

CHAPTER 28  
FORMERLY  
HOUSE SUBSTITUTE NO. 1 FOR  
HOUSE BILL NO. 100  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 2, 3, 4 & 5

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE LOTTERY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Subchapter I, Chapter 48, Title 29 of the Delaware Code by adding thereto two new sections to read:

§4825. Sports lottery.

(a) The Director shall, pursuant to the authority granted under §§4805(a)(1) and 4805(b)(4) of this chapter, commence a sports lottery as soon as practicable. The Director shall, by rules and regulations, provide for the features and attributes of a sports lottery. The regulations must, in the Director's judgment, administer the sports lottery in a manner which will produce the greatest income for the State while minimizing or eliminating the risk of financial loss to the State.

(b) A person under the age of 21 may not purchase a sports lottery ticket, or wager on a sports lottery machine, or in any way participate in the sports lottery.

(c) A sports lottery commenced pursuant to this section must be conducted exclusively at facilities operated by video lottery agents licensed by the State. Licenses awarded to video lottery agents relative to the video lottery shall automatically allow those agents to operate facilities at which the sports lottery can be conducted.

§4826. Feasibility of Additional Venues.

(a) There is created the Video and Sports Lottery Study Commission, which shall be composed of nine persons. The President Pro Tempore of the Senate shall appoint two members of the Senate and the Minority Leader of the Senate shall appoint one member of the Senate to serve on the Video and Sports Lottery Study Commission. The Speaker of the House of Representatives shall appoint two members of the House of Representatives and the Minority Leader of the House of Representatives shall appoint one member of the House of Representatives to serve on the Video and Sports Lottery Study Commission. The Secretary of Finance and Director of the Delaware Economic Development Office shall serve as members of the Video and Sports Lottery Study Commission, and the Governor shall appoint one other person to serve on the Video and Sports Lottery Study Commission. The Governor shall appoint a Chairperson of the Video and Sports Lottery Study Commission from among its members. The Video and Sports Lottery Study Commission may engage and retain such consultants as it deems necessary. Appointees to the Video and Sports Lottery Study Commission shall serve until April 15, 2010, at which time the Video and Sports Lottery Study Commission shall be terminated, if not reconstituted by further act of the General Assembly.

(b) Not later than October 15, 2009, the Video and Sports Lottery Study Commission shall report to the General Assembly on the effects on state revenues, the revenues of existing video lottery agents, the horse racing industry, employment, and the surrounding communities and businesses if the State were to grant additional video lottery licenses to any person, including, but not limited to, a person who does not operate a racetrack property in this State conducting horse racing meets pursuant to Title 3 or Title 28 or harness racing meets pursuant to Title 3.

(c) Not later than April 1, 2010, the Video and Sports Lottery Study Commission shall report to the General Assembly on the effects on state revenues, the revenues of existing video lottery agents, the horse racing industry, employment, and the surrounding communities and businesses if the State were to grant additional licenses to operate only a sports lottery to any person, including, but not limited to, a person who does not operate a racetrack property in this State conducting horse racing meets pursuant to Title 3 or Title 28 or harness racing meets pursuant to Title 3.

§4827. Table Gaming.

It is the intent of the General Assembly that the Director shall be enabled to commence table game operations as soon as possible, subject to the enactment of legislation addressing the distribution of proceeds therefrom and an appropriate annual

license fee. The Secretary of Finance, the Controller General, and one representative of the racino industry shall submit to the General Assembly, within 75 days from enactment of this section, a proposal for the distribution of table gaming proceeds and an appropriate annual license fee. The representative of the racino industry shall be designated by the existing video lottery agents, the Delaware Thoroughbred Horsemen's Association, and the Delaware Standardbred Owners Association. The three aforementioned persons shall also negotiate and submit to the General Assembly, within 75 days from enactment of this section, such legislation as they determine to be necessary or advisable for the effective administration and enforcement of table games. In the event the three aforementioned persons cannot negotiate a collective resolution of the distribution of table gaming proceeds, an appropriate annual license fee, or such legislation as they determine to be necessary or advisable for the effective administration and enforcement of table games, one or more of the parties shall submit their proposal on the foregoing to the General Assembly within 90 days from enactment of this section.”.

