, effective July 1, 2016, the commission's share of net terminal income shall be fixed at fifty  
46 percent, regardless of the aggregate average daily gross terminal income per terminal.

47 (b) Net terminal income shall be distributed by the commission as follows:

48 (1)(A) Beginning July 1, 2002, a county and the incorporated municipalities within that  
49 county shall receive two percent of the net terminal income generated by limited video lottery  
50 terminals located within the county;

51 (B) From this two percent of net terminal income, each municipality shall receive a share  
52 that bears the same proportion to the total two percent of net terminal income as the population  
53 of the municipality bears to the total population of the county as determined by the most recent  
54 decennial United States census of population, and the county shall receive the remaining portion  
55 of the two percent of net terminal income; and

56 (2) Any remaining funds shall be deposited into the state excess lottery revenue fund  
57 established in section eighteen-a, article twenty-two of this chapter.

58 (c) The licensed operators and limited video lottery retailers shall receive the balance of  
59 gross terminal income remaining after deduction of the state's share as calculated pursuant to  
60 this section.