

FIRST REGULAR SESSION

SENATE BILL NO. 475

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR JACOB.

Read 1st time February 11, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1662S.011

AN ACT

To amend chapter 313, RSMo, by adding thereto eight new sections relating to funding of higher education with video gaming revenue, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 313, RSMo, is amended by adding thereto eight new sections, to be known as sections 313.400, 313.403, 313.406, 313.409, 313.412, 313.415, 313.418 and 313.421, to read as follows:

313.400. As used in sections 313.400 to 313.421, the following words and terms mean:

- (1) "Commission", the Missouri lottery commission;
- (2) "Credit" or "game credit", an amount registered on a video gaming machine in exchange for coins or currency, such amount to be registered in units where one unit equals a minimum of twenty-five cents or a greater value to be determined by the commission;
- (3) "Director", the director of the Missouri lottery commission;
- (4) "Gray area device", any video device, not authorized by the commission and not connected to the state video gaming central computer communication system, that is available to the public for play and capable of simulating a game played on a licensed video gaming machine;
- (5) "Licensed premises", any establishment licensed for the sale and on premise consumption of alcoholic beverages regulated by chapter 311 or 312, RSMo, and approved by the commission, and truck stops that have maintained at least two hundred fifty thousand gallons of gross retail sales of petroleum products for each of

the two years prior to application for license, or such other places as may be approved by the commission;

(6) "Net machine income", the amount of money placed by players into a video gaming machine less amounts paid out to winning players as prizes;

(7) "Service employee", an employee of a video gaming machine distributor or video gaming machine operator who is certified by the commission to service, maintain and repair video gaming machines;

(8) "Video display", the visual presentation of a video game shown on the screen of a video gaming machine;

(9) "Video game", any electronically simulated games of chance, including but not limited to video poker, keno or blackjack, displayed and played on a video gaming machine;

(10) "Video gaming machine" or "machine", an electronic video game machine which accepts coins or currency in exchange for game credit, and is available to play or simulate the play of a video game using a video display and microprocessors and in which the player may receive game credit for winning plays, that may be redeemed for a ticket voucher redeemable for cash prizes. The term "video gaming machine" does not include a machine that directly dispenses coins, currency or tokens;

(11) "Video gaming machine associated equipment", any proprietary device, machine or part used in the manufacture or maintenance of a video gaming machine;

(12) "Video gaming machine distributor", any individual, firm, corporation or other legal entity licensed by the commission, who, prior to being licensed, for at least two years did distribute or sell video gaming machines or video gaming machine associated equipment in this state;

(13) "Video gaming machine manufacturer", any individual, firm, corporation or other legal entity licensed by the commission to assemble or produce video gaming machines or video gaming machine associated equipment for sale or use in this state;

(14) "Video gaming machine operator", any individual, firm or corporation licensed by the commission to own and physically place video gaming machines or video gaming machine associated equipment in lottery licensed retail locations located anywhere in this state. The commission shall limit licensing video gaming machine operators to residents of this state or companies who, for at least two years prior to application, engaged in the business of operating coin-operated amusement machines in this state. Nothing in this section shall prohibit the commission from placing a video gaming machine at a licensed premise if such licensed premise demonstrates to the satisfaction of the commission that it was unable to secure video gaming machines from a licensed video gaming machine operator. The commission shall not

directly place video gaming machines without providing for the servicing and maintenance of such machines. In such case only, the net machine income that is shared with the premise location shall not exceed the percentage received by a premise location which has video gaming machines placed by a licensed video gaming machine operator.

313.403. 1. The commission shall establish a statewide video gaming machine network in accordance with the provisions of sections 313.400 to 313.421.

