

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 478

(By Senators Miller, Laird, Barnes and Williams)

[Originating in the Committee on the Judiciary;
reported March 27, 2013.]

A BILL to amend and reenact §29-22A-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22B-332 of said code; and to amend and reenact §29-25-2 and §29-25-24 of said code, all relating to deleting those video lottery games that allow players an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play from the definition of “video lottery game”; deleting prohibition against game themes commonly associated with casino gambling; and permitting certain employees of an historic resort hotel to wager at the gaming facility of that historic hotel.

Be it enacted by the Legislature of West Virginia:

That §29-22A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22B-332 of said code be amended and reenacted; and that §29-25-2 and §29-25-24 of said code be amended and reenacted, all to read as follows:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-3. Definitions.

1 As used in this article:

2 (a) “Applicant” means any person applying for any video
3 lottery license or permit.

4 (b) “Associated equipment” means any hardware located
5 on a licensed racetrack’s premises which is connected to the
6 video lottery system for the purpose of performing
7 communication, validation or other functions, but not
8 including the video lottery terminals or the communication
9 facilities of a regulated public utility.

10 (c) “Background investigation” means a security,
11 criminal and credit investigation of a person, as defined in
12 this section, who has applied for a video lottery license or

13 permit, or who has been granted a video lottery license or
14 permit.

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

20 (e) “Commission” or “State Lottery Commission” means
21 the West Virginia Lottery Commission created by article
22 twenty-two of this chapter.

23 (f) “Control” means the authority to direct the
24 management and policies of an applicant or a license or
25 permit holder.

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

31 (h) “Director” means the individual appointed by the
32 Governor to provide management and administration
33 necessary to direct the State Lottery Office.

34 (i) “Disable” or “terminal disable” means the process of
35 executing a shutdown command from the central control
36 computer which causes video lottery terminals to cease
37 functioning.

38 (j) “Display” means the visual presentation of video
39 lottery game features on a video lottery terminal in the form
40 of video images, actual symbols or both.

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

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

55 (m) "Gross terminal income" means the total amount of
56 cash, vouchers or tokens inserted into the video lottery
57 terminals operated by a licensee, minus the total value of
58 coins and tokens won by a player and game credits which are
59 cleared from the video lottery terminals in exchange for
60 winning redemption tickets.

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

68 (o) "Lottery" means the public gaming systems or games
69 established and operated by the State Lottery Commission.

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

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

86 of video lottery games shall be deducted from gross terminal
87 income.

88 (r) “Noncash prize” means merchandise which a video
89 lottery player may be given the option to receive in lieu of
90 cash in exchange for a winning redemption ticket and which
91 shall be assigned a redemption value equal to the actual cost
92 of the merchandise to the licensed racetrack.

93 (s) “Own” means any beneficial or proprietary interest in
94 any property or business of an applicant or licensed
95 racetrack.

96 (t) “Pari-mutuel racing facility,” “licensed racetrack,”
97 “racetrack” or “track” means a facility where horse or dog
98 race meetings are held and the pari-mutuel system of
99 wagering is authorized pursuant to the provisions of article
100 twenty-three, chapter nineteen of this code: *Provided*, That,
101 for the purposes of this article, “pari-mutuel racing facility,”
102 “licensed racetrack,” “racetrack” or “track” includes only a
103 facility which was licensed prior to January 1, 1994, to hold
104 horse or dog race meetings, and which conducts not less than

105 two hundred twenty live racing dates for each horse or dog
106 race meeting or such other number of live racing dates as
107 may be approved by the Racing Commission in accordance
108 with the provisions of section twelve-b, article twenty-three,
109 chapter nineteen of this code.

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

113 (v) "Person" means any natural person, corporation,
114 association, partnership, limited partnership, or other entity,
115 regardless of its form, structure or nature.

116 (w) "Player" means a person who plays a video lottery
117 game on a video lottery terminal at a racetrack licensed by
118 the commission to conduct video lottery games.

