

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2191

BY DELEGATES WESTFALL, ESPINOSA AND BARRETT

[Originating in the committee on Finance;

January 24, 2019.]

1 A BILL to amend and reenact §29-22B-321, §29-22B-503, §29-22B-504, §29-22B-903, and §29-
2 22B-1408 of the Code of West Virginia, 1931, as amended, all relating generally to limited
3 video lottery; modifying the definition of “operator”; allowing operators to be retailers at up
4 to 10 licensed locations with certain exceptions; increasing the maximum wager permitted
5 per limited video lottery game; removing restrictions on bill denominations accepted by
6 limited video lottery terminals; and fixing the state’s share of gross terminal income at 50
7 percent on July 1, 2019.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

PART III.

DEFINITIONS.

§29-22B-321. Operator defined.

1 “Operator” means a person holding an operator’s license granted under this article by the
2 commission allowing the person to: (1) Own or lease a specified number of video lottery terminals
3 from one or more manufacturers; (2) service and repair those video lottery terminals; ~~and~~ (3) enter
4 into contracts with limited video lottery retailers for placement of those video lottery terminals in a
5 restricted access adult-only facility located on the premises of the limited video lottery retailers;
6 and (4) operate limited video lottery terminals as a limited video lottery retailer, subject to the
7 provisions of §29-22B-503 of this code.

PART V.

REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.

§29-22B-503. Additional qualifications for an applicant for an operator’s license.

1 (a) No operator’s license or license renewal may be granted unless the Lottery
2 Commission has determined that, in addition to the general requirements set forth in §29-22B-
3 502 of this code, the applicant satisfies all of the following qualifications:

4 (1)(A) If the applicant is an individual, the applicant has been a citizen of the United States
5 and a resident of this state for the four year period immediately preceding the application; or

6 (B) If the applicant is a corporation, partnership or other business entity, the chief executive
7 officer and the majority of the officers, directors, members, and partners (to the extent each of
8 these groups exists with respect to a particular business organization), both in number and
9 percentage of ownership interest, have been citizens of the United States and residents of this
10 state for the four year period immediately preceding the application.

11 (2) The applicant has demonstrated the training, education, business ability and
12 experience necessary to establish, operate and maintain the business for which the license
13 application is made;

14 (3) The applicant has secured any necessary financing for the business for which the
15 license application is made, and the financing: (A) Is from a source that meets the qualifications
16 of this section, and (B) is adequate to support the successful performance of the duties and
17 responsibilities of the licensee. A licensee shall request commission approval of any change in
18 financing or leasing arrangements at least 30 days before the effective date of the change;

19 (4) The applicant has disclosed all financing or refinancing arrangements for the purchase,
20 lease or other acquisition of video lottery terminals and associated equipment in the degree of
21 detail requested by the Lottery Commission;

22 (5) The applicant has filed with the Lottery Commission a copy of any current or proposed
23 agreement between the applicant and any manufacturer for the sale, lease or other assignment
24 to the operator of video lottery terminals, the electronic computer components of the terminals,
25 the random number generators of the terminals, or the cabinets in which they are housed; and

26 (6) The applicant does not hold any other license under this article, §19-23-1, *et seq.*, 29-
27 22-1, *et seq.*, 29-22A-1, *et seq.*, or 29-25-1, *et seq.* of this code, except that an applicant may
28 also be licensed as a service technician. In addition, an applicant may also be licensed as a
29 limited video lottery retailer: *Provided, That* a licensed operator that also is a licensed retailer

30 may operate limited video lottery terminals as a limited video lottery retailer at no more than 10
31 locations: *Provided, however,* That the Director may authorize the operator to operate limited
32 video lottery terminals as a limited video lottery retailer at more than 10 locations if the applicant
33 provides sufficient justification that such approval is necessary to sustain state revenues without
34 a detrimental impact on public interest, further shows that a qualified retailer is unavailable and a
35 good faith effort to identify a qualified retailer was made prior to the request, and an explanation
36 of other relevant information supporting such request.

37 (b)(1) A person or a member of his or her immediate family who has an ownership interest
38 in a business entity that submits an application for an operator's license may not: (A) Submit an
39 application for another operator's license as an individual, (B) serve as an officer, director,
40 member, or partner of a business entity that submits an application for another operator's license,
41 or (C) have an ownership interest in any other business entity that submits an application for an
42 operator's license.

43 (2) Business entities that have common owners or common officers, directors, members,
44 or partners may not hold more than one operator's license.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's license.

