



SPONSOR: Rep. D.E. Williams & Sen. Henry

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 146

AN ACT TO AMEND TITLES 3 AND 29 OF THE DELAWARE CODE RELATING TO THE LICENSING OF VIDEO LOTTERY CASINOS AND HARNESS RACING DAYS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §4801(b), Title 29 of the Delaware Code by striking the existing paragraph (2) thereof in its
2 entirety and substituting a new paragraph "(2)" in lieu thereof as follows:

3 "(2) Restrict the location of such lottery to locations where wagering is or may be permitted as authorized
4 in this Chapter."

5 Section 2. Amend §4803, Title 29 of the Delaware Code by adding the following as subsection (i) and re-lettering
6 the current subsection (i) and subsequent subsections accordingly:

7 "(i) "Investor," as used in this subchapter, shall mean any person who owns, directly or
8 or indirectly, all or a portion of an applicant, except insofar as the applicant is publicly traded on a national securities
9 exchange, in which case a person is an "investor" only if he, she or it holds or has the right to acquire 5% or more of the
10 applicant's equity securities."

11 Section 3. Amend §4805(b)(13), Title 29 of the Delaware Code by striking the first sentence thereof and
12 substituting in lieu thereof the following:

13 "License as video lottery agents each person corporation or association which is either selected as a video lottery
14 casino pursuant to section 4819(a)(2) of this Title, or which, in 1993, held either a horse racing meet pursuant to Title 3 or
15 Title 28 or a harness horse racing meet pursuant to Title 3, provided that such person, corporation or association satisfies
16 such fitness and background standards as the Director may promulgate pursuant to subsection (a)(16) of this section."

17 Section 4. Amend §4819(a), Title 29 of the Delaware Code by designating the entirety of the existing subsection
18 as paragraph "(1)" thereof and by inserting a new paragraph "(2)" thereto as follows:

19 "(2) A. Notwithstanding the provisions of paragraph (1), video lottery machines, sports lottery machines and
20 table game equipment may be located within the confines of two video lottery casinos, one of which shall be located within
21 New Castle County and one of which shall be located within Sussex County, the precise location of such video lottery
22 casinos to be determined through a competitive process by the Lottery Economic Development Committee in accordance

with this section. Video lottery machines, sports lottery machines, and table game equipment shall not be located in a hotel, motel, or other overnight sleeping facility.

B. A Lottery Economic Development Committee (the "Committee") is hereby established for the sole purpose of selecting the locations and awarding the licenses for the operation of video lottery casinos. The Committee shall be comprised of nine members. The minimum qualifications for appointment to the Committee shall be 10 years' experience in business, government, or education in the areas of finance, accounting, or banking. Three members, no more than two of whom may be from the same political party, shall be appointed by the Governor. Three members, no more than two of whom may be from the same political party, shall be appointed by the President Pro Tempore of the Senate. Three members, no more than two of whom may be from the same political party, shall be appointed by the Speaker of the House of Representatives. The members of the Committee shall be appointed within 30 days of the enactment of this paragraph. The Chairperson shall be selected by the Governor from among the Committee's members.

C. The Committee shall select, in separate processes, one location in New Castle County and one location in Sussex County for a video lottery casino from applications for licensure subject to, and in accordance with, the provisions of this section. The Committee shall make its form of application available no later than 30 days after enactment of this Act, and applications must be submitted to the Committee at the location and date specified by the Chairperson, but no sooner than 90 days and no later than 120 after applications are made available. All applications shall be considered by the Committee and the video lottery casino site shall be preliminarily designated by majority vote of the Committee from among applications meeting the minimum qualifications within 60 days after the deadline for receipt of applications. If no applicant receives a majority vote of the Committee, then the Committee will re-vote until such time as an application receives a majority vote. The Committee shall determine its procedures.