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

123 (y) "Video lottery game" means a commission approved,
124 owned and controlled electronically simulated game of
125 chance which is displayed on a video lottery terminal and
126 which:

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

129 (2) Is initiated by a player's insertion of coins, currency,
130 vouchers or tokens into a video lottery terminal, which
131 causes game play credits to be displayed on the video lottery
132 terminal and, with respect to which, each game play credit
133 entitles a player to choose one or more symbols or numbers
134 or to cause the video lottery terminal to randomly select
135 symbols or numbers;

136 (3) Allows the player to win additional game play credits,
137 coins or tokens based upon game rules which establish the
138 random selection of winning combinations of symbols or
139 numbers or both and the number of free play credits, coins or
140 tokens to be awarded for each winning combination of
141 symbols or numbers or both;

142 (4) Is based upon computer-generated random selection
143 of winning combinations based totally or predominantly on
144 chance;

145 ~~(5) In the case of a video lottery game which allows the~~
146 ~~player an option to select replacement symbols or numbers or~~
147 ~~additional symbols or numbers after the game is initiated and~~
148 ~~in the course of play, either: (A) Signals the player, prior to~~
149 ~~any optional selection by the player of randomly generated~~
150 ~~replacement symbols or numbers, as to which symbols or~~
151 ~~numbers should be retained by the player to present the best~~
152 ~~chance, based upon probabilities, that the player may select~~
153 ~~a winning combination; (B) signals the player, prior to any~~
154 ~~optional selection by the player of randomly generated~~
155 ~~additional symbols or numbers, as to whether such additional~~
156 ~~selection presents the best chance, based upon probabilities,~~
157 ~~that the player may select a winning combination; or (C)~~
158 ~~randomly generates additional or replacement symbols and~~
159 ~~numbers for the player after automatically selecting the~~
160 ~~symbols and numbers which should be retained to present the~~

161 ~~best chance, based upon probabilities, for a winning~~
162 ~~combination, so that in any event, the player is not permitted~~
163 ~~to benefit from any personal skill, based upon a knowledge~~
164 ~~of probabilities, before deciding which optional numbers or~~
165 ~~symbols to choose in the course of video lottery game play;~~

166 ~~(6)~~ (5) Allows a player at any time to simultaneously
167 clear all game play credits and print a redemption ticket
168 entitling the player to receive the cash value of the free plays
169 cleared from the video lottery terminal; and

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

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

179 (aa) “Video lottery” means a lottery which allows a game
180 to be played utilizing an electronic computer and an
181 interactive computer terminal device, equipped with a video
182 screen and keys, a keyboard or other equipment allowing
183 input by an individual player, into which the player inserts
184 coins, currency, vouchers or tokens as consideration in order
185 for play to be available, and through which terminal device
186 the player may receive free games, coins, tokens or credit that
187 can be redeemed for cash, annuitized payments over time, a
188 noncash prize or nothing, as may be determined wholly or
189 predominantly by chance. “Video lottery” does not include
190 a lottery game which merely utilizes an electronic computer
191 and a video screen to operate a lottery game and
192 communicate the results of the game, such as the game
193 “Travel,” and which does not utilize an interactive electronic
194 terminal device allowing input by an individual player.

195 (bb) “Video lottery terminal” means a commission-
196 approved interactive electronic terminal device which is
197 connected with the commission’s central computer system,

198 and which is used for the purpose of playing video lottery
199 games authorized by the commission. A video lottery
200 terminal may simulate the play of one or more video lottery
201 games.

202 (cc) “Wager” means a sum of money or thing of value
203 risked on an uncertain occurrence.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-332. Video lottery game defined.

1 “Video lottery game” means an electronically simulated
2 game of chance that is approved, owned and controlled under
3 this article by the commission, which is displayed on the
4 screen or video monitor of a video lottery terminal and that:

5 (1) Is connected to the commission’s central control
6 computer by an on-line or dial-up communication system;

7 (2) Is initiated by a player’s insertion of coins or currency
8 into a video lottery terminal, which causes game play credits
9 to be displayed on the video lottery terminal and, with respect
10 to which, each game play credit entitles a player to choose

11 one or more symbols or numbers or to cause the video lottery
12 terminal to randomly select symbols or numbers;

13 (3) Allows the player to win additional game play credits
14 based upon game rules which establish the random selection
15 of winning combinations of symbols or numbers or both and
16 the number of free-play credits to be awarded for each
17 winning combination of symbols or numbers or both;

18 (4) Is based upon computer-generated random selection
19 of winning combinations based totally or predominantly on
20 chance;