Section 2. Amend §4803, Title 29 of the Delaware Code by deleting subsection (k) in its entirety and by substituting in lieu thereof new subsections (k) – (n) to read:

"(k) "Credit Slip" shall mean the receipt generated by a video lottery terminal when a player is playing that particular video lottery terminal, or the ticket resulting from a sports lottery game.

(l) "Sports lottery" shall mean a lottery in which the winners are determined based on the outcome of any professional or collegiate sporting event, including racing, held within or without the State, but excluding collegiate sporting events that involve a Delaware college or university and amateur or professional sporting events that involve a Delaware team.

(m) "Sports lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play a sports lottery game. A machine shall be considered a sports lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

(n) "Sports lottery operations employee" shall mean an individual employee, person or agent of an applicant or licensee who is responsible for the security of sports lottery operations or proceeds.”.

Section 3. Amend §4805(a), Title 29 of the Delaware Code by deleting "video lottery machines" and by substituting in lieu thereof "the video lottery and sports lottery".

Section 4. Amend §4805(a), Title 29 of the Delaware Code by deleting subsections (12)-(13) in their entirety and by substituting in lieu thereof new subsections to read:

"(12) Such other matters necessary or desirable for the efficient and economical operation and administration of the game and for the convenience of the purchasers of tickets and the holders of winning tickets and the players of the video lottery and sports lottery;

(13) Value of bills, coins or tokens needed to play video lottery machines and sports lottery machines;”.

Section 5. Amend §4805(a), Title 29 of the Delaware Code by deleting subsections (16)-(17) in their entirety and by substituting in lieu thereof new subsections to read:

"(16) A licensure requirement and enforcement procedure (taking no more than 90 days to complete, unless extenuating circumstances require a longer period in which case the Director and the State shall act with all deliberate speed to complete the process) for officers, directors, key employees, video lottery operations employees, sports lottery operations employees, and persons who own directly or indirectly 10% or more of such agent, which licensure requirement shall include the satisfaction of such security, fitness and background standards as the Director may deem necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the lottery; it being specifically understood that any person convicted of any felony, a crime involving gambling or a crime of moral turpitude within 10 years prior to applying for a license hereunder or at any time thereafter shall be deemed unfit. The Delaware State Police shall conduct the security, fitness and background checks required under this rule or regulation. It shall be the obligation of the video lottery agent to notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, sports lottery operations employees and persons who own, directly or indirectly, 10% or more of such entity;

(17) A licensure requirement and enforcement procedure (taking no more than 90 days to complete, unless extenuating circumstances require a longer period in which case the Director and the State shall act with all deliberate speed to complete the process) for those persons or entities, including lottery machine manufacturers, who propose to contract with a video lottery agent or the State for the provision of goods or services including management services, which licensure requirements shall include the satisfaction of such security, fitness and background standards for officers, directors, key employees, video lottery operations employees, sports lottery operations employees, and persons who own directly or indirectly 10% or more of such entity, as the Director may deem necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulations and control of the lottery; it being specifically understood that any person convicted of any felony, a crime involving gambling or a crime of moral turpitude within 10 years prior to applying for a license hereunder or at any time thereafter shall be deemed unfit. The risk manager must be a bookmaker currently licensed to operate, and operating, sports books in the United States and the sports lottery technology system provider must be licensed to operate lotteries in the United States. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may, in the Director's discretion, license an applicant already licensed in such state without the necessity of a full application and background check. The Delaware State Police shall conduct the security, fitness and background checks required under this rule or regulation. It shall be the obligation of any licensed entity, including technology providers, to notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, sports lottery operations employees, and persons who own, directly or indirectly, 10% or more of such entity;".

Section 6. Amend §4805(a), Title 29 of the Delaware Code by deleting subsections (19)-(21) in their entirety and by substituting in lieu thereof new subsections to read:

"(19) Regulations and procedures for the accounting and reporting of the payments required under § 4815 of this title;

(20) The registration, kind, type, number and location of video lottery machines and sports lottery machines on the licensee's premises, subject to the Director's obligations set forth in § 4820(b) of this title;

(21) The on-site security arrangements for video lottery agents;".

Section 7. Amend §4805(a)(24), Title 29 of the Delaware Code by deleting the word "video" when it appears in subsection (a)(24)c.2.