D. An application shall be in the form and manner required by the Committee, but which shall include, without limitation, the following:

i. General business information

- a. Name and form of business of the applicant;
- b. Name, address, and photograph of the following:
 1. Owners;
 2. Directors (if a corporation, LLC, or other entity with directors or managing members); and
 3. Key employees; and
- c. Current Delaware business license

53 ii. Financial information:

54 a. Such personal and financial history information for owner and investors, to be
55 determined by the Committee, as is necessary for the Committee to review the financial fitness
56 of each applicant and for the Division of Gaming Enforcement to review the background of each
57 applicant to at least the standards of a key employee;

58 b. A business plan for the project, in sufficient detail, including the timing of all
59 estimates, which would allow such calculations as net present value of the income stream, and
60 for further evaluation based on the criteria of subparagraph F, and which shall include, without
61 limitation, the following:

62 1. Lottery Revenue – amount played / amount won /net proceeds, including the
63 projection of the impact of the proposed new facility on existing video lottery casinos;

64 2. Number of employees and gross wages of employees for those directly employed in
65 the lottery revenue business;

66 3. Number of employees and gross wages of employees for those employed in non-
67 lottery revenue business;

68 4. Gross amount to be paid by the applicant to contractors and others to design,
69 construct, furnish, and otherwise prepare for operation, the Casino and related structures and
70 businesses; and.

71 5. Such other information as the Committee deems necessary for evaluation to meet the
72 criteria, as further remunerated below, for the issuance of a video lottery casino license. The Division of Gaming
73 Enforcement shall conduct a background review of each applicant and each of the applicant's identified owners, investors,
74 and proposed actual or potential managerial employees to the standard of a key employee, and the results of that review
75 shall be made available to the Committee but shall otherwise remain confidential pursuant to section 4830 of this Title.

76 E. The Committee shall also develop and implement minimum qualifications for applicants, which
77 qualifications shall include but not be limited to the ownership of, a leasehold for, or right to acquire such interests in, the
78 proposed property location, financing commitments for the development of the proposed property location, and a lack of
79 insuperable barriers to eventual approval of the development plan by government authorities. The Committee shall not
80 further consider those applicants that it determines by majority vote fail to meet the minimum qualifications.

81 F. Applicants meeting the minimum qualifications of the Committee shall be evaluated for the potential

award of a license by the Committee, in separate proceedings for New Castle County and Sussex County. In considering the application, the committee shall, at all times, take into account the reasonableness of all estimates and of the financial viability of the applicant to meet their business plan objectives. The committee may, at its discretion, require additional data from the applicants to validate underlying economic assumptions, and may, at its discretion, recalculate applicant's projections using equal underlying assumptions as determined by the committee. The comparison of the applicant's business plans and the economic benefit to the State shall be based on a generally accepted financial analysis methodologies such as net present value. The selection of the licensee shall be based on the following criteria:

1. The State share of video lottery net proceeds, net of projected decreases in the State share from current video lottery casinos generated by the new video lottery casino;
2. The estimated personal income tax revenue to the State from wages earned by temporary, permanent, full-time, and part-time employees of the video lottery casino and its related businesses;
3. The financial and economic cost to the State for infrastructure and other expenditures to facilitate the design, construction, and operation of the video lottery casino and related businesses;
4. The financial and economic impact on the communities surrounding the proposed project; and
5. The percentage of project expenditures and ongoing expenditures including salaries and wages going to Delaware businesses and residents.

G. The applicant receiving a majority vote shall be awarded a temporary license as a video lottery casino, and that temporary license shall authorize and entitle the recipient to take possession of fifty percent of the table game equipment, sports lottery machines, and video lottery machines as if a video lottery agent under section 4833 of this Title, to make internal control submissions required by the Office, and to exercise such other rights and obligations of a video lottery agent only as expressly permitted by the Office, but which shall not authorize or entitle the temporary licensee to exercise the complete rights and obligations of a video lottery agent until a permanent license is awarded. Operation of the video lottery casino under the temporary license must begin within 12 months from the issuance of the temporary license. The Committee may, at its discretion, upon the request of the applicant, extend this period by up to 3 months with a corresponding decrease in the number of table game equipment, sports lottery machines, and video lottery machines authorized under the temporary license of 5 percent per month of extension. The term of this temporary license shall not exceed 36 months. The applicant shall apply to the Delaware Lottery Office for a permanent license no later than 60 days prior to the expiration of the temporary license. The Delaware Lottery Office shall request of the Committee a determination of whether to award the permanent license to operate as a video lottery casino, such decision to be based on the applicants'

substantial compliance with the terms of the application and the completion of the permanent video lottery casino facility. Should the Committee revoke its prior selection based on non-compliance with the applicants business plan, the Committee shall initiate a new selection process in accordance with the terms of this section, such process to begin with applications to be filed no sooner than 60 days and no later than 90 days after a decision not to grant a permanent license.

