

WEST VIRGINIA LEGISLATURE
2016 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1007

BY SENATORS WALTERS, TRUMP AND GAUNCH

[Introduced May 24, 2016]

1 A BILL to amend and reenact §29-22B-503, §29-22B-504, §29-22B-1101 and §29-22B-1408 of
 2 the Code of West Virginia, 1931, as amended, all relating to limited video lottery terminals
 3 at retail locations; allowing a person to be both a limited video operator and retailer;
 4 increasing number of limited video lottery terminals allowed at retail locations; requiring
 5 Lottery Commission to conduct bid only open to current permit holders prior to September
 6 1, 2016, for permits expiring June 30, 2021; establishing procedure for bid process; and
 7 setting commission's share of net terminal income at fifty-four percent effective July 1,
 8 2016, provided that the average daily gross terminal income per terminal is greater than
 9 \$140 per day.

Be it enacted by the Legislature of West Virginia:

1 That §29-22B-503, §29-22B-504, §29-22B-1101 and §29-22B-1408 of the Code of West
 2 Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

PART 5. REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.

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

1 (a) No operator's license or license renewal may be granted unless the Lottery
 2 Commission has determined that, in addition to the general requirements set forth in section five
 3 hundred two of this article, the applicant satisfies all of the following qualifications:

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

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

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

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

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

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

26 (6) The applicant does not hold any other license under this article, ~~article 19-23-1, et seq.~~
27 twenty-three, chapter nineteen of this code, or articles twenty-two, twenty-two-a or twenty-five of
28 this chapter, except that an applicant may also be licensed as a service technician or limited video
29 lottery retailer, or both.

30 (b) (1) A person or a member of his or her immediate family who has an ownership interest
31 in a business entity that submits an application for an operator's license may not: (A) Submit an
32 application for another operator's license as an individual; (B) serve as an officer, director,
33 member or partner of a business entity that submits an application for another operator's license;
34 or (C) have an ownership interest in any other business entity that submits an application for an
35 operator's license.

36 (2) Business entities that have common owners or common officers, directors, members

37 or partners may not hold more than one operator's license.

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

1 No limited video lottery retailer's license or license renewal may be granted unless the
2 Lottery Commission has determined that, in addition to the general requirements set forth in
3 section five hundred two of this article, the applicant satisfies all of the following qualifications:

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

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

11 (2) The applicant has disclosed to the Lottery Commission the identity of each person who
12 has control of the applicant, as control is described in section five hundred seven of this article;

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

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

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

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

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

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

33 (9) The applicant does not hold any other license under this article, article ~~19-23-1, et seq.,~~
 34 twenty-three, chapter nineteen of this code or articles twenty-two-a or twenty-five of this chapter
 35 except that an applicant may also be licensed as a service technician or operator or both.

PART 11. ALLOCATION AND DISTRIBUTION OF VIDEO LOTTERY TERMINALS.

§29-22B-1101. Limitation on number and location of video lottery terminals.

1 (a) The Lottery Commission may not authorize the placement of more than nine thousand
 2 video lottery terminals in restricted access adult-only facilities in this state.

3 (b) No person may directly or indirectly operate more than seven and one-half percent of
 4 the number of video lottery terminals authorized in this section, which ~~shall~~ may only be located
 5 ~~only~~ in restricted access adult-only facilities.

6 (c) No licensed limited video lottery retailer may be authorized to have on the premises for
 7 which the license was issued more than ~~five~~ seven video lottery terminals except that a fraternal
 8 society or veteran's organization that is: (A) A fraternal beneficiary society that is exempt from
 9 federal income tax under Section 501 (c) (8) of the Internal Revenue Code of 1986, as amended;
 10 (B) a domestic fraternal society that is exempt from federal income tax under Section 501(c)(10);
 11 or (C) a veteran's organization that is exempt from federal income tax under Section 501(c)(19)
 12 of the Internal Revenue Code may be authorized to have on the premises for which the license

13 was issued not more than ~~ten~~ twelve video lottery terminals.

14 (d) To help accommodate the change in the number of terminals authorized by the
15 amendment to this section enacted during the first extraordinary session of the Legislature in
16 2016, the commission shall conduct a bid no later than September 1, 2016, for permits expiring
17 June 30, 2021, which bid is open to current permit holders only and which shall be conducted in
18 accordance with sections one thousand one hundred six, one thousand one hundred seven and
19 one thousand one hundred nine of this article.

§29-22B-1408. Distribution of state's share of gross terminal income.

