

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

# ENROLLED

*Com. Sub. for*  
**HOUSE BILL No. 4399**

(By Mr. *Speaker, Mr. Chambers, & Del. R. Burk*  
[By request of the Executive])

— ● —

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

In Effect ..... *From* ..... Passage

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 4399**

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)  
[By Request of the Executive]

[Passed February <sup>26</sup>~~27~~, 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.**

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

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

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

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

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

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

26 (5) Selection of the winner must be predicted totally  
27 on chance.

28 (6) Any drawings or winner selections shall be held  
29 in public and witnessed by an independent accountant  
30 designated by the director for such purposes.

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

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

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

49 (10) A detailed tabulation of the estimated number of  
50 prizes of each particular prize denomination that are  
51 expected to be awarded in each lottery, or the estimated  
52 odds of winning such prizes shall be printed on any  
53 lottery ticket, where feasible, or in descriptive mate-  
54 rials, and shall be available at the offices of the  
55 commission.

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

59 (12) By purchasing a ticket or participation in a  
60 lottery, a participant agrees to abide by, and be bound  
61 by, the lottery rules which apply to the lottery or game  
62 play involved. An abbreviated form of such rules may  
63 appear on tickets and shall appear on descriptive  
64 materials and shall be available at the offices of the  
65 commission. A participant in a lottery agrees that the  
66 determination of whether the participant is a valid  
67 winner is subject to the lottery or game play rules and

68 the winner validation tests established by the commis-  
69 sion. The determination of the winner by the commission  
70 shall be final and binding upon all participants in a  
71 lottery and shall not be subject to review or appeal.

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

82 (c) The commission shall proceed with operation of  
83 such additional lottery games, including the implemen-  
84 tation of games utilizing a variety of existing or future  
85 technological advances at the earliest feasible date. The  
86 commission may operate lottery games utilizing elec-  
87 tronic computers and electronic computer terminal  
88 devices and systems, which systems must include a  
89 central site system of monitoring the lottery terminals  
90 utilizing direct communication systems, or other  
91 technological advances and procedures, ensuring hon-  
92 esty 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; organiza-  
tions qualified; commissions; display of  
license; geographic distribution; monopoly  
prohibited; lottery retailers; preprinted  
instant type lottery tickets; fee; certificate of  
authority; security; bond.**

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

6 (1) The commission shall issue its annual license to  
7 such lottery sales agents for each lottery outlet and for  
8 such fee as is established by the commission to cover its

9 costs thereof, but not to exceed one thousand dollars.  
10 Application for licensing as a lottery sales agent shall  
11 be on forms to be prescribed and furnished by the  
12 director.

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

15 (3) The commission shall ensure geographic distribu-  
16 tion of lottery sales agents throughout the state.

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

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

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

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

31 (8) A license is not assignable or transferable.

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

39 (10) The commission may issue licenses to any legit-  
40 imate business, organization, person or entity, including,  
41 but not limited to, civic or fraternal organizations; parks  
42 and recreation commissions or similar authorities;  
43 senior citizen centers, state owned stores, persons  
44 lawfully engaged in nongovernmental business on state  
45 property, persons lawfully engaged in the sale of  
46 alcoholic beverages; political subdivisions or their  
47 agencies or departments, state agencies, commission

48 operated agencies; persons licensed under the provisions  
49 of article twenty-three, chapter nineteen of this code,  
50 and religious, charitable or seasonal businesses.

51 (11) Licensed lottery sales agents shall receive five  
52 percent of gross sales as commission for the perfor-  
53 mance of their duties. In addition, the commission may  
54 promulgate a bonus-incentive plan as additional com-  
55 pensation not to exceed one percent of annual gross  
56 sales. The method and time of payment shall be  
57 determined by the commission.