Section 8. Amend §4805(a), Title 29 of the Delaware Code by adding thereto a new subsection to read:

"(26) Type and number of sports lottery games to be conducted, the price or prices for any sports lottery games, the rules for any sports lottery games, and the payout and manner of compensation to be paid to winners of sports lottery games;".

Section 9. Amend §4805(b)(2), Title 29 of the Delaware Code by deleting "operation of video lottery machines," and by substituting in lieu thereof "operations of video lottery agents".

Section 10. Amend §4815, Title 29 of the Delaware Code by striking subsection (b)(2) in its entirety and by substituting in lieu thereof a new subsection (b)(2) to read:

"(2) a. Proceeds returned to the State: Except as otherwise provided by this paragraph, of amounts remaining after all payments to players under paragraph (b)(1) of this section, there shall be returned to the State forty-three and one half percent. For licensees which conducted 40 or fewer (but at least 1) days of live harness horse races during 1992, should such licensees' video lottery proceeds, net of proceeds returned to players, at the end of any fiscal year fall below \$107,500,000, then, in the subsequent fiscal year, there shall be returned to the State forty-two and one half percent of amounts remaining after all payments to players under paragraph (b)(1) of this section.

b. The State shall also receive the funds on each credit slip that has not been presented for redemption within 1 year from the date the slip is issued.

c. Application of Funds Retained by the State Lottery. -- The funds retained by the State Lottery shall be applied as follows: first, to the administrative costs and expenses in respect of the video lottery including, but not limited to, administrative expenses including payroll and other employment costs attributable to the operation of the video lottery by the

State Lottery Office, law-enforcement and security expenses, including payroll and other employment costs of the State Lottery, the office of the Attorney General and the Delaware State Police, attributable to the operation by the State Lottery of a video lottery; second, \$1,000,000 or 1%, whichever is greater, of the proceeds returned to the State under subsection (b)(2), to the Division of Substance Abuse and Mental Health of the Department of Health and Social Services for funding programs for the treatment, education and assistance of compulsive gamblers and their families; third, costs of the Administrator of Racing and racing inspectors referenced in Chapters 100 and 101 of Title 3; fourth, the State's contribution to the Delaware Standardbred Breeder's Program and Delaware Certified Thoroughbred Program (DCTP); and fifth, the remainder shall be paid into the State's General Fund.

d. The State's contribution to the Delaware Standardbred Breeder's Program pursuant to this sub-section shall be \$750,000, and said amount is to be allocated equally as of January 1st of the calendar year among existing licensees which conduct live harness horse racing, but moneys shall not be expended for the program until such time as a plan has been approved pursuant to paragraph (b)(3)b.2. of this section. The State's contribution to the Delaware Certified Thoroughbred Program (DCTP) pursuant to this sub-section shall be \$250,000, and said amount shall be allocated as of January 1 of each calendar year to the existing licensee which conducts live thoroughbred horse racing, but moneys shall not be expended for the program until such time as a plan has been approved pursuant to paragraph (b)(3)b.1. of this section.”.

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Section 11. Amend §4815(b)(3)a., Title 29 of the Delaware Code by deleting subsection (b)(3)a. in its entirety and by substituting in lieu thereof a new subsection (b)(3)a. to read:

"a. Administrative and Vendor Costs. -- The State shall receive an amount equal to all costs of equipment (both video lottery machines and related equipment), whether leased or owned by the State, used or under the control of such agent, the cost of the central computer used to monitor the equipment used by the agent, and related vendor fees, and from these proceeds the State shall pay for these costs, provided that the video lottery agents shall pay all equipment costs consisting of video lottery machine license or proprietary fees."

Section 12. Amend §4815(b)(3)b.1., Title 29 of the Delaware Code by striking the words "10% of the proceeds remaining after payments made under paragraph (b)(1) of this section." and substituting in lieu thereof the words "9% of the proceeds remaining after payments made under paragraph (b)(1) of this section."

Section 13. Amend §4815(b)(3)b., Title 29 of the Delaware Code by deleting subsection 2. in its entirety, including subsections 2.A. – 2.D., and by substituting in lieu thereof a new subsection 2. to read:

"2. For video lottery agents licensed only to conduct harness racing meets under Chapter 100 of Title 3, such agents shall be paid and shall pay additional purses (and related administrative expenses of the horse racing association) to be applied under the direction of the Delaware Harness Racing Commission to purses for races conducted at such agent's racetrack in accordance with § 10048 of Title 3, in an amount calculated as follows: 11% of the proceeds remaining after payments made under paragraph (b)(1) of this section.

