

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 258 Session of 2009

INTRODUCED BY DERMODY, FRANKEL, WALKO, DeLUCA, KOTIK, READSHAW,  
PALLONE, VULAKOVICH, BRENNAN, WHITE AND YOUNGBLOOD,  
FEBRUARY 5, 2009

REFERRED TO COMMITTEE ON URBAN AFFAIRS, FEBRUARY 5, 2009

AN ACT

1 Amending the act of July 28, 1953 (P.L.723, No.230), entitled,  
2 as amended, "An act relating to counties of the second class  
3 and second class A; amending, revising, consolidating and  
4 changing the laws relating thereto," providing for video  
5 gaming in counties of the second class.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. The act of July 28, 1953 (P.L.723, No.230), known  
9 as the Second Class County Code, is amended by adding an article  
10 to read:

11 ARTICLE XXV-B

12 VIDEO GAMING

13 Section 2501-B. Definitions.

14 The following words and phrases when used in this article  
15 shall have the meanings given to them in this section unless the  
16 context clearly indicates otherwise:

17 "Account." The Video Gaming Account established in section  
18 2513-B.

19 "Board." The Second Class County Gaming Control Board.

1     "Board member." A member of the Second Class County Gaming  
2     Control Board.

3     "Chairman." The chairman of the Second Class County Gaming  
4     Control Board.

5     "Coin-operated amusement machine." A machine that requires  
6     the insertion of a coin, currency or tokens to play or activate  
7     an amusement game or music machine.

8     "County." A county of the second class.

9     "Distributor." An individual, partnership, association or  
10    corporation, licensed by the Second Class County Gaming Control  
11    Board to buy, sell, service or distribute video gaming machines.  
12    The term does not include a machine vendor or a manufacturer.

13    "Licensed establishment." A restaurant, bar, tavern, hotel  
14    or club that has a valid liquor or malt or brewed beverage  
15    license under Article IV of the act of April 12, 1951 (P.L.90,  
16    No.21), known as the Liquor Code.

17    "Machine vendor." An individual, partnership, association or  
18    corporation that:

19        (1) is licensed by the Second Class County Gaming  
20        Control Board; and

21        (2) owns, services and maintains video gaming machines  
22        for placement in licensed establishments.

23    "Manufacturer." An individual, partnership, association or  
24    corporation that:

25        (1) is licensed by the Second Class County Gaming  
26        Control Board; and

27        (2) manufactures or assembles video gaming machines.

28    "Party officer." The following members or officers of any  
29    political party:

30        (1) A member of a national committee.

1       (2) A chairman, vice chairman, secretary, treasurer or  
2 counsel of a Commonwealth committee.

3       (3) A member of the executive committee of a  
4 Commonwealth committee.

5       (4) A county chairman, vice chairman or counsel.

6       (5) A secretary or treasurer of a county committee.

7       (6) A city chairman, vice chairman or counsel.

8       (7) A secretary or treasurer of a city committee.

9 "Video gaming machine." A device or machine:

10       (1) that, upon insertion of a coin or currency, will  
11 play or simulate the play of a video poker, bingo, keno,  
12 blackjack or other game authorized by the Second Class County  
13 Gaming Control Board;

14       (2) that utilizes a video display and microprocessors;  
15 and

16       (3) in which, by the skill of the player or by chance,  
17 the player may receive free games or credits that may be  
18 redeemed for cash.

19 Section 2502-B. Second Class County Gaming Control Board.

20       (a) Establishment.--The county executive of a county, if  
21 authorized by the county council, shall establish an independent  
22 commission to be known as the Second Class County Gaming Control  
23 Board. The board shall consist of five members to be appointed  
24 by the county executive.

25       (b) Members.--Of the original members of the board, two  
26 shall be appointed for a term of two years, two for a term of  
27 four years and one for a term of six years. Thereafter, all  
28 appointments shall be for terms of six years or until successors  
29 are appointed and qualified. All successors shall be appointed  
30 by the county executive.

1     (c) Compensation and expenses.--The members of the board  
2 shall be compensated at a rate of \$125 per day and shall receive  
3 reimbursement for their actual and necessary expenses while  
4 performing the business of the board.

5     (d) Qualifications.--Each member of the board, at the time  
6 of appointment and qualification, must be a citizen of the  
7 United States and a resident of the county and must have been a  
8 qualified elector in this Commonwealth for a period of at least  
9 two years preceding the member's appointment.