2. The commission shall issue rules and regulations concerning the operation of a statewide video gaming machine network. The rules and regulations shall include, but shall not be limited to, the following:

(1) The type of video gaming machines and the type of video gaming machine associated equipment to be used to conduct video games as defined in sections 313.400 to 313.421;

(2) The type of video games offered for play as defined in section 313.400;

(3) The amount of game credits wagered for a single game play, such amount not to exceed the number of credits that equals two dollars;

(4) The award of game credits for winning plays, as determined by the commission;

(5) The manner of payment of cash prizes to the holders of winning video gaming ticket vouchers;

(6) The normal location premise license shall provide for the initial installation of up to a maximum total of two machines. The commission may after one year authorize up to two additional machines per year at a rate of one additional machine per five thousand square feet of licensed premises and not to exceed a total of fifteen machines at any one premise location. To qualify for more than two machines, all machines must be generating, at a minimum, net machine income equal to the average for all machines in the state of Missouri;

(7) The payback value of one credit wagered, determined over time, shall be a minimum of sixty percent but shall not exceed a maximum of eighty percent.

3. The commission, in order to assure integrity of its accounting system, shall operate the video gaming network through a central computer communications system, which shall be dedicated and used solely for the operation of the video gaming network. The central computer communications system shall be capable of auditing the operation, financial data and program information of the video gaming network. The commission may enter into a contract with any private entity for central computer communications system services. All equipment or devices required for operation of the central computer communications system shall be included in any

contract made for the purpose of providing or operating such system. Nothing in this section shall be construed to require the commission to use constant on-line communications when the central computer communications system used is a dial-up system.

4. The central computer communications system used by the commission shall incorporate electronic fund transfer procedures to facilitate the collection of revenue, be capable of disabling any machine from play which does not comply with the provisions of sections 313.400 to 313.421, and be capable of communicating with all video gaming machines approved by the commission. The commission shall provide licensed manufacturers with the protocol documentation and the audit information and controls necessary to enable the manufacturers' machines to communicate with the commission's central computer communication system. The central computer communication system shall not limit participation to only one manufacturer of video gaming machines or video gaming machine associated equipment by either the cost of implementing necessary program modifications to communicate or the inability to communicate with the system.

5. The director shall remove from play and confiscate any machine that does not comply with the requirements of sections 313.400 to 313.421. Any machine that the director determines has been modified or the design of which has been modified without the consent of the director shall be removed from play and confiscated by the director.

6. All revenues received by the commission pursuant to sections 313.400 to 313.421 shall be transferred by the commission to the director of revenue for deposit in the state treasury to the credit of the "Higher Education Trust Fund", which is hereby created. The state treasurer shall administer such fund, and, except as otherwise provided in this subsection, the moneys in the fund and any interest which accrues to the fund shall be used solely, upon appropriation, for the higher education purposes described in subsection 7 of this section. The state treasurer shall annually transfer from the higher education trust fund to the lottery proceeds fund an amount equal to the reduction in the lottery proceeds fund from the reduction, if any, of sales of Missouri state lottery tickets sold pursuant to sections 313.200 to 313.350, in the prior fiscal year, but in no event shall such transfer exceed the moneys transferred to the higher education trust fund during such prior fiscal year. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the higher education trust fund at the end of any biennium shall not be transferred to the credit of the general revenue fund.

7. In each fiscal year after all transfers required by subsection 6 of this section,

the remaining funds shall be appropriated as follows:

(1) Not less than ten percent for maintenance, repair and major renovation of buildings constructed with state funds on public four-year institutions of higher education in this state, except that such appropriation shall not exceed one and one-half percent of the replacement cost of all buildings described in this subdivision. The coordinating board for higher education shall calculate the replacement cost for all such buildings on each public four-year institution of higher education in this state and total such calculations. Any appropriation made pursuant to this subdivision shall be made to the coordinating board for higher education, and such board shall distribute such funds to each public four-year institution of higher education in this state on a pro rata basis based on the ratio that the total calculated replacement cost for that institution bears to the total calculated replacement cost for all such institutions;

(2) Not less than five percent to community colleges in this state for maintenance and repair of community college facilities, except that such appropriation shall not exceed one and one-half percent of the replacement cost of all facilities described in this subdivision. The coordinating board for higher education shall calculate the replacement cost for all such buildings on each such community college in this state and total such calculations. Any appropriation made pursuant to this subdivision shall be made to the coordinating board for higher education, and such board shall distribute such funds to each community college in this state on a pro rata basis based on the ratio that the total calculated replacement cost for that institution bears to the total calculated replacement cost for all such institutions;