1 No limited video lottery retailer's license or license renewal may be granted unless the
2 Lottery Commission has determined that, in addition to the general requirements set forth in §29-
3 22B-502, the applicant satisfies all of the following qualifications:

4 (1)(A) If the applicant is an individual, the applicant has been a citizen of the United States
5 and a resident of this state for the four year period immediately preceding the application;

6 (B) If the applicant is a corporation, partnership or other business entity, the chief executive
7 officer and the majority of the officers, directors, members, and partners (to the extent each of
8 these groups exists with respect to a particular business organization), both in number and

9 percentage of ownership interest, have been citizens of the United States and residents of this
10 state for the four year period immediately preceding the application;

11 (2) The applicant has disclosed to the Lottery Commission the identity of each person who
12 has control of the applicant, as control is described in §29-22B-507 of this code;

13 (3) The applicant holds either: (A) A valid license issued under §60-7-1 *et seq.* of this code
14 to operate a private club, (B) a valid Class A license issued under §11-16-1 *et seq.* of this code
15 to operate a business where nonintoxicating beer is sold for consumption on the premises, or (C)
16 both licenses;

17 (4) The applicant has demonstrated the training, education, business ability and
18 experience necessary to establish, operate and maintain the business for which the license
19 application is made;

20 (5) The applicant has secured any necessary financing for the business for which the
21 license application is made and the financing: (A) Is from a source that meets the qualifications
22 of this section, and (B) is adequate to support the successful performance of the duties and
23 responsibilities of the licensee;

24 (6) The applicant has disclosed all financing or refinancing arrangements for placement
25 on the applicant's premises of video lottery terminals and associated equipment in the degree of
26 detail requested by the Lottery Commission;

27 (7) The applicant has filed with the Lottery Commission a copy of any current or proposed
28 agreement between the applicant and a licensed operator for the placement on the applicant's
29 premises of video lottery terminals;

30 (8) The applicant has filed with the Lottery Commission a copy of any current or proposed
31 agreement between the applicant and a licensed operator or other person for the servicing and
32 maintenance of video lottery terminals by licensed service technicians; and

33 (9) The applicant does not hold any other license under this article, §19-23-1 *et seq.*, or
34 §29-22A-1 *et seq.*, or §29-25-1 *et seq.* of this code except that an applicant may also be licensed

35 as a service technician. In addition, an applicant may also be licensed as an operator, subject to
36 provisions of §29-22B-503(a)(6) of this code.

PART IX.

VIDEO LOTTERY HARDWARE AND SOFTWARE.

§29-22B-903. Coin or bill acceptors.

1 (a) A minimum of one electronic or mechanical coin acceptor or other means by which to
2 accurately and efficiently establish credits must be installed on each video lottery terminal. Each
3 video lottery terminal may also contain bill acceptors. ~~for one or more of the following: One-dollar~~
4 ~~bills, five-dollar bills, ten-dollar bills and twenty-dollar bills~~

5 (b) The Lottery Commission shall approve all coin and bill acceptors prior to use on any
6 video lottery terminal in this state.

7 (c) A video lottery terminal shall not allow more than ~~\$2~~ \$5 to be wagered on a single
8 game.

PART XIV.

NET TERMINAL INCOME AND DISTRIBUTION OF REVENUES.

§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 million per fiscal year, as determined by
5 the commission each year, shall be transferred to the Compulsive Gambling Treatment Fund
6 created in §29-22A-19 of this code. In the event that the percentage allotted under this subsection
7 for the commission's costs and expenses incurred in administering this article generates a
8 surplus, the surplus shall be allowed to accumulate to an amount not to exceed \$250,000. On a
9 monthly basis, the director shall report to the Joint Committee on Government and Finance of the
10 Legislature any surplus in excess of \$250,000 and remit to the State Treasurer the entire amount

11 of those surplus funds in excess of \$250,000 to be deposited in the fund established in §29-22-
12 18a of this code: *Provided*, That at the close of each of the fiscal years ending June 30, 2006,
13 2007, 2008, 2009, 2010, and 2011, the portion of the two percent allowance for administrative
14 expenses provided in this subdivision (1) that remains unspent for costs and expenses incurred
15 in administering this article, not to exceed \$20 million in any fiscal year, shall be transferred to the
16 Revenue Center Construction Fund created by §29-22-18(l) of this code for the purpose of
17 constructing a state office building.

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

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

37 profits for the ensuing quarter beginning the first day of the quarter of the year described in this
38 subdivision shall be 42 percent; if the amount is greater than \$120 per day but not greater than
39 \$140 per day, the commission's share of gross profits for the ensuing quarter beginning the first
40 day of the quarter of the year described in this subdivision shall be 46 percent; if the amount is
41 greater than \$140 per day, the commission's share of gross profits for the ensuing quarter
42 beginning the first day of the quarter of the year described in this subdivision shall be 50 percent:
43 Provided, That effective July 1, 2019, the commission's share of gross profits shall be 50 percent.
44 This amount shall be known as net terminal income.

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

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

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

54 (2) Any remaining funds shall be deposited into the State Excess Lottery Revenue Fund
55 established in §29-22-18a of this code.

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