WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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HOUSE BILL No. 4399

(By Mr. Speaker, Mr. Chambers, and R. Back)

[By request of the Executive]

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Passed ........................................... Feb. 26, 1990

In Effect ............................................ Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4399
(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)
[By Request of the Executive]

[Passed February 26, 1990; in effect from passage.]

AN ACT to amend and reenact sections nine, ten, thirteen, eighteen, nineteen, twenty and twenty-one, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state lottery; permitting lottery games to use certain gaming themes; permitting security other than bonds to be provided for issuance of licenses; prohibiting lottery director from having any interest in dealing in a lottery; defining and allocating net profit as a residual amount in order to increase prize payouts and total revenues; permitting the legislative auditor to accept the annual audit of an independent certified public accountant to meet the yearly post audit requirement; and permitting official's names to be used in connection with lottery tickets, materials and advertisements.

Be it enacted by the Legislature of West Virginia:

That sections nine, ten, thirteen, eighteen, nineteen, twenty and twenty-one, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 22. STATE LOTTERY ACT.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

(a) The commission shall initiate operation of the state lottery on a continuous basis at the earliest feasible and practical time, first initiating operation of the pre-printed instant winner type lottery. The lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good. Other state government departments, boards, commissions, agencies and their officers shall cooperate with the lottery commission so as to aid the lottery commission in fulfilling these objectives.

(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery: Provided, That:

(1) No lottery may use the results of any amateur or professional sporting event, dog race or horse race to determine the winner.

(2) Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry.

(3) In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

(4) No lottery utilizing a machine may use machines which dispense coins or currency.

(5) Selection of the winner must be predicted totally on chance.
(6) Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

(7) All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

(8) The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the purchase of annuities for prizes payable in installments.

(9) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid more than once, and, in the event of a binding determination by the commission that more than one person is entitled to a particular prize, the sole remedy of the claimants shall be the award to each of them of an equal share in the single prize.

(10) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery, or the estimated odds of winning such prizes shall be printed on any lottery ticket, where feasible, or in descriptive materials, and shall be available at the offices of the commission.

(11) No prizes shall be paid which are invalid and not contemplated by the prize structure of the lottery involved.

(12) By purchasing a ticket or participation in a lottery, a participant agrees to abide by, and be bound by, the lottery rules which apply to the lottery or game play involved. An abbreviated form of such rules may appear on tickets and shall appear on descriptive materials and shall be available at the offices of the commission. A participant in a lottery agrees that the determination of whether the participant is a valid winner is subject to the lottery or game play rules and
the winner validation tests established by the commission. The determination of the winner by the commission shall be final and binding upon all participants in a lottery and shall not be subject to review or appeal.

(13) The commission shall institute such security procedures as it deems necessary to ensure the honesty and integrity of the winner selection process for each lottery. All such security and validation procedures and techniques shall be, and remain, confidential, and shall not be subject to any discovery procedure in any civil judicial, administrative or other proceeding, nor subject to the provisions of article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(c) The commission shall proceed with operation of such additional lottery games, including the implementation of games utilizing a variety of existing or future technological advances at the earliest feasible date. The commission may operate lottery games utilizing electronic computers and electronic computer terminal devices and systems, which systems must include a central site system of monitoring the lottery terminals utilizing direct communication systems, or other technological advances and procedures, ensuring honesty and integrity in the operation of the lottery.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

(a) The commission shall promulgate rules and regulations for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following:

(1) The commission shall issue its annual license to such lottery sales agents for each lottery outlet and for such fee as is established by the commission to cover its
costs thereof, but not to exceed one thousand dollars. Application for licensing as a lottery sales agent shall be on forms to be prescribed and furnished by the director.

(2) No licensee may engage in business exclusively as a lottery sales agent.

(3) The commission shall ensure geographic distribution of lottery sales agents throughout the state.

(4) Before issuance of a license to an applicant, the commission shall consider factors such as the financial responsibility, security, background, accessibility of the place of business or activity to the public, public convenience and the volume of expected sales.

(5) No person under the age of twenty-one may be licensed as an agent. No licensed agent shall employ any person under the age of eighteen for sales or dispensing of lottery tickets or materials or operation of a lottery terminal.

(6) A license is valid only for the premises stated thereon.

