WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4632
(By Delegate Pettit)

Passed March 14, 1998
In Effect Ninety Days from Passage
ENROLLED

H. B. 4632

(BY DELEGATE PETTIT)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, eight, nine, and twelve, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to racetrack video lottery; creating of an additional permitted job classification of video lottery floor attendant; providing for an annual license or permit fee; defining of the term "eprom"; and increasing the number of terminals which may be located in a nonconforming location.

Be it enacted by the Legislature of West Virginia:

That sections three, eight, nine, and twelve, article twenty-two-a, 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 22A. RACETRACK VIDEO LOTTERY ACT.


1 As used in this article:

2 (a) "Applicant" means any person applying for any

3 video lottery license or permit.
(b) "Associated equipment" means any hardware located on a licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

(c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

(d) "Central computer," "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs.

(e) "Commission" or "state lottery commission" means the West Virginia lottery commission created by article twenty-two of this chapter.

(f) "Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

(g) "Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.

(h) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(i) "Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.
(j) "Display" means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.

(k) "EPROM" and "erasable programmable read-only memory chips" means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and which can also be in the form of CD-ROM, flash RAM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be the property of the state of West Virginia.

(l) "Floor attendant" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who corrects paper jams and bill jams in video lottery terminals and also provides courtesy services for video lottery players.

(m) "Gross terminal income" means the total amount of cash inserted into the video lottery terminals operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(n) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia racing commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission.

(o) "Lottery" means the public gaming systems or games established and operated by the state lottery commission.

(p) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals,
or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(q) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(r) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(s) "Pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, that, for the purposes of this article, "pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" includes only a facility which was licensed prior to the first day of January, one thousand nine hundred ninety-four, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the racing commission in accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this code.

(t) "Permit" means authorization granted by the commission to a person to function as either a video lottery manufacturer, service technician or validation manager.

(u) "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.
"Player" means a person who plays a video lottery game on a video lottery terminal at a racetrack licensed by the commission to conduct video lottery games.

"Service technician" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who performs service, maintenance and repair on licensed video lottery terminals in this state.

"Video lottery game" means a commission approved, owned and controlled electronically simulated game of chance which is displayed on the screen or video monitor of a video lottery terminal and which:

1. Is connected to the commission's central control computer by an on-line or dial-up communication system;

2. Is initiated by a player's insertion of coins or currency into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credit entitles a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

3. Allows the player to win additional game play credits based upon game rules which establish the random selection of winning combinations of symbols or numbers or both and the number of free play credits to be awarded for each winning combination of symbols or numbers or both;

4. Is based upon computer-generated random selection of winning combinations based totally or predominantly on chance;

5. In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either: (A) Signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance, based upon probabilities, that the player may select a winning combination; (B)
signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether the additional selection presents the best chance, based upon probabilities, that the player may select a winning combination; or (C) randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

(6) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal; and

(7) Does not use the following game themes commonly associated with casino gambling: Roulette, dice, or baccarat card games: Provided, That games having a video display depicting symbols which appear to roll on drums to simulate a classic casino slot machine, game themes of other card games and keno may be used.

(y) "Validation manager" means a person who holds a permit issued by the commission and who performs video lottery ticket redemption services.

(z) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device the player may receive free games or credit that can be redeemed for cash, or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery
game and communicate the results of the game, such as
the game "Travel," and which does not utilize an
interactive electronic terminal device allowing input by an
individual player.

(aa) "Video lottery terminal" means a commission-
approved interactive electronic terminal device which is
connected with the commission's central computer system,
and which is used for the purpose of playing video lottery
games authorized by the commission. A video lottery
terminal may simulate the play of one or more video
lottery games.

(bb) "Wager" means a sum of money or thing of value
risked on an uncertain occurrence.

§29-22A-8. Form of application; local option elections;
issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

(a) The commission shall determine the form of
applications to be used and shall not consider incomplete
applications. The commission may consider an
application when the applicant has completed and
executed all forms and documents required by the
commission and all application fees and costs have been
paid.

(b) The question of whether video lottery games shall
be permitted at pari-mutuel racetracks shall be determined
by local option election in each county in which a
pari-mutuel racetrack is located. The local option election
on this question may be placed on the ballot in each
county at any general election. The county commission
of the county in which the racetrack is located shall give
notice to the public of the election by publication of the
notice as a Class II-0 legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election to the commission.