10    (e) Offices.--No member of the board shall, during the  
11 member's period of service, hold any other office under the laws  
12 of the United States or this Commonwealth or seek elected office  
13 of any kind within the United States or this Commonwealth.

14    (f) Chairman and quorum.--

15       (1) The county executive shall appoint the chairman of  
16 the board. The chairman shall, when present, preside at all  
17 meetings. In the chairman's absence, a member designated by  
18 the board shall preside.

19       (2) Three members of the board shall constitute a  
20 quorum, and any action or order of the board shall require  
21 the approval of at least three members.

22    (g) Director.--The board may appoint an executive director  
23 to hold office at its pleasure. The director shall have powers  
24 and duties as the board shall prescribe and shall receive  
25 compensation as the board shall determine. The director may  
26 employ personnel necessary to carry out the duties of office.

27    (h) Powers and duties.--The board shall:

28       (1) Provide for licensing of vendors, distributors,  
29 licensees and for distribution of revenue.

30       (2) Prescribe all necessary application and reporting

1 forms.

2 (3) Grant or deny license applications.

3 (4) Prescribe types of video gaming machines to be used.

4 (5) Establish fees.

5 Section 2503-B. Video gaming.

6 The board shall provide for video gaming at licensed  
7 establishments. With the exception of tickets indicating credits  
8 won, which are redeemable for cash, no machine may directly  
9 dispense coins, cash, tokens or anything else of value.

10 Section 2504-B. Licensing of manufacturers, distributors and  
11 vendors.

12 (a) Background investigation and application fee.--

13 (1) The board shall conduct a background investigation  
14 of an applicant for a manufacturer's, distributor's or  
15 machine vendor's license as to personal and business  
16 character, honesty and integrity.

17 (2) An applicant must pay a nonrefundable application  
18 fee of \$5,000.

19 (3) The investigation may utilize information on the  
20 applicant compiled by the Pennsylvania Liquor Control Board.  
21 The investigation shall include the following:

22 (i) An examination of criminal or civil records.

23 (ii) An examination of personal, financial or  
24 business records. This subparagraph includes tax returns,  
25 bank accounts, business accounts, mortgages and  
26 contracts, to which the license applicant is a party or  
27 has an interest.

28 (iii) An examination of personal or business  
29 relationships which:

30 (A) include a partial ownership or voting

1 interest in a partnership, association or  
2 corporation; and

3 (B) bear on the fitness of the applicant for  
4 licensure.

5 (b) Production of information.--In order to become a  
6 licensee, an applicant must produce information, documentation  
7 and assurances as required by the board. This subsection  
8 includes the following:

9 (1) Each license applicant must:

10 (i) consent in writing to and provide for the  
11 examination of financial and business accounts, bank  
12 accounts, tax returns and related records, in the  
13 applicant's possession or under the applicant's control  
14 that establish by clear and convincing evidence the  
15 financial stability, integrity and responsibility of the  
16 license applicant; and

17 (ii) authorize all third parties in possession or  
18 control of accounts or records under subparagraph (i) to  
19 allow for their examination as deemed necessary by the  
20 board in conducting background investigations.

21 (2) Each license applicant must disclose on the  
22 application form any criminal convictions for offenses graded  
23 above summary offenses covering the ten-year period  
24 immediately preceding the filing of the application. The  
25 license applicant must also include on the application form  
26 any convictions of the gambling laws of any jurisdiction.

27 (3) (i) If the license applicant has conducted a gaming  
28 operation in a jurisdiction that permits such activity,  
29 the license applicant must produce letters of reference  
30 from the gaming or casino enforcement or control agency

1 that specify the experiences of the agency with the  
2 license applicant, the license applicant's associates and  
3 the license applicant's gaming operations.

4 (ii) If the license applicant is unable to obtain  
5 these letters within 60 days of the request, the license  
6 applicant may submit a copy of the letter requesting the  
7 information together with a statement under oath or  
8 affirmation that, during the period activities were  
9 conducted, the license applicant was in good standing  
10 with the appropriate gambling or casino enforcement  
11 control agency.

12 (4) Each license applicant must provide information,  
13 documentation and assurances as required by the board to  
14 establish by clear and convincing evidence the license  
15 applicant's good character, honesty and integrity.  
16 Information under this paragraph may relate to family,  
17 habits, character, reputation, business affairs, financial  
18 affairs, business associates, professional associates and  
19 personal associates, covering the ten-year period immediately  
20 preceding the filing of the application.