21 ~~(5) In the case of a video lottery game which allows the~~
22 ~~player an option to select replacement symbols or numbers or~~
23 ~~additional symbols or numbers after the game is initiated and~~
24 ~~in the course of play, either: (A) Signals the player, prior to~~
25 ~~any optional selection by the player of randomly generated~~
26 ~~replacement symbols or numbers, as to which symbols or~~
27 ~~numbers should be retained by the player to present the best~~
28 ~~chance, based upon probabilities, that the player may select~~
29 ~~a winning combination; (B) signals the player, prior to any~~

30 ~~optional selection by the player of randomly generated~~
31 ~~additional symbols or numbers, as to whether the additional~~
32 ~~selection presents the best chance, based upon probabilities,~~
33 ~~that the player may select a winning combination; or (C)~~
34 ~~randomly generates additional or replacement symbols and~~
35 ~~numbers for the player after automatically selecting the~~
36 ~~symbols and numbers which should be retained to present the~~
37 ~~best chance, based upon probabilities, for a winning~~
38 ~~combination; so that in any event, the player is not permitted~~
39 ~~to benefit from any personal skill, based upon a knowledge~~
40 ~~of probabilities, before deciding which optional numbers or~~
41 ~~symbols to choose in the course of video lottery game play;~~

42 ~~(6)~~ (5) Allows a player at any time to simultaneously
43 clear all game play credits and print a redemption ticket
44 entitling the player to receive the cash value of the free plays
45 cleared from the video lottery terminal; and

46 ~~(6)~~ Does not use game themes of roulette, dice or
47 baccarat card games commonly associated with casino
48 gambling. *Provided*, That games having a video display

49 ~~depicting symbols that appear to roll on drums to simulate a~~
50 ~~classic casino slot machine, game themes of other card games~~
51 ~~and keno may be used.~~

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires, the following words and phrases have meanings
3 indicated:

4 (a) “Applicant” means any person or entity applying for
5 a license.

6 (b) “Adjusted gross receipts” means the gross receipts of
7 a gaming facility from West Virginia Lottery table games less
8 winnings paid to wagerers in such games.

9 (c) “Annual average gross receipts of the pari-mutuel
10 racetracks with table games licenses” means the amount
11 obtained by adding the adjusted gross receipts of all West
12 Virginia pari-mutuel racetracks with table games licenses and
13 then dividing that calculation by the number of West Virginia
14 pari-mutuel racetracks with table games licenses.

15 (d) “Background investigation” means a security,
16 criminal and credit investigation of an applicant who has
17 applied for the issuance or renewal of a license pursuant to
18 this article or a licensee who holds a current license.

19 (e) “Controlling interest” means:

20 (1) For a partnership, an interest as a general or limited
21 partner holding more than five percent interest in the entity;

22 (2) For a corporation, an interest of more than five
23 percent of the stock in the corporation; and

24 (3) For any other entity, an ownership interest of more
25 than five percent in the entity.

26 (f) “Controlling person” means, with respect to another
27 person, any person directly or indirectly owning or holding
28 a controlling interest in that other person.

29 (g) “Commission” means the State Lottery Commission
30 created in section four, article twenty-two of this chapter.

31 (h) “Designated gaming area” means one or more specific
32 floor areas of a licensed gaming facility within which the
33 commission has authorized operation of video lottery

34 terminals or West Virginia Lottery table games, or the
35 operation of both video lottery terminals and West Virginia
36 Lottery table games.

37 (i) "Director" means the Director of the State Lottery
38 Commission.

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

47 (k) "Fringe benefits" means sickness and accident
48 benefits and benefits relating to medical and pension
49 coverage.

50 (l) "Gaming devices and supplies" mean gaming tables
51 for all West Virginia Lottery table games, roulette wheels,
52 wheels of fortune, video lottery terminals, cards, dice, chips,

53 tokens, markers or any other mechanical, electronic or other
54 device, mechanism or equipment or related supplies utilized
55 in the operation of a West Virginia Lottery table game.

56 (m) “Gaming facility” means a designated area on the
57 premises of an existing historic resort hotel in which West
58 Virginia Lottery table games are conducted by a gaming
59 licensee.

60 (n) “Gaming licensee” means the licensed operator of a
61 gaming facility.