(c) Upon receipt of the results of the election from the county commission, and if a majority has voted "yes," the commission shall issue the requested license if the applicant is otherwise qualified for the license. If a majority has voted "no," the commission shall notify the applicant of the results, the application shall be denied, and another election on the issue shall not be held for a period of two years: Provided, That for purposes of this section, the term "two years" means the interval between a general election and the next general election, and in no event shall it mean or encompass a period of time in excess of one hundred four weeks. If a majority has voted "yes," another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by
the county commission of the county in which the horse
or dog racetrack is located. The petition may be in any
number of counterparts.

The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident
within the county of _____________, do hereby
petition that a special election be held within the county of
___________ upon the following question: Shall
West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in
which pari-mutuel betting is authorized by law?

Name Address Date

(Post office or street address)

(d) The commission may not issue any license or permit until background investigations are concluded. The commission shall make an affirmative determination that the applicant is qualified and the applicable license or permit fees have been paid prior to issuing any license or permit.

(e) The commission shall notify the applicant if an application is incomplete and the notification shall state the deficiencies in the application.

(f) The commission shall notify applicants in writing of the denial, suspension or revocation of a permit or license and the reasons for the denial, suspension or revocation in accordance with the provisions of section fifteen of this article.

(g) An applicant may request a hearing to review a license or permit denial, suspension or revocation in accordance with section fifteen of this article.

(h) The following license or permit fees shall be paid annually by each licensed racetrack, or permitted manufacturer, service technician, floor attendant or validation manager:
(1) Racetrack: ..................... $1,000
(2) Manufacturer: ................. $10,000
(3) Service technician: . . . . . . . . . . . . . . . $100
(4) Validation manager: ............... $50
(5) Floor attendant: ................... $50

The fees shall be paid to the commission at the time of license or permit application and on or before the first day of July of each year thereafter, at which time the license or permit may be renewed.

(i) An applicant for a video lottery license shall, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond shall be issued by a surety company authorized to transact business in West Virginia and the company shall be approved by the insurance commissioner of this state as to solvency and responsibility.

(j) The commission shall renew video lottery licenses and permits annually as of the first day of July of each year, if each person seeking license or permit renewal submits the applicable renewal fee, completes all renewal forms provided by the commission, and continues to meet all qualifications for a license or permit.

(k) License and permit holders shall notify the commission of any proposed change of ownership or control of the license or permit holder and of all other transactions or occurrences relevant to license or permit qualification. In order for a license or permit to remain in effect, commission approval is required prior to completion of any proposed change of ownership or control of a license or permit holder.

(l) A license or permit is a privilege personal to the license or permit holder and is not a legal right. A license or permit granted or renewed pursuant to this article may not be transferred or assigned to another person, nor may a license or a permit be pledged as collateral. The
purchaser or successor of any license or permit holder shall independently qualify for a license or permit. The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission.

§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

(a) All video lottery license and permit holders shall:

1. Promptly report to the commission any facts or circumstances related to video lottery operations which constitute a violation of state or federal law;

2. Conduct all video lottery activities and functions in a manner which does not pose a threat to the public health, safety or welfare of the citizens of this state, and which does not adversely affect the security or integrity of the lottery;

3. Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a license or permit holder, the commission, the state or the employees thereof, arising from the license or permit holder's participation in the video lottery system authorized by this article;

4. Assist the commission in maximizing video lottery revenues;

5. Maintain all records required by the commission;

6. Upon request by the commission, provide the commission access to all records and the physical premises
of the business or businesses where the license or permit holder's video lottery activities occur, for the purpose of monitoring or inspecting the license or permit holder's activities and the video lottery games, video lottery terminals and associated equipment; and

(7) Keep current in all payments and obligations to the commission.

(b) Manufacturers shall:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in sections five and six of this article;

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed racetracks;

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state;

(4) Provide to licensed racetracks and permitted service technicians technical assistance and training in the service and repair of video lottery terminals and associated equipment so as to assure the continuous authorized operation and play of the video lottery terminals; and

(5) Obtain certification of compliance under the provisions of part fifteen of the federal communication commission rules for all video lottery terminals placed in this state.

