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Marshall, Plant, Schooley, B. Short, Viola; Sens. Henry,
Katz, Sokola

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

FOR

HOUSE BILL NO. 100

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):

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

3 "§4825. Sports lottery.

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

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

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

13 §4826. Feasibility of Table Gaming and Additional Venues.

14 (a) There is created the Video and Sports Lottery Study Commission, which shall be composed of nine persons.
15 The President Pro Tempore of the Senate shall appoint three members of the Senate, at least one of whom shall be a
16 member of the minority party, to serve on the Video and Sports Lottery Study Commission. The Speaker of the House of
17 Representatives shall appoint three members of the House of Representatives, at least one of whom shall be a member of
18 the minority party, to serve on the Video and Sports Lottery Study Commission. The Secretary of Finance and Director of
19 the Delaware Economic Development Office shall serve as members of the Video and Sports Lottery Study Commission,

20 and the Governor shall appoint one other person to serve on the Video and Sports Lottery Study Commission. The
21 Governor shall appoint a Chairperson of the Video and Sports Lottery Study Commission from among its members. The
22 Video and Sports Lottery Study Commission may engage and retain such consultants as it deems necessary. Appointees to
23 the Video and Sports Lottery Study Commission shall serve until April 15, 2010, at which time the Video and Sports
24 Lottery Study Commission shall be terminated, if not reconstituted by further act of the General Assembly.

25 (b) Not later than December 1, 2009, the Video and Sports Lottery Study Commission shall report to the General
26 Assembly on the economic, regulatory, and operational issues incident to the authorization of table gaming at the properties
27 of licensed video lottery agents. The report should include a review of the effects of table gaming on the state's revenue,
28 the revenues of existing video lottery agents, employment, and the surrounding communities and businesses. The report
29 should also include a timeline by which any regulatory and operational issues could be addressed if further legislation were
30 passed.

31 (c) Not later than April 1, 2010, the Video and Sports Lottery Study Commission shall report to the General
32 Assembly on the effects on state revenues, the revenues of existing video lottery agents, the horse racing industry,
33 employment, and the surrounding communities and businesses if the State were to grant:

34 (1) Additional video lottery licenses to any person, including, but not limited to, a person who does not
35 operate a racetrack property in this State conducting horse racing meets pursuant to Title 3 or Title 28 or harness
36 racing meets pursuant to Title 3; and

37 (2) Additional licenses to operate only a sports lottery to any person, including, but not limited to, a
38 person who does not operate a racetrack property in this State conducting horse racing meets pursuant to Title 3 or
39 Title 28 or harness racing meets pursuant to Title 3."

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

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

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

47 (m) "Sports lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play
48 a sports lottery game. A machine shall be considered a sports lottery machine notwithstanding the use of an electronic
49 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 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 deleting subsection (b)(2) in its entirety and by substituting in lieu thereof a new subsection (b)(2) to read:

109 "(2) Proceeds returned to the State. -- Of amounts remaining after all payments to players under paragraph (1) of
110 this subsection, there shall be returned to the State forty-five percent. The State shall also receive the funds on each credit
111 slip that has not been presented for redemption within 1 year from the date the slip is issued.

112 The funds retained by the State Lottery shall be applied as follows: first, to the administrative costs and expenses
113 in respect of the video lottery including, but not limited to, administrative expenses including payroll and other employment
114 costs attributable to the operation of the video lottery by the State Lottery Office, law-enforcement and security expenses,
115 including payroll and other employment costs of the State Lottery, the office of the Attorney General and the Delaware
116 State Police, attributable to the operation by the State Lottery of a video lottery; second, \$1,000,000 or 1%, whichever is
117 greater, of the proceeds returned to the State under subsection (b)(2), to the Division of Substance Abuse and Mental Health
118 of the Department of Health and Social Services for funding programs for the treatment, education and assistance of
119 compulsive gamblers and their families; third, costs of the Administrator of Racing and racing inspectors referenced in
120 Chapters 100 and 101 of Title 3; fourth, the State's contribution to the Delaware Standardbred Breeder's Program and
121 Delaware Certified Thoroughbred Program (DCTP); and fifth, the remainder shall be paid into the State's General Fund.

122 The State's contribution to the Delaware Standardbred Breeder's Program pursuant to this sub-section shall be
123 \$750,000, and said amount is to be allocated equally as of January 1st of the calendar year among existing licensees which
124 conduct live harness horse racing, but moneys shall not be expended for the program until such time as a plan has been
125 approved pursuant to paragraph (b)(3)b.2. of this section. The State's contribution to the Delaware Certified Thoroughbred
126 Program (DCTP) pursuant to this sub-section shall be \$250,000, and said amount shall be allocated as of January 1 of each
127 calendar year to the existing licensee which conducts live thoroughbred horse racing, but moneys shall not be expended for
128 the program until such time as a plan has been approved pursuant to paragraph (b)(3)b.1. of this section."

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

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

136 Section 12. Amend §4815(b)(3)b.1., Title 29 of the Delaware Code by striking the words "10% of the proceeds
137 remaining after payments made under paragraph (b)(1) of this section." and substituting in lieu thereof the words "9% of
138 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 \$4,500,000. Each video lottery agent shall be liable for and shall pay to the State the portion of the \$4,500,000 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 sub-section 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.

SYNOPSIS

This bill requires the Lottery Director to use his or her authority to reestablish a sports lottery, which will enhance the Delaware Lottery, protect Delaware employment, and provide additional revenues for the State. The sports lottery excludes collegiate sporting events that involve a Delaware college or university. Persons under the age of 21 will not be allowed to participate in the sports lottery.

In reestablishing the sports lottery, the bill would take advantage of an exemption granted to the State of Delaware under federal law, namely the Professional and Amateur Sports Protection Act, which allows the states of Delaware, Nevada, Oregon, and Montana to engage in sports betting.

This bill would authorize the conduct of a sports lottery only at the three racinos presently operating. Proceeds from the conduct of a sports lottery at the racinos would be divided equally between the racinos and the State. The bill imposes a collective annual license fee of \$4,500,000, which is to be divided among the three racinos in proportion to each property's percentage of the State's total video lottery net proceeds.

The bill also decreases the commission currently paid to the three racinos, thereby increasing the share of video lottery proceeds received by the State. Under this bill, the State's share of expected revenue would be increased approximately 8%, from 37% to 45%, the commission paid to the three racinos would be decreased by approximately 7%, and the share of proceeds to be distributed to the purse accounts for thoroughbred and standardbred racing would be decreased by approximately 1%.

The bill also creates a Video and Sports Lottery Study Commission, which shall undertake two studies. First, on or before December 1, 2009, the Commission shall study and report back to the General Assembly on the legislative, regulatory and operational aspects of table gaming in Delaware, including the timeline for implementation of table gaming should the General Assembly seek to do so. Second, on or before April 1, 2010, the Commission shall study whether the State should expand the number of lottery venues, including both additional casinos and additional venues for the conduct of only a sports lottery. The Commission shall be composed of nine members, including three members of the House of Representatives appointed by the Speaker of the House of Representatives, three members of the Senate appointed by the President Pro Tempore, one appointee of the Governor, the Secretary of Finance and the Director of the Delaware Economic Development Office. At least one of the appointees of each of the President Pro Tempore of the Senate and Speaker of the House of Representatives shall be a member of the minority party.