21 (c) Third-party disclosure.--

22 (1) Each license applicant must accept any risk of  
23 adverse public notice, embarrassment, criticism, damages or  
24 financial loss, which may result from disclosure or  
25 publication by a third party of material or information  
26 requested by the board pursuant to action on an application.

27 (2) The license applicant expressly must waive a claim  
28 against the board or the county and its employees from  
29 damages as a result of disclosure or publication by a third  
30 party.

1     (d) Hearing upon denial.--A person who is denied a license  
2 has the right to a hearing before the board.

3     (e) Sole proprietor vendors.--A sole proprietor vendor must  
4 comply with all of the following:

5         (1) Be a resident of this Commonwealth for at least two  
6 years prior to application for a license.

7         (2) Be of good moral character and reputation in the  
8 community.

9         (3) Be at least 18 years of age.

10         (4) (i) Be current in the payment of all taxes,  
11 interest and penalties owed to the Commonwealth and  
12 political subdivisions.

13             (ii) This paragraph excludes items under formal  
14 dispute or appeal under applicable law.

15         (5) Demonstrate sufficient financial resources to  
16 support the activities required to place and service video  
17 gaming machines.

18     (f) Partnership vendors.--Partnership vendors must comply  
19 with all of the following:

20         (1) (i) Be current in the payment of taxes, interest  
21 and penalties owed to the Commonwealth and political  
22 subdivisions.

23             (ii) This paragraph excludes items under formal  
24 dispute or appeal under applicable law.

25         (2) Demonstrate sufficient financial resources to  
26 support the activities required to place and service video  
27 gaming machines.

28         (3) Have each partner be:

29             (i) Of good moral character and reputation in the  
30 community.



1           (ii) At least 18 years of age.

2           (iii) A resident of this Commonwealth for at least  
3           two years prior to application for a license.

4           (4) At all times subsequent to licensing, a majority of  
5           the partnership ownership interest must be held by residents  
6           of this Commonwealth.

7           (g) Association and corporate vendors.--Association or  
8           corporate vendors must comply with all of the following:

9           (1) (i) Be current in the payment of taxes, interest  
10           and penalties owed to the Commonwealth and political  
11           subdivisions.

12           (ii) This paragraph excludes items under formal  
13           dispute or appeal under applicable law.

14           (2) Demonstrate sufficient financial resources to  
15           support the activities required to place and service video  
16           gaming machines.

17           (3) Have each shareholder holding more than 10% of the  
18           stock of a corporation be:

19           (i) Of good moral character and reputation in the  
20           community.

21           (ii) At least 18 years of age.

22           (iii) A resident of this Commonwealth for at least  
23           two years prior to application.

24           (h) Sole proprietor distributors.--A sole proprietor  
25           distributor must comply with all of the following:

26           (1) Be a resident of this Commonwealth for at least one  
27           year prior to application.

28           (2) Be of good moral character and reputation in the  
29           community.

30           (3) Be at least 18 years of age.

1       (4) (i) Be current in the payment of taxes, interest  
2       and penalties owed to the Commonwealth and political  
3       subdivisions.

4       (ii) This paragraph excludes items under formal  
5       dispute or appeal under applicable laws.

6       (5) Demonstrate sufficient financial resources to  
7       support the activities required to sell and service video  
8       gaming machines.

9       (i) Partnership distributors.--Partnership distributors must  
10      comply with all of the following:

11       (1) (i) Be current in the payment of taxes, interest  
12       and penalties owed to the Commonwealth and political  
13       subdivisions.

14       (ii) This paragraph excludes items under formal  
15       dispute or appeal under applicable law.

16       (2) Demonstrate sufficient financial resources to  
17       support the activities required to sell and service video  
18       gaming machines.

19       (3) Have each partner be:

20       (i) Of good moral character and reputation in the  
21       community.

22       (ii) At least 18 years of age.

23       (iii) A resident of this Commonwealth for at least  
24       one year prior to application.

25       (4) At all times subsequent to licensing, a majority of  
26       the partnership ownership interest must be held by residents  
27       of this Commonwealth.

28       (j) Association and corporate distributors.--Association or  
29      corporate distributors must comply with all of the following:

30       (1) (i) Be current in the payment of taxes, interest

1 and penalties owed to the Commonwealth and political  
2 subdivisions.

3 (ii) This paragraph excludes items under formal  
4 dispute or appeal under applicable law.

5 (2) Demonstrate sufficient financial resources to  
6 support the activities required to sell and service video  
7 gaming machines.