(c) Service technicians shall:

(1) Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation of those terminals;

(2) Attend all commission mandated meetings, seminars and training sessions concerning the repair and maintenance of licensed video lottery terminals and associated equipment; and
(3) Promptly notify the commission of any electronic or mechanical video lottery terminal malfunctions.

(d) Validation managers shall:

(1) Attend all commission mandated meetings, seminars and training sessions concerning the validation and redemption of video lottery winning tickets and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets; and

(3) Supervise video lottery ticket validation procedures at the applicable licensed racetrack.

(e) Floor attendants shall:

(1) Provide change and assistance to persons playing video lottery games in a licensed racetrack video lottery gaming area;

(2) Open video lottery terminal access doors to clear ticket paper jams and to insert new paper ticket tapes into the video lottery terminals; and

(3) Open video lottery terminal access doors to clear bill jams from the bill acceptors in video lottery terminals.

(f) The specific duties required of all licensed racetracks are as follows:

(1) Acquire video lottery terminals by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the video lottery terminals;

(2) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission's central control computer;

(3) Permit no person to tamper with or interfere with the operation of any video lottery terminal;
(4) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the licensed racetrack are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines;

(5) Ensure that video lottery terminals are within the sight and control of designated employees of the licensed racetrack;

(6) Ensure that video lottery terminals are placed and remain placed in the specific locations within the licensed racetrack which have been approved by the commission. No video lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the commission;

(7) Monitor video lottery terminals to prevent access to or play by persons who are under the age of eighteen years or who are visibly intoxicated;

(8) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(9) Provide no access by a player to an automated teller machine (ATM) in the area of the racetrack where video lottery games are played, accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

(10) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(11) Report promptly to the manufacturer and the commission all video lottery terminal malfunctions and notify the commission of the failure of a manufacturer or service technician to provide prompt service and repair of such terminals and associated equipment;

(12) Conduct no video lottery advertising and promotional activities without the prior written approval of the director;
126 (13) Install, post and display prominently at locations
127 within or about the licensed racetrack, signs, redemption
128 information and other promotional material as required
129 by the commission;
130 (14) Permit video lottery to be played only during
131 those hours established and approved by the commission;
132 (15) Maintain general liability insurance coverage for
133 all video lottery terminals in an amount of at least two
134 million dollars per claim;
135 (16) Promptly notify the commission in writing of any
136 breaks or tears to any logic unit seals;
137 (17) Assume liability for lost or stolen money from
138 any video lottery terminal; and
139 (18) Submit an audited financial statement, which has
140 been approved by the commission, to the commission
141 when applying for a license or permit and annually
142 thereafter prior to the time a license or permit may be
143 renewed.

§29-22A-12. Number and location of video lottery terminals;
security.

1 (a) A racetrack which has been licensed to conduct
2 video lottery games has the right to install and operate up
3 to four hundred video lottery terminals at a licensed
4 racetrack. A licensed racetrack may apply to the
5 commission for authorization to install and operate more
6 than four hundred video lottery terminals. If the
7 commission determines that the installation of additional
8 machines is in the best interest of the licensed racetrack,
9 the lottery commission and the citizens of this state, the
10 commission may grant permission to install and operate
11 additional machines.
12 (b) All video lottery terminals in licensed racetracks
13 shall be physically located as follows:
14 (1) The video lottery location shall be continuously
15 monitored through the use of a closed circuit television
16 system capable of recording activity for a continuous
twenty-four hour period. All video tapes shall be retained for a period of at least thirty days;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without prior approval from the commission; and

(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of article twenty-three, chapter nineteen of this code: Provided, That if the commission, before the first day of November, one thousand nine hundred ninety-three, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission: Provided, however. That on the effective date of this section, for each two video lottery terminals located in a nonconforming location, the racetrack shall locate and operate one video lottery terminal in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted.

(c) A licensee shall allow video lottery games to be played only on days when live racing is being conducted at the racetrack and/or on televised racing days: Provided, That this restriction shall not apply to any racetrack authorized by the commissioner prior to the first day of
November, one thousand nine hundred ninety-three, to operate video lottery terminals and conduct video lottery games.

(d) Security personnel shall be present during all hours of operation at each video lottery terminal location. Each license holder shall employ the number of security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery facilities and the safety and well-being of the players.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within [Approved] this the [8th] day of [April], 1998.

[Signature]
Governor