(3) Not less than five percent for direct appropriation or as a revenue stream to fund bonds to be issued for major renovations and new capital improvement projects at public four-year institutions of higher education and at community colleges in this state;

(4) Not less than five percent to fund the student grant program prescribed in sections 173.200 to 173.230, RSMo, except that such appropriation shall not exceed the amount necessary to fully fund such program so that all qualified students may receive the amount prescribed by section 173.220, RSMo;

(5) Not less than five percent for the following: any state scholarship programs, other than the student grant program described in subdivision (4) of this subsection, any higher education research programs, endowed chairs, any other higher education purposes as determined appropriate by the general assembly and governor, and any administrative costs incurred by the department of higher education pursuant to sections 313.400 to 313.421.

No moneys in the higher education trust fund shall be used for the operating budget of any public institution of higher education in this state.

8. Public four-year institutions of higher education and community colleges may assign, transfer, pledge, and grant a security interest in funds to be distributed by the coordinating board for higher education pursuant to this section, to secure the payment of notes, bonds or other evidences of indebtedness issued to fund the purposes for which such disbursements will be made. Such notes, bonds or other evidences of indebtedness may be issued by a state educational institution pursuant to chapter 174, RSMo, or otherwise, by the health and educational facilities authority of the state of Missouri as authorized by the provisions of chapter 360, RSMo, by a not-for-profit corporation as authorized by the provisions of section 177.088, RSMo, or by any other entity authorized to issue bonds for such purposes under the constitution and laws of the state of Missouri. Disbursements made by the coordinating board for higher education pursuant to the provisions of this section shall be treated as revenues arising from the operation of a project for purposes of sections 176.020 to 176.080, RSMo. Agreements may be entered into by the coordinating board for higher education, public four-year institutions of higher education, or community colleges, as the case may be, pertaining to such disbursement of funds pursuant to the section, with such terms as may be necessary and desirable, in the judgment of the governing body of such entities. Notwithstanding any other provision of law to the contrary, such agreements shall be authorized by a resolution adopted by the governing body of such entity, and no other proceedings or approvals shall be required to authorize such agreements.

9. No state or local sales tax prescribed by chapter 144, RSMo, or other provisions of law shall be imposed upon a game or games played on a video gaming machine or on any prize winnings from a game or games played on a video gaming machine. No state income tax or local earnings tax shall be imposed upon any video game prizes which accumulate to an amount of less than six hundred dollars during a prize winner's tax year.

10. No rule or portion of a rule promulgated pursuant to the authority of sections 313.400 to 313.421 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

313.406. 1. The director shall issue, suspend, revoke and renew licenses for video gaming machine manufacturers, distributors and operators, and video gaming machines and video game premise locations pursuant to rules and regulations adopted by the commission. Such rules and regulations shall specify that no individual, firm,

corporation or other legal entity shall apply for or be granted more than one type of license established pursuant to this section, except that the holder of a video game premise location license shall obtain a license for each individual video gaming machine placed in operation, which license shall be in addition to their video game premiere location license. Fees for such licenses shall be as follows:

(1) For video gaming machine manufacturers, a nonrefundable application fee of twenty-five thousand dollars for the first year of licensure for investigation and a fee of five thousand dollars for each year of licensure thereafter. The applicant shall be responsible for the total cost of the investigation. If the cost of the investigation exceeds the total amount of fees filed by the applicant, the commission may assess additional fees it deems appropriate;

(2) For video gaming machine distributors, a nonrefundable application fee of fifteen thousand dollars for the first year of licensure for investigation and a fee of five thousand dollars for each year of licensure thereafter. The applicant shall be responsible for the total cost of the investigation. If the cost of the investigation exceeds the total amount of fees filed by the applicant, the commission may assess additional fees it deems appropriate;

(3) For video gaming machine operators, a nonrefundable application fee of fifteen thousand dollars for the first year of licensure for investigation and a fee of two thousand five hundred dollars for each year of licensure thereafter. The applicant shall be responsible for the total cost of the investigation. If the cost of the investigation exceeds the total amount of fees filed by the applicant, the commission may assess additional fees it deems appropriate; and

(4) For each licensed premise, an application fee of one thousand dollars for the first year of licensure and five hundred dollars for each year thereafter and a license fee for video gaming machines not to exceed two hundred fifty dollars per year for each of the video gaming machines per location.