8 (3) Have each shareholder holding more than 10% of the  
9 stock of a corporation be:

10 (i) Of good moral character and reputation in the  
11 community.

12 (ii) At least 18 years of age.

13 (4) (i) For at least one year immediately prior to  
14 application, have maintained and operated a coin machine  
15 distributorship office and sales staff within this  
16 Commonwealth.

17 (ii) This paragraph does not apply to an association  
18 distributor.

19 (k) Sole proprietor manufacturers.--A sole proprietor  
20 manufacturer must comply with all of the following:

21 (1) Be of good moral character and reputation in the  
22 community.

23 (2) Be at least 18 years of age.

24 (3) (i) Be current in the payment of taxes, interest  
25 and penalties owed to the Commonwealth and political  
26 subdivisions.

27 (ii) This paragraph excludes items under formal  
28 dispute or appeal under applicable law.

29 (4) Demonstrate sufficient financial resources to  
30 support the activities required to manufacture and sell video

gaming machines through a licensed distributor.

(l) Partnership manufacturers.--Partnership manufacturers must comply with all of the following:

(1) (i) Be current in the payment of taxes, interest and penalties owed to the Commonwealth and political subdivisions.

(ii) This paragraph excludes items under formal dispute or appeal under applicable law.

(2) Demonstrate sufficient financial resources to support the activities required to manufacture and sell video gaming machines through a licensed distributor.

(3) Have each partner be:

(i) At least 18 years of age.

(ii) Of good moral character and reputation in the community.

(m) Association and corporate manufacturers.--Association or corporate manufacturers must comply with all of the following:

(1) (i) Be current in the payment of taxes, interest and penalties owed to the Commonwealth and political subdivisions.

(ii) This paragraph excludes items under formal dispute or appeal under applicable law.

(2) Demonstrate sufficient financial resources to support the activities required to manufacture and sell video gaming machines through a licensed distributor.

(3) Have each shareholder holding more than 10% of the stock of the corporation or association be:

(i) Of good moral character and reputation in the community.

(ii) At least 18 years of age.

1 Section 2505-B. Licensed establishment license.

2 The board shall issue a license to any licensed establishment  
3 upon a showing that its liquor or retail dispensers license is  
4 valid and is in good standing with the Pennsylvania Liquor  
5 Control Board. The annual fee for a licensed establishment shall  
6 be \$500 per video gaming machine.

7 Section 2506-B. Limitations on licensed establishments.

8 Licensed establishments shall be subject to the following  
9 limitations:

10 (1) No licensed establishment may have more than three  
11 video gaming machines. A licensed establishment which  
12 requests a video gaming machine must receive one machine  
13 before any other licensed establishment receives second or  
14 subsequent machines.

15 (2) No applicant may hold more than one type of license  
16 authorized by this article.

17 (3) Each licensee is responsible for payment of its  
18 license fee. Payment of the fee by a person, partnership or  
19 corporation other than the licensee is prohibited.

20 Section 2507-B. Central communications system.

21 The board may establish and procure a central communications  
22 system capable of monitoring and communicating with each  
23 licensed video gaming machine. If a central communications  
24 system is established, all licensed video gaming machines must  
25 be linked to the central communications system at the board.

26 Section 2508-B. Video gaming machine prototype.

27 The board shall develop a prototype video gaming machine that  
28 includes hardware and software specifications. These  
29 specifications shall include:

30 (1) Unremovable identification plates on the exterior of

1 the machine containing the name of the manufacturer and the  
2 serial and model number of the machine.

3 (2) Rules of play displayed on the machine face or  
4 screen as promulgated by the board.

5 (3) A video gaming machine may not directly dispense  
6 coins, cash, tokens or any other article of exchange or value  
7 except for tickets. The tickets shall be dispensed by  
8 pressing the ticket dispensing button on the machine at the  
9 end of one's turn or play. The ticket shall indicate the  
10 total amount of credits and the cash award and the player  
11 shall turn in the ticket to the appropriate person at the  
12 licensed establishment to receive the cash award. The cost of  
13 the credit shall be \$.25, and the number of credits played  
14 per game shall not exceed ten.

15 (4) No cash award for any individual game may exceed  
16 \$1,000.

17 (5) All video gaming machines must be designed and  
18 manufactured with total accountability, to include gross  
19 proceeds, net profits, winning percentages and any other  
20 information the board requires.

21 (6) Each machine shall pay out a minimum of 80% of the  
22 amount wagered.