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

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

71 (b) The commission shall promulgate rules and  
72 regulations specifying the terms and conditions for  
73 contracting with lottery retailers for sale of preprinted  
74 instant type lottery tickets and may provide for the  
75 dispensing of such tickets through machines and  
76 devices. Tickets may be sold or dispensed in any public  
77 or private store, operation or organization, without  
78 limitation. The commission may establish an annual fee  
79 not to exceed fifty dollars for such persons, per location  
80 or site, and shall issue a certificate of authority to act  
81 as a lottery retailer to such persons. The commission  
82 shall establish procedures to ensure the security, honesty  
83 and integrity of the lottery and distribution system. The  
84 commission shall establish the method of payment,  
85 commission structure, methods of payment of winners,  
86 including payment in merchandise and tickets, and may  
87 require prepayment by lottery retailers, require bond or  
88 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  
2 directors and the employees of the lottery may not  
3 directly or indirectly, individually, or as a member of  
4 a partnership or as a shareholder of a corporation have  
5 an interest in dealing in a lottery.

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

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

**§29-22-18. State lottery fund; appropriations and deposits; 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  
2 treasury which shall be designated and known as the  
3 "state lottery fund." The fund shall consist of all  
4 appropriations to the fund and all interest earned from



5 investment of the fund, and any gifts, grants or  
6 contributions received by the fund. All revenues  
7 received from the sale of lottery tickets, materials and  
8 games shall be deposited with the state treasurer and  
9 placed into the "state lottery fund." The revenue shall  
10 be disbursed in the manner herein provided for the  
11 purposes stated herein and shall not be treated by the  
12 auditor and treasurer as part of the general revenue of  
13 the state.

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

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

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

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

46 dollars and remit to the state treasurer the entire  
47 amount of those surplus funds in excess of two hundred  
48 fifty thousand dollars which shall be allocated as net  
49 profit.

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

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

78 (h) There is hereby created a special fund in the state  
79 treasury which shall be designated and known as the  
80 "lottery senior citizens fund." The fund shall consist of  
81 the amounts allocated pursuant to subsection (f) of this  
82 section, which amounts shall be deposited into the  
83 lottery senior citizens fund by the state treasurer. The  
84 lottery senior citizens fund shall also consist of all  
85 interest earned from investment of the lottery senior  
86 citizens fund, and any other appropriations, gifts,

87 grants, contributions or moneys received by the lottery  
88 senior citizens fund from any source. The revenues  
89 received or earned by the lottery senior citizens fund  
90 shall be disbursed in the manner provided below and  
91 shall not be treated by the auditor or treasurer as part  
92 of the general revenue of the state. Annually, the  
93 Legislature shall appropriate the revenues received or  
94 earned by the lottery senior citizens fund to such senior  
95 citizens medical care and other programs as it considers  
96 beneficial to the citizens of this state.

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

**§29-22-19. Post audit of accounts and transactions of office.**

1 The legislative auditor shall conduct a yearly post  
2 audit of all accounts and transactions of the state lottery  
3 office. The cost of the audit shall be paid out of the state  
4 lottery fund moneys designated for payment of operat-  
5 ing expenses. The commission shall have an annual  
6 audit performed by an independent certified public  
7 accountant, and such audit may be accepted by the  
8 legislative auditor in lieu of performance of its yearly  
9 post audit.

**§29-22-20. Monthly and annual reports.**

1 (a) The director shall, upon the twentieth day of each  
2 month provide the joint committee on government and

3 finance of the Legislature with a report reviewing the  
4 lottery operations, including, but not limited to, the  
5 amount of gross sales, the amount of net profit, the types  
6 of games being played, the number of licensed sales  
7 agents, the names and amounts of winners and any other  
8 information requested by the Legislature or by the joint  
9 committee on government and finance.

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

**§29-22-21. Official's name not to appear on lottery  
materials or at drawing.**

1 No elected or appointed official, other than the  
2 members of the lottery commission, the director or  
3 deputy directors, may preside or appear at any lottery  
4 drawing.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Fredrick L. Parker*  
Chairman Senate Committee

*Bernard V. Kelly*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Harrell E. Johnson*  
Clerk of the Senate

*Donna L. Hopp*  
Clerk of the House of Delegates

*Walter Bennett*  
President of the Senate

*W. R. [Signature]*  
Speaker of the House of Delegates

The within *is approved* this the *10<sup>th</sup>*  
day of *March*, 1990.

*Walter Bennett*  
Governor

PRESENTED TO THE

GOVERNOR

~~Date~~ 3/5/90

~~Time~~ 9:15 AM

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OFFICE OF ASSISTANT  
SECRETARY OF DEFENSE