The license fees prescribed in this section shall pay for the administrative expenses of the commission in administering sections 313.400 to 313.421. Licenses issued pursuant to this section shall be the only licenses required by the commission or any political subdivision of this state to manufacture, distribute, place and operate video gaming machines and video gaming machine associated equipment. Licensing rules and regulations may include requirements relating to the financial responsibility of the licensee, the accessibility of the licensee's place of business or activity to the public, the volume of expected sales, the security and efficient operation of video gaming machines and any other matters necessary to protect the public interest and trust in video gaming. Video gaming licensees shall be selected without regard to

political affiliation.

2. Any individual, firm, corporation or other legal entity seeking to obtain a license pursuant to rules and regulations adopted by the commission shall apply to the director for such license on forms provided by the director. No license shall be granted to any person who has been convicted of a felony. The commission shall refuse to issue a license to any applicant who has been convicted of a gambling related offense.

3. The director shall notify an applicant who is found, for any reason, not to be qualified for licensure, of the specific reasons therefor which constitute the basis for the finding. The commission may contract with other state and federal agencies to investigate applicants for licensure pursuant to sections 313.400 to 313.421.

4. No license issued pursuant to this section shall be assignable or transferable without the consent of the commission and such consent shall only be considered after the potential transferee has provided for and met all requirements of the existing licensee.

5. A license issued pursuant to this section shall be revoked upon a finding that the licensee has been convicted of a felony.

6. A license may be suspended, revoked, or not renewed for any of the following causes:

- (1) The licensee has been convicted of a gambling related offense;
- (2) The licensee has knowingly provided false or misleading information to the commission or its employees;
- (3) Failure to notify the commission about a change of business location;
- (4) A delinquency in remitting money owed to the commission; or
- (5) Any violation of any rule or regulation adopted by the commission.

313.409. 1. Any individual, firm, corporation or other legal entity applying for a license to manufacture or assemble video gaming machines or video gaming machine associated equipment for sale or use in this state shall submit to the director two copies of machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source codes and hexadecimal dumps, with the compiled computer program presented in base ten format. The director may require the applicant to submit for examination, testing and analysis, two working models of the video gaming machine and video gaming machine associated equipment, which such applicant is proposing to offer for sale or use in this state. The director may completely disassemble machines or equipment submitted for testing purposes and the applicant waives any claim against the commission or its staff for any damage to or destruction of such machine. The director may employ an independent technical

expert to assist in testing a machine or machines submitted pursuant to this section to certify that such machine or machines are in technical compliance with the provisions of sections 313.400 to 313.421. The applicant shall pay any costs incurred by the commission for testing of the machine and associated equipment.

2. The director shall provide the applicant with a written report of testing results for machines and equipment submitted under this section. In the event the machines or equipment fail to meet testing standards, the commission shall inform the applicant of the necessary modifications required to meet commission testing standards. No applicant shall be issued a license as a manufacturer of video gaming machines or associated equipment until such applicant's machines and associated equipment have satisfactorily completed the testing requirements of the commission.

3. Every licensed manufacturer of video gaming machines and video gaming associated equipment shall submit a training program for the service and maintenance of such machines and equipment for approval by the commission. The training program shall include an outline of the training curriculum, a list of instructors and their qualifications, a copy of the instructional materials and the dates, times and location of training classes. No service and maintenance program shall be held until approved by the commission.