H. The decisions of the Committee shall be final and unappealable."

Section 5. Amend §4819(b), Title 29 of the Delaware Code by striking the language "were lawful under any county or municipal zoning ordinance as of January 1, 1993," and substituting the language "are lawful under any county or municipal zoning ordinance" in lieu thereof.

Section 6. Amend §4820, Title 29 of the Delaware Code by inserting the words "or video lottery casino" after the words "racetrack property" and after "at each racetrack" wherever the same appear subsections (a) and (b) of said section.

Section 7. Amend §4822, Title 29 of the Delaware Code by inserting the words "or video lottery casino" after the words "racetrack property" where it appears.

Section 8. Amend §4826, Title 29 of the Delaware Code by deleting that section in its entirety.

Section 9. Amend §10048, Title 3 of the Delaware Code by striking the number "80" when it appears in subparagraph (1)a.1. and substituting in lieu thereof "120," striking the number "60" when it appears in subparagraph (1)a.2. and substituting in lieu thereof "100," and adding a new subparagraph "3." to paragraph a. of subsection (1) thereof as follows:

"3. A licensee that was not in existence, or did not conduct any live harness racing, during 1992 shall, at a minimum, conduct live harness horse races on at least: (i) 35 days for the first 3 years it is licensed by the Director of the State Lottery Office to maintain video lottery machines within the confines of a racetrack licensed under this chapter; and (ii) for each year thereafter, for the average number of days that live harness racing was conducted by all licensees licensed by the Director of the State Lottery Office to maintain video lottery machines within the confines of a racetrack licensed under this chapter during the preceding year; provided, however, that licensees who conducted live harness horse races during 1992 shall be entitled, upon written notice to the Delaware Harness Racing Commission, to reduce the number of minimum days of live harness racing required under subparagraph (1)a.1 and (1)a.2. hereof by the number of concurrent racing dates said licensee has with such newly-built racetrack."

Section 10. Amend §10048, Title 3 of the Delaware Code by striking sub-paragraph (1)b.3. in its entirety.

Section 11. Amend §10048(i)b.1, by adding the word "and" to the end.

142 Section 12. Amend §10048(1)b.2 by striking the word “and”.

143 Section 13. It is the intent of the General Assembly that the video lottery casinos authorized pursuant to this Act
144 shall be subject to a substantially similar license fee currently paid by existing video lottery agents under sections 4815 and
145 4819 of this Title, subject to the enactment of legislation authorizing the imposition of said fees and contributions. It is also
146 the intent of the General Assembly that any video lottery casino that does not operate a horse or harness racing track, and
147 therefore incurs none of the attendant costs, shall be subject to such additional fees that would create a level playing field
148 for competition with video lottery agents who do have such costs, subject to the enactment of legislation authorizing the
149 imposition of such fees. It is the intent of the General Assembly that the Video Lottery Casinos shall, upon the passage of
150 appropriate legislation, be subjected to one-time license fees for the temporary and permanent license. The Secretary of
151 Finance is directed to submit to the General Assembly, within 120 days from enactment of this section, a proposal for the
152 amendment of this chapter to subject the video lottery casinos to such license fees and contributions.

153 Section 14. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the
154 invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision
155 or application; and, to that end, the provisions of this Act are declared to be severable.

SYNOPSIS

This Act seeks to create jobs and new sources of revenue for the State by authorizing the addition of two new video lottery agents, one in Sussex County and one in New Castle County, through an application process conducted by a Lottery Economic Development Committee. This Act creates a nine-member, politically balanced Committee with financial, accounting, or banking experience to select the sites and licensees in a fair and open process. This Act also increases the number of required racing days to reflect the current amount of racing, and prevents the addition of video lottery agents from triggering a reduction in the minimum number of days that existing harness tracks must offer harness racing. The Act also expresses the intent of the General Assembly that the new video lottery casinos will be subject to a one-time license fee and ongoing license fees, as well as such fees as are necessary to create a level playing field for competition with video lottery agents who operate horse racing or harness racing, and directs the Department of Finance to prepare legislation implementing that intent.