One million five hundred thousand dollars of those proceeds, which would otherwise fund purses, on an annual basis (\$750,000 to come from each licensee which conducts live harness horse racing) to be set aside for purses under paragraph (b)(3)b.2. of this section shall be used to fund a Delaware Standardbred Breeder's Program which shall be administered by a board comprised of 4 members from the Delaware Standardbred Owners Association, 1 member from the Standardbred Breeders and Owners of Delaware, Inc., 1 member from each video lottery agent licensed to conduct harness racing meets under Chapter 100 of Title 3, 1 member appointed by the Speaker of House of the General Assembly, 1 member appointed by the President Pro Tempore of the Senate of the General Assembly, the Secretary of Agriculture or the Secretary's designee, and the Secretary of Finance or the Secretary's designee. Members shall be chosen by the organizations they represent, and shall serve 4-year terms except that 4 of the initial board selected by the members of the Delaware Standardbred Owners Association shall serve an initial term of 2 years, and 4 years thereafter. The board created hereunder will present a plan for the administration of the Program to the General Assembly no later than May 15, 1999. This plan, and all subsequent amendments to the plan, shall be subject to the

written approval of the Secretary of Agriculture or the Secretary's designee, the Chairperson of the Delaware Harness Racing Commission or the Chairperson's designee, and the Secretary of Finance or the Secretary's designee. The board shall transmit minutes of all meetings and any proposed actions to the Delaware Harness Racing Commission within 10 days after each meeting. The board shall transmit an annual report detailing the allocation of proceeds from the fund and make available to the State Auditor or the State Auditor's representative such information as may be required to perform an annual audit of funds allocated from the Delaware Standardbred Breeder's Program. In addition to funding special purses for Delaware standardbred horses, the board created hereby may also use the funds dedicated to this Program for advertising, promotion, educational and administrative purposes. Funds dedicated to the Delaware Standardbred Breeder's Program shall not be subject to the 1-year payout requirement of § 10048 of Title 3."

Section 14. Amend §4815(b)(3), Title 29 of the Delaware Code by deleting subsection d. in its entirety and by substituting in lieu thereof a new subsection d. to read:

"d. Commissions to agents. -- The portion of such proceeds remaining after the payments required by paragraphs (b)(3)a., b. and c. of this section shall be paid to such video lottery agent as commission.

For video lottery agents licensed only to conduct horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, such agents shall pay \$250,000 of the proceeds received under this section to fund the video lottery agent's contribution to the Delaware Certified Thoroughbred Program (DCTP) annually. Said amount shall be allocated as of January 1 of each calendar year.

For video lottery agents licensed only to conduct harness racing meets under Chapter 100 of Title 3, each agent shall pay \$375,000 of the proceeds received under this section to fund the video lottery agent's contribution to the Delaware Standardbred Breeder's Program annually. Said amount shall be allocated as of January 1 of each calendar year."

Section 15. Amend §4815, Title 29 of the Delaware Code by adding thereto a new subsection to read:

"(c) All proceeds, net of proceeds returned to players, from the operation of the sports lottery shall be electronically transferred daily or weekly at the discretion of the Lottery Director into a designated State Lottery account by the agent, and transferred to the State Lottery Fund by the Lottery on a daily or weekly basis. Proceeds from the sports lottery, less the amounts returned to winning players and vendor fees, shall be returned to the State at a rate of 50% of the total win so experienced. The Director, by regulation shall adopt accounting procedures for the sports lottery in order to accommodate the differences between the sports lottery and the video lottery. Administrative costs and expenses incurred by the video lottery agent for the initiation of the sports lottery and the costs of the equipment shall be solely the responsibility of the video lottery agent. The provisions of § 4815(b) shall not apply to the proceeds from the operation of the sports lottery."