23 Section 2509-B. Fees.

24 (a) Vendors license and fee.--The annual fee for a machine  
25 vendors license shall be \$15,000 for the first 50 video gaming  
26 machines and an additional \$500 per video gaming machine license  
27 in excess of 50. A machine vendor license permits the vendor to  
28 sell video gaming machines to another licensed machine vendor or  
29 licensed distributor.

30 (b) Distributor's license fee.--The annual fee for a

1 distributor's license shall be \$15,000.

2 (c) Manufacturer's license fee.--The annual fee for a  
3 manufacturer's license shall be \$15,000.

4 Section 2510-B. Unlawful use by minors.

5 (a) Minors.--

6 (1) No individual under 21 years of age may use or play  
7 a video gaming machine.

8 (2) An individual who violates this subsection commits a  
9 summary offense.

10 (b) Licensees.--

11 (1) A licensed establishment may not, regardless of  
12 knowledge or intent, permit an individual under 21 years of  
13 age to play or use a video gaming machine.

14 (2) A licensed establishment that violates this  
15 subsection commits a misdemeanor of the second degree.

16 (3) The establishment of any of the following facts  
17 constitutes a defense to prosecution under this subsection:

18 (i) The minor falsely represented in writing that  
19 the minor was 21 years of age or older.

20 (ii) The appearance of the minor was such that an  
21 ordinary person of prudent judgment would believe the  
22 minor to be 21 years of age or older.

23 Section 2511-B. Inducements prohibited.

24 (a) General rule.--A video gaming machine owner may not  
25 offer or give any type of inducement or incentive to a licensed  
26 establishment to secure a machine placement agreement.

27 (b) Definition.--As used in this section, the term  
28 "inducement" or "incentive" means consideration from a licensed  
29 machine vendor to a licensed establishment owner as an  
30 enticement to solicit or maintain the licensed establishment

owner's business. The term includes cash, gifts, loans and  
prepayment of commissions.

Section 2512-B. Illegal activities.

No person may sell, distribute, service, own, operate or  
place on location a video gaming machine unless the person is  
licensed pursuant to this article and is in compliance with all  
requirements of this article.

Section 2513-B. Video gaming account.

(a) Establishment.--There is established a separate account  
in the county treasury to be known as the Video Gaming Account.  
Fees and fines under this article and the portion of net profits  
under subsection (b) (2) (iii) shall be deposited in the account.

(b) Distribution of net profits.--

(1) Net profits shall be calculated by subtracting cash  
awards from the total consideration played on the machine.

(2) The net profits from each video gaming machine shall  
be distributed in the following manner:

(i) 25% to the licensed establishment.

(ii) 25% to the licensed vendor.

(iii) 49.5% to the account to be used for general  
government operations in the county.

(iv) .5% to a city of the second class.

(c) Board funding.--The board shall derive all funding for  
its operations related to the establishment, enforcement and  
operation of video gaming from the account.

(d) Funds maintained in account.--An annual minimum balance  
of \$500,000 shall be maintained in the account. Money in excess  
of this amount at the end of each fiscal year shall be  
distributed to the general fund of a county.

(e) Continuous appropriation.--The money in the account is



continuously appropriated to the account and shall not lapse at the end of any fiscal year.

Section 2514-B. Preemption of local taxes and license fees.

(a) Statutes.--Video gaming machines shall be exempt from taxes levied under the following:

(1) The act of December 31, 1965 (P.L.1257, No.511), know as The Local Tax Enabling Act.

(2) The provisions of 53 Pa.C.S. Pt. III Subpt. E (relating to home rule and optional plan government).

(3) Any statute that confers taxing authority to a political subdivision.

(b) Licensing fees.--

(1) Video gaming machines are exempt from local licensing fees.

(2) Local licensing fees imposed on all other coin-operated amusement machines shall not exceed \$150.

Section 2515-B. Exemption from State gaming laws.

Video gaming machines authorized under this article and their use as authorized under this article are exempt from 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.).

Section 2516-B. Exemption from Federal regulation.

The General Assembly declares that the Commonwealth is exempt from section 2 of the Gambling Devices Transportation Act (64 Stat. 1134, 15 U.S.C. § 1172). Shipments of approved video gaming machines into this Commonwealth in compliance with sections 3 and 4 of the Gambling Devices Transportation Act (15 U.S.C. §§ 1173 and 1174) shall be deemed legal shipments into this Commonwealth.

Section 2. This act shall take effect in 60 days.