(7) The director may issue a temporary license when deemed necessary.

(8) A license is not assignable or transferable.

(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner to be determined by the director, or shall provide such other security, in an amount, form and manner determined by the director, as will ensure the performance of the agent's duties and responsibilities as a licensed lottery agent or the indemnification of the commission.

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations; parks and recreation commissions or similar authorities; senior citizen centers, state owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages; political subdivisions or their agencies or departments, state agencies, commission
(11) Licensed lottery sales agents shall receive five percent of gross sales as commission for the performance of their duties. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission.

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made.

(13) No person or entity or subsidiary, agent or subcontractor thereof shall receive or hold more than twenty-five percent of the licenses to act as licensed lottery sales agent in any one county or municipality nor more than five percent of the licenses issued throughout this state: Provided, That the limitations of twenty-five percent and five percent in this subdivision shall not apply if it is determined by the commission that there are not a sufficient number of qualified applicants for licenses to comply with these requirements.

(b) The commission shall promulgate rules and regulations specifying the terms and conditions for contracting with lottery retailers for sale of preprinted instant type lottery tickets and may provide for the dispensing of such tickets through machines and devices. Tickets may be sold or dispensed in any public or private store, operation or organization, without limitation. The commission may establish an annual fee not to exceed fifty dollars for such persons, per location or site, and shall issue a certificate of authority to act as a lottery retailer to such persons. The commission shall establish procedures to ensure the security, honesty and integrity of the lottery and distribution system. The commission shall establish the method of payment, commission structure, methods of payment of winners, including payment in merchandise and tickets, and may require prepayment by lottery retailers, require bond or security for payment and require deposit of receipts in
89 accounts established therefor. Retailers shall promi-
90 nently display the certificate of authority issued by the
91 commission on the premises where lottery sales are
92 made.

§29-22-13. Prohibited acts; conflict of interest; prohibited
gifts and gratuities.

1 (1) The commissioners, the director, the deputy
directors and the employees of the lottery may not
directly or indirectly, individually, or as a member of
a partnership or as a shareholder of a corporation have
an interest in dealing in a lottery.

6 (2) A member of the commission, the director, and an
employee of the lottery or a member of their immediate
families may not ask for, offer to accept, or receive any
gift, gratuity or other thing of value from any person,
corporation, association or firm contracting or seeking
to contract with the state to supply gaming equipment
or materials for use in the operation of a lottery or from
an applicant for a license to sell tickets in the lottery
or from a licensee.

15 (3) A person, corporation, association or firm con-
tracting or seeking to contract with the state to supply
gaming equipment or materials for use in the operation
of a lottery, an applicant for a license to sell tickets in
the lottery or a licensee may not offer a member of the
commission, an employee of the lottery, or a member of
their immediate families any gift, gratuity or other
thing of value.

§29-22-18. State lottery fund; appropriations and depos-
its; not part of general revenue; no transfer
of state funds after initial appropriation; use
and repayment of initial appropriation;
allocation of fund for prizes, net profit and
expenses; surplus; state lottery education
fund; state lottery senior citizens fund;
allocation and appropriation of net profits.

1 (a) There is hereby created a special fund in the state
treasury which shall be designated and known as the
“state lottery fund.” The fund shall consist of all
appropriations to the fund and all interest earned from
investment of the fund, and any gifts, grants or
ccontributions received by the fund. All revenues
received from the sale of lottery tickets, materials and
games shall be deposited with the state treasurer and
placed into the “state lottery fund.” The revenue shall
be disbursed in the manner herein provided for the
purposes stated herein and shall not be treated by the
auditor and treasurer as part of the general revenue of
the state.

(b) No appropriation, loan or other transfer of state
funds shall be made to the commission or lottery fund
after the initial appropriation.

(c) A minimum annual average of forty-five percent
of the gross amount received from each lottery shall be
allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount
received from each lottery shall be allocated to and may
be disbursed as necessary for fund operation and
administration expenses.