4. Every service employee shall complete the requirements of the manufacturer's training program before such employee performs service, maintenance and repairs on video gaming machines or video gaming machine associated equipment. Upon the successful completion by a service employee of the training program required by this section, the commission shall issue a certificate authorizing such employee to service, maintain and repair video gaming machines and video gaming machine associated equipment. No certificate of completion shall be issued to any service employee until the commission has ascertained that such employee has completed the required training program. Any person certified as a service employee pursuant to this section shall pass a background investigation pursuant to the rules and regulations of the commission. The commission may revoke certification upon finding a service employee in violation of a commission rule or regulation.

313.412. 1. The director shall not issue a license to any individual, firm, corporation or other legal entity making application to distribute video gaming machines or video gaming machine associated equipment until such applicant meets the requirements for such license as required in sections 313.400 to 313.412.

2. Video gaming machines offered for distribution in this state shall be approved by the commission and only offer video games authorized by the commission.

3. Video gaming machines distributed in this state shall:

(1) Be incapable of manipulation to effect the random probability of winning plays;

(2) Have one or more mechanisms that accepts coins or currency in exchange for game credits, and such mechanisms shall be designed to prevent players from obtaining credits by means of physical tampering;

(3) Be capable of suspending play until reset at the direction of the director as a result of physical tampering;

(4) Have nonresettable mechanical and electronic meters housed in a locked area of the machine that maintain a permanent record of all moneys inserted into the machine, all refunds of winnings, all credits played and all credits won by players. The machines printing mechanism shall be capable of printing the readings of electronic meters;

(5) Be capable of printing a ticket voucher stating the value of the cash prize won by the player at the completion of each game, the date and time of day the game was played in a twenty-four-hour format showing hours and minutes, the machine serial number, the sequential number of the ticket voucher and an encrypted validation number for determining the validity of the winning ticket voucher;

(6) Be capable of being linked to the commission's central computer communications system for the purpose of auditing the operation, financial data and program information as required by the director.

313.415. 1. The director shall not issue a license to any individual, firm, corporation or other legal entity making application for a license to operate video gaming machines or video gaming machine associated equipment until such applicant meets the requirements for such license as required in sections 313.400 to 313.421.

2. The holder of a video gaming operator's license shall:

(1) Offer for inspection and licensure by the commission each individual video gaming machine upon demand to ensure that such machine complies with the provisions of sections 313.400 to 313.421, and rules and regulations promulgated by the commission. Upon the successful completion of any inspection and initially at either the place of manufacture or at the place of a licensed distributor, and after the payment of the applicable machine license fee, the director shall seal the software eproms on the logic board on each machine presented for inspection in accordance with procedures established by the commission and then issue a license for each individual machine. Such license shall be kept prominently displayed on the machine by the operator;

(2) Provide service and maintenance for all licensed video gaming machines

and video gaming machine associated equipment owned by an operator as required by the commission;

(3) Maintain a written service and maintenance log for each licensed machine placed in service. Such service and maintenance log shall be stored inside the main access cabinet of such machine. Any service employee or employee of the commission gaining entry for the service, maintenance or repair of a licensed machine shall sign the log, record the date, time and purpose of the entry, the electronic and mechanical meter readings and the parts of the machine inspected or repaired. Service and maintenance log forms shall be obtained from the commission and retained by the operator for a period not to exceed five years. Service and maintenance logs shall be available for inspection upon request of the director;

(4) Maintain records of the operation of each licensed machine placed into use by the operator pursuant to this section. The records shall be kept in a secure place by the licensee, subject to inspection by the commission and shall include, but not be limited to, an audit tape that records an exact duplicate of all tickets printed and transactions recorded and licensing records.

3. The director shall contract with licensed operators for the operation of video gaming machines and video gaming machine associated equipment. Such contract shall be one year in duration, automatically renewable subject to such operator's continued compliance with the provisions of this section, and require the operator to:

(1) Except as required pursuant to subdivision (14) of section 313.400, pay to the commission twenty-five percent of the net machine income during the first three years from the date that video gaming machines are first offered for play to the public in the state of Missouri, and thirty-five percent of the net machine income for each year thereafter;

(2) Provide the commission with all information and bank authorizations necessary to ensure the timely transfer of moneys due the commission;

(3) Maintain an account balance and surety bond or letter of credit, as required by the commission, sufficient to cover the amount due the commission; and

(4) Maintain accurate records of net machine income.