1 (a) The state's share of gross terminal income is calculated as follows:

2 (1) The commission shall deposit two percent of gross terminal income into the State
3 Lottery Fund for the commission's costs and expenses incurred in administering this article. From
4 this amount, not less than \$150,000 nor more than \$1 million ~~dollars~~ per fiscal year, as determined
5 by the commission each year, shall be transferred to the Compulsive Gambling Treatment Fund
6 created in section nineteen, article twenty-two-a of this chapter. In the event that the percentage
7 allotted under this subsection for the commission's costs and expenses incurred in administering
8 this article generates a surplus, the surplus shall be allowed to accumulate to an amount not to
9 exceed \$250,000. On a monthly basis, the director shall report to the Joint Committee on
10 Government and Finance of the Legislature any surplus in excess of \$250,000 and remit to the
11 State Treasurer the entire amount of those surplus funds in excess of \$250,000 to be deposited
12 in the fund established in section eighteen-a, article twenty-two of this chapter: *Provided*, That at
13 the close of each of the fiscal years ending June 30, 2006, 2007, 2008, 2009, 2010 and 2011, the
14 portion of the two percent allowance for administrative expenses provided in this subdivision ~~(4)~~
15 that remains unspent for costs and expenses incurred in administering this article, not to exceed
16 \$20 million ~~dollars~~ in any fiscal year, shall be transferred to the Revenue Center Construction
17 Fund created by subsection (l) ~~of~~, section eighteen, article twenty-two of this chapter for the
18 purpose of constructing a state office building.

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

21 (3) The commission shall receive thirty percent of gross profits as defined in subdivision
22 (2) of this subsection except as otherwise provided in this subdivision. On June 1, 2002, the
23 commission shall calculate the aggregate average daily gross terminal income for all operating
24 video lottery terminals during the preceding three month period. Thereafter, the commission shall
25 make the calculation on the first day of the month preceding the months of October, January, April
26 and July of each year. So long as the aggregate average gross terminal income per day for the
27 operating video lottery terminals does not exceed \$60, the commission's share of gross profits
28 shall continue to be thirty percent for the succeeding quarter of the year beginning July 1.
29 Beginning on July 1, 2002, and the first days of October, January, April and July in 2002 and
30 thereafter, if the commission's calculation of aggregate average daily gross terminal income per
31 video lottery terminal yields an amount greater than \$60, one of the following schedules apply: If
32 the amount is greater than \$60 per day but not greater than \$80 per day, the commission's share
33 of gross profits for the ensuing quarter beginning the first day of the quarter of the year described
34 in this subdivision shall be thirty-four percent; if the amount is greater than \$80 per day but not
35 greater than \$100 per day, the commission's share of gross profits for the ensuing quarter
36 beginning the first day of the quarter of the year described in this subdivision shall be thirty-eight
37 percent; if the amount is greater than \$100 per day but not greater than \$120 per day, the
38 commission's share of gross profits for the ensuing quarter beginning the first day of the quarter
39 of the year described in this subdivision shall be forty-two percent; if the amount is greater than
40 \$120 per day but not greater than \$140 per day, the commission's share of gross profits for the
41 ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall
42 be forty-six percent; if the amount is greater than \$140 per day, the commission's share of gross
43 profits for the ensuing quarter beginning the first day of the quarter of the year described in this
44 subdivision shall be fifty percent. This amount shall be known as net terminal income: *Provided,*

45 That effective July 1, 2016, the commission's share of net terminal income shall be fixed at fifty-
46 four percent, inclusive of any administrative fees, regardless of the aggregate average daily gross
47 terminal income per terminal: *Provided, however,* That if the commission's calculation of
48 aggregate average daily gross income per video lottery terminal yields an amount that is not
49 greater than \$140 per day, one of the following schedules apply: If the amount is greater than \$60
50 per day but not greater than \$80 per day, the commission's share of gross profits for the ensuing
51 quarter beginning the first day of the quarter of the year described in this subdivision shall be
52 thirty-four percent; if the amount is greater than \$80 per day but not greater than \$100 per day,
53 the commission's share of gross profits for the ensuing quarter beginning the first day of the
54 quarter of the year described in this subdivision shall be thirty-eight percent; if the amount is
55 greater than \$100 per day but not greater than \$120 per day, the commission's share of gross
56 profits for the ensuing quarter beginning the first day of the quarter of the year described in this
57 subdivision shall be forty-two percent; if the amount is greater than \$120 per day but not greater
58 than \$140 per day, the commission's share of gross profits for the ensuing quarter beginning the
59 first day of the quarter of the year described in this subdivision shall be forty-six percent.

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

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

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

69 (2) Any remaining funds shall be deposited into the State Excess Lottery Revenue Fund
70 established in section eighteen-a, article twenty-two of this chapter.

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

NOTE: The purpose of this bill is to allow a person to be both a limited video operator and retailer; to increase the number of limited video lottery terminals allowed at retail locations; to require the Lottery Commission to conduct a bid only open to current permit holders prior to September 1, 2016, for permits expiring June 30, 2021; to establish a procedure for the bid process; and to set the commission's share of net terminal income at fifty-four percent effective July 1, 2016, provided that the average daily gross terminal income per terminal is greater than \$140 per day.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.