(e) The excess of the aggregate of the gross amount
received from all lotteries over the sum of the amounts
allocated by subsections (c) and (d) shall be allocated as
net profit. The director is authorized to expend the
necessary percentage of the amount allocated as net
profit, not to exceed six percent of the gross amount
received, for the purposes of entering into contractual
arrangements for the acquisition, financing, lease and
lease-purchase, and other financing transactions, of
lottery goods and services, including tickets, equipment,
machinery, electronic computer systems and terminals,
and supplies and maintenance therefor, for the first
thirty-six months of operation, and may apportion the
costs, expenses and expenditures related thereto among
the commission, vendor or vendors and licensed lottery
sales agents. In the event that the percentage allotted
for operations and administration generates a surplus,
the surplus will be allowed to accumulate to an amount
not to exceed two hundred fifty thousand dollars. On a
monthly basis the director shall report to the joint
committee on government and finance of the Legislature
any surplus in excess of two hundred fifty thousand
dollars and remit to the state treasurer the entire
amount of those surplus funds in excess of two hundred
fifty thousand dollars which shall be allocated as net
profit.

(f) Annually, the Legislature shall appropriate all of
the amounts allocated as net profits above, in such
proportions as it deems beneficial to the citizens of this
state, to (1) the lottery education fund created in
subsection (g) of this section, (2) the lottery senior
citizens fund created in subsection (h) of this section,
and (3) the commerce division created in article one,
chapter five-b of this code, in accordance with subsec-
tion (i) of this section.

(g) There is hereby created a special fund in the state
treasury which shall be designated and known as the
"lottery education fund." The fund shall consist of the
amounts allocated pursuant to subsection (f) of this
section, which amounts shall be deposited into the
lottery education fund by the state treasurer. The lottery
education fund shall also consist of all interest earned
from investment of the lottery education fund, and any
other appropriations, gifts, grants, contributions or
moneys received by the lottery education fund from any
source. The revenues received or earned by the lottery
education fund shall be disbursed in the manner
provided below and shall not be treated by the auditor
and treasurer as part of the general revenue of the state.
Annually, the Legislature shall appropriate the re-
venues received or earned by the lottery education fund
to the state system of public and higher education for
such educational programs as it considers beneficial to
the citizens of this state.

(h) There is hereby created a special fund in the state
treasury which shall be designated and known as the
"lottery senior citizens fund." The fund shall consist of
the amounts allocated pursuant to subsection (f) of this
section, which amounts shall be deposited into the
lottery senior citizens fund by the state treasurer. The
lottery senior citizens fund shall also consist of all
interest earned from investment of the lottery senior
citizens fund, and any other appropriations, gifts,
grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be disbursed in the manner provided below and shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(i) The commerce division may use the amounts allocated to it pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as such terms are defined in section thirteen-a, article one, chapter five-b of this code, pursuant to the authority granted to it under article one, chapter five-b of this code, (2) the payment, funding or refunding of the principal of, interest on, or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the commerce division under article one, chapter five-b of this code, or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.


The legislative auditor shall conduct a yearly post audit of all accounts and transactions of the state lottery office. The cost of the audit shall be paid out of the state lottery fund moneys designated for payment of operating expenses. The commission shall have an annual audit performed by an independent certified public accountant, and such audit may be accepted by the legislative auditor in lieu of performance of its yearly post audit.


(a) The director shall, upon the twentieth day of each month provide the joint committee on government and
finance of the Legislature with a report reviewing the lottery operations, including, but not limited to, the amount of gross sales, the amount of net profit, the types of games being played, the number of licensed sales agents, the names and amounts of winners and any other information requested by the Legislature or by the joint committee on government and finance.

(b) The director shall, no later than the tenth day of each regular session of the Legislature, provide to the Legislature, legislative auditor, governor and state treasurer an annual report focused upon subjects of interest concerning lottery operations, including, but not limited to, an annual financial analysis of the lottery operations, a discussion of the types of games played and revenues generated, a statement of expenditures for the last fiscal year, a summary of the benefit programs and recommendations to the Legislature.


No elected or appointed official, other than the members of the lottery commission, the director or deputy directors, may preside or appear at any lottery drawing.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.
Takes effect from passage.

Harrell Eubanks
Clerk of the Senate

Daniel L. Vopo
Clerk of the House of Delegates

Billdest
President of the Senate

Speaker of the House of Delegates

The within is approved this the 10th day of March, 1990.

Governor
PRESENTED TO THE
GOVERNOR

Date: 3/17/90

Time: 9:15 AM