62 (o) “Gross receipts” means the total amount of money
63 exchanged for the purchase of chips, tokens or electronic
64 cards by patrons of a gaming facility reduced by gross
65 terminal income to the extent gross terminal income is
66 included in the amount of money exchanged.

67 (p) “Gross terminal income”, as used in this article and as
68 used in article twenty-two-a of this chapter, means the total
69 amount of cash, vouchers or tokens inserted into the video
70 lottery terminals operated by a licensee, minus promotional
71 credits played, and minus the total value of coins and tokens

72 won by a player and game credits which are cleared from the
73 video lottery terminals in exchange for winning redemption
74 tickets.

75 (q) “Historic resort hotel” means a resort hotel registered
76 with the United States Department of the Interior as a
77 national historic landmark in its National Registry of Historic
78 Places having not fewer than five hundred guest rooms under
79 common ownership and having substantial recreational guest
80 amenities in addition to the gaming facility.

81 (r) “Historic Resort Hotel Fund” means the special fund
82 in the State Treasury created in section twenty-two of this
83 article.

84 (s) “Human Resource Benefit Fund” means the special
85 fund in the State Treasury created in section twenty-two-a of
86 this article.

87 (t) “Human Resource Benefit Advisory Board” or
88 “board” means the advisory board created in section twenty-
89 two-a of this article.

90 (u) “License” means a license issued by the commission,

91 including:

92 (1) A license to operate a gaming facility;

93 (2) A license to supply gaming devices and supplies to a
94 gaming facility;

95 (3) A license to be employed in connection with the
96 operation of a gaming facility; or

97 (4) A license to provide management services under a
98 contract to a gaming facility under this article.

99 (v) “Licensed gaming facility employee” means any
100 individual licensed to be employed by a gaming licensee in
101 connection with the operation of a gaming facility.

102 (w) “Licensed gaming facility supplier” means a person
103 who is licensed by the commission to engage in the business
104 of supplying gaming devices and gaming supplies to a
105 gaming facility.

106 (x) “Licensee” means a gaming licensee, a licensed
107 gaming facility supplier or a licensed gaming facility
108 employee.

109 (y) “Manufacturer” means any person holding a license
110 granted by the commission to engage in the business of
111 designing, building, constructing, assembling or
112 manufacturing video lottery terminals, the electronic
113 computer components of the video lottery terminals, the
114 random number generator of the video lottery terminals, or
115 the cabinet in which it is housed, and whose product is
116 intended for sale, lease or other assignment to a licensed
117 gaming facility in West Virginia and who contracts directly
118 with the licensee for the sale, lease or other assignment to a
119 licensed gaming facility in West Virginia.

120 (z) “Net terminal income” means gross terminal income
121 minus an amount deducted by the commission to reimburse
122 the commission for its actual cost of administering video
123 lottery at the licensed gaming facility. No deduction for any
124 or all costs and expenses of a licensee related to the operation
125 of video lottery games shall be deducted from gross terminal
126 income.

127 (aa) "Person" means any natural person, corporation,
128 association, partnership, limited partnership, limited liability
129 company or other entity, regardless of its form, structure or
130 nature.

131 (bb)"Premises of an existing historic resort hotel" means
132 the historic resort hotel, attachments of the historic resort
133 hotel, and the traditional, immediate grounds of the historic
134 resort hotel.

135 (cc) "Promotional credits" means credits given by the
136 licensed gaming facility or licensed racetrack to players
137 allowing limited free play of video lottery terminals in total
138 amounts and under conditions approved in advance by the
139 commission.

140 (dd) "Video lottery game", as used in this article and as
141 used in article twenty-two-a of this chapter, means a
142 commission-approved, -owned and -controlled electronically
143 simulated game of chance which is displayed on a video
144 lottery terminal and which:

145 (1) Is connected to the commission's central control
146 computer by an online or dial-up communication system;

147 (2) Is initiated by a player's insertion of cash, vouchers or
148 tokens into a video lottery terminal, which causes game play
149 credits to be displayed on the video lottery terminal and, with
150 respect to which, each game play credits entitles a player to
151 choose one or more symbols or numbers or to cause the video
152 lottery terminal to randomly select symbols or numbers;

153 (3) Allows the player to win additional game play credits,
154 coins or tokens based upon game rules which establish the
155 random selection of winning combinations of symbols or
156 numbers or both and the number of free play credits, coins or
157 tokens to be awarded for each winning combination of
158 symbols or numbers or both;