Section 16. Amend §4819, Title 29 of the Delaware Code by deleting subsection (a) in its entirety and by substituting in lieu thereof a new subsection (a) to read:

"(a) Video lottery machines and sports lottery machines shall only be located within the confines of an existing racetrack property in this State on which was conducted in 1993 either a horse racing meet pursuant to Title 3 or Title 28 or a harness horse racing meet pursuant to Title 3 and/or such immediately adjacent property or properties that are owned by, or immediately adjacent properties that may be acquired by, the video lottery licensee authorized to conduct such horse racing or harness racing; and provided further, that video lottery machines and sports lottery machines shall not be located in a hotel, motel or other overnight sleeping facility."

Section 17. Amend §4819(c), Title 29 of the Delaware Code by inserting the phrase "and sports lottery machines" after the phrase "Video lottery machines" in the first sentence.

Section 18. Amend §4819, Title 29 of the Delaware Code by adding thereto a new subsection (d) to read:

"(d) The State shall collect from the video lottery agents no later than February 15 of each year license fees totaling \$4,000,000. Each video lottery agent shall be liable for and shall pay to the State the portion of the \$4,000,000 that is in proportion to the amount of the video lottery net proceeds of that agent in the preceding fiscal year in comparison to the total video lottery net proceeds recovered by the State in the preceding fiscal year. The Director shall determine that proportion and

the amount due from each video lottery agent no later than July 30 of each year. The license fees collected pursuant to this subsection shall be contributed to the General Fund."

Section 19. Amend §4820, Title 29 of the Delaware Code by deleting subsection (a) in its entirety and by substituting in lieu thereof a new subsection (a) to read:

"(a) All video lottery machines and sports lottery machines shall be owned or leased by the State and shall be obtained from manufacturers licensed under §4805(a)(17) of this title. All video lottery machines and sports lottery machines shall be leased or purchased under the procedures set forth in Chapter 69 of this title. Any video lottery agent must file with the Director a copy of any current or proposed agreement or disclose any other relationship between the agent, its parents, subsidiaries, related entities, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment to the agent's facility of video lottery machines or sports lottery machines, or any other relationship with any vendor, manufacturer or other party which stands to benefit financially from the possession or use of video lottery machines or sports lottery machines by such agent. Failure to file such information shall constitute grounds for the revocation or suspension of a license. The lottery may own or lease video lottery machines pursuant to this subsection that require the payment of an additional license or proprietary fees and the number of such license or proprietary fee machines at any licensed video lottery agent may not exceed more than 5% of the total number of video lottery machines at the licensed racetrack property unless the Director finds that an additional number of such machines are necessary to increase revenues, will not produce reductions in the overall net proceeds from the video lottery, will protect the public welfare, and will ensure the security of the video lottery."

Section 20. Amend §4820, Title 29 of the Delaware Code by deleting subsections (c)-(f) in their entirety and by substituting in lieu thereof new subsections (c)-(g) to read:

"(c) Upon submission by a video lottery agent of a proposed plan for the lease or purchase of sports lottery machines in accordance with procedures to be established by the Director, the Lottery Director shall lease or purchase the number, type and kind of sports lottery machines necessary for the efficient and economical operation of the Lottery, or the convenience of the players, and in accordance with the plan of the licensee, provided that the Director may recommend the amendment of such plan where the Director finds that such amendments are necessary to increase revenues, protect the public welfare or ensure the security of the video lottery. The Director's lease or purchase of sports lottery machines under this subsection shall be pursuant to the procedures used for procurement under Chapter 69 of this title.

(d) Each video lottery agent shall be responsible for the security and safekeeping of the video lottery machines and sports lottery machines of which it has physical custody.

(e) The Director shall contract with an independent laboratory to test video lottery machines, sports lottery machines and related equipment on a periodic basis to ensure that the machines and equipment comply with the requirements of this chapter and any other applicable standards and regulations. The manufacturer, vendor or lessor of such machines and equipment shall pay all costs associated with such testing.

(f) Each video lottery agent shall hold the Director and this State harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the video lottery system; specifically excluding, however, any claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.

(g) Each video lottery agent shall provide access to all records of the licensee and the physical premises of the business or businesses where the agent's lottery activities occur for the purpose of monitoring or inspecting the agent's activities and the lottery games, machines and associated equipment. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Freedom of Information Act, §§ 10001-10005 of this title."

Section 21. This Act shall become effective May 1, 2009 or 14 days after it becomes law, whichever is later.

Section 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved May 14, 2009