4. A licensed operator shall be prohibited from obtaining an interest in or operating more than ten percent of the total number of video gaming machines authorized for play by the public pursuant to sections 313.400 to 313.421.

5. Any operator who fails to maintain an account balance sufficient to cover the amount due the commission shall be assessed an interest penalty equal to five percent of the amount due. Each operator shall post a bond, letter of credit or deposit, determined by the commission, in an amount not to exceed the average

amount due to the commission in that operator's fifteen-day collection cycle. Failure to make payments on any amount past due the commission on or before the next electronic transfer date shall be grounds for suspension or revocation of the operator's license and the removal of the licensee's machines from play.

313.418. 1. The director shall not issue a license to any individual, firm, corporation or other legal entity making application for a premise license to operate video gaming machines or video gaming machine associated equipment until such applicant meets the requirements for such license as required in sections 313.400 to 313.421. No video gaming machine shall be placed into play by an operator until:

(1) The premise license applicant's location has been licensed by the commission and the licensed machine or machines have been connected to the commission's central computer communications system. It shall be the responsibility of the premise location licensee to provide and pay for the phone line to connect to the central computer communications system and provide to the operator a surety bond of an amount equal to the state's prior year per machine average fifteen-day gross income multiplied by the number of machines in the licensee's premises or five thousand dollars, whichever amount is greater, to ensure against theft or otherwise loss of receipts;

(2) A licensed operator and the premise license applicant have entered into a written contract to place such operator's machine or machines for play at the location stated on such premise license application. The contract between the operator and the premise licensee shall ensure equal distribution of net machine income less applicable payments to the state by electronic transfer. The contract shall have a term of thirty-six months and be automatically renewable for one-year terms unless written notice is given by either party at least thirty days prior to the date of renewal.

2. Video games shall only be played during the legal hours of operation of such premise license holder's establishment or hours deemed appropriate by the commission and no licensed video gaming machine shall be played by any person under twenty-one years of age.

3. Video gaming machines, video gaming machine associated equipment and video games authorized by the commission for play shall not be construed as gambling devices or the offering of gambling to the public or participation in gambling activities for the purpose of administering the provisions of chapters 311 and 312, RSMo, or rules and regulations made pursuant thereto. No license issued pursuant to chapter 311 or 312, RSMo, for the on-premise consumption of alcoholic beverages shall be denied, suspended or revoked because such license holder is a

licensed participant in the state video gaming network authorized in sections 313.400 to 313.421; however, revocation of a lottery retail location's liquor license shall result in action against the location's video lottery license or the location's authority to operate video gaming machines and suspension of a lottery retail location's liquor license may result in action against the location's video lottery license or the location's authority to operate video gaming machines.

313.421. 1. Pursuant to section 2 of an Act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce", approved January 2, 1951, being chapter 1194, 64 Stat. 1134, acting by and through the duly elected and qualified members of the legislature, does hereby, in accordance with and in compliance with the provisions of section 2 of that Act of Congress, declare and proclaim that section 2 of that Act of Congress shall not apply to any gambling device in this state where the transportation of such device is specifically authorized by and done in compliance with the provisions of sections 313.400 to 313.421, any other applicable statute of this state, and any regulations promulgated pursuant thereto, and that any such gambling device transported in compliance with state law and regulations shall be exempt from the provisions of that Act of Congress.

2. No holder of a license issued pursuant to sections 313.400 to 313.421 shall use the word "casino" in any sign or advertisement in connection with a video gaming machine.

3. Any person who physically tampers with a licensed video gaming machine with the intent to interfere with the proper operation of the machine, manipulate the outcome or payoff of such machine is guilty of a class D felony.

4. After the effective date of this section, any individual, firm, corporation or other legal entity who shall place in operation or continue to have in place any gray area device for use by members of the public at any licensed premise or any other place is guilty of a class D felony.