159 (4) Is based upon a computer-generated random selection
160 of winning combinations based totally or predominantly on
161 chance;

162 ~~(5) In the case of a video lottery game which allows the~~
163 ~~player an option to select replacement symbols or numbers or~~
164 ~~additional symbols or numbers after the game is initiated and~~
165 ~~in the course of play, either:~~

166 ~~(A) Signals the player, prior to any optional selection by~~
167 ~~the player of randomly generated replacement symbols or~~
168 ~~numbers, as to which symbols or numbers should be retained~~
169 ~~by the player to present the best chance, based upon~~
170 ~~probabilities, that the player may select a winning~~
171 ~~combination;~~

172 ~~(B) Signals the player, prior to any optional selection by~~
173 ~~the player of randomly generated additional symbols or~~
174 ~~numbers, as to whether such additional selection presents the~~
175 ~~best chance, based upon probabilities, that the player may~~
176 ~~select a winning combination; or~~

177 ~~(C) Randomly generates additional or replacement~~
178 ~~symbols and numbers for the player after automatically~~
179 ~~selecting the symbols and numbers which should be retained~~
180 ~~to present the best chance, based upon probabilities, for a~~

181 ~~winning combination, so that in any event, the player is not~~
182 ~~permitted to benefit from any personal skill, based upon a~~
183 ~~knowledge of probabilities, before deciding which optional~~
184 ~~numbers or symbols to choose in the course of video lottery~~
185 ~~game play;~~

186 (6) (5) Allows a player at any time to simultaneously
187 clear all game play credits and print a redemption ticket
188 entitling the player to receive the cash value of the free plays
189 cleared from the video lottery terminal; and

190 (6) ~~Does not use the following game themes commonly~~
191 ~~associated with casino gambling: Roulette, dice or baccarat~~
192 ~~card games. *Provided,* That games having a display with~~
193 ~~symbols which appear to roll on drums to simulate a classic~~
194 ~~casino slot machine, game themes of other card games and~~
195 ~~keno may be used.~~

196 (ee) “Wager” means a sum of money or thing of value
197 risked on an uncertain occurrence.

198 (ff) “West Virginia Lottery table game” means any game
199 played with cards, dice or any mechanical, electromechanical

200 or electronic device or machine for money, credit or any
201 representative of value, including, but not limited to,
202 baccarat, blackjack, poker, craps, roulette, wheel of fortune
203 or any variation of these games similar in design or operation
204 and expressly authorized by rule of the commission,
205 including multiplayer electronic table games, machines and
206 devices, but excluding video lottery, punchboards, faro,
207 numbers tickets, push cards, jar tickets, pull tabs or similar
208 games.

§29-25-24. Individual gaming restrictions.

1 (a) An individual may enter a designated gaming area or
2 remain in a designated gaming area only if the individual:

3 (1) Is either;

4 (A) A registered overnight guest at the historic resort
5 hotel on whose premises the gaming facility is located;

6 (B) A person who is a not a registered overnight guest,
7 but is a registered participant at a convention or event being
8 held at the historic resort hotel: *Provided*, That this
9 paragraph does not apply on any calendar day when less than

10 four hundred guest rooms are occupied at the historic resort
11 hotel; or

12 (C) A member of a homeowner or facility association that
13 entitles members to substantial privileges at the historic resort
14 hotel on whose premises the gaming facility is located or an
15 overnight guest of such a member: *Provided*, That the
16 association was in existence as of April 1, 2009;

17 (2) Is at least twenty-one years of age;

18 (3) Is not visibly intoxicated;

19 (4) Has not been determined by the gaming facility
20 operator or the commission to be unruly, disruptive or
21 otherwise interfering with operation of the gaming facility; or
22 to be likely to commit, or to attempt to commit, a violation of
23 this article; and

24 (5) Has not been barred by the commission from entering
25 a gaming facility.

26 (b) Notwithstanding any provisions of this code to the
27 contrary, no employee of the commission ~~or employee of the~~
28 ~~historic resort hotel~~ or any member of his or her immediate

29 household may wager at the gaming facility, and no licensed
30 limited gaming facility employee may wager on any table
31 game at the limited gaming facility.