

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2300

Session of  
1990

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MARCH 13, 1990

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REFERRED TO COMMITTEE ON FINANCE, MARCH 13, 1990

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AN ACT

1 Providing for control and licensing of video poker machines in  
2 this Commonwealth; creating the Video Poker Machine Control  
3 Commission and providing for its powers and duties; and  
4 providing for local option and for distribution of revenues.

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11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Video Poker  
15 Machine Control Law.

16 Section 2. Definitions.

17 The following words and phrases when used in this act shall  
18 have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "Commission." The Video Poker Machine Control Commission  
21 created by this act.

22 "Distributor." An individual, partnership or corporation  
23 licensed under this act to buy, sell, lease or distribute video  
24 poker machines. The term excludes machine owners and  
25 manufacturers.

26 "Gross proceeds." The total amount of money placed into  
27 video poker machines.

28 "Incentive." A consideration, including a premium or bonus  
29 in cash or advance commission or merchandise, offered from a  
30 machine owner to a licensed establishment in order to solicit

1 its business.

2 "Licensed establishment." A restaurant, bar, tavern, hotel  
3 or club which has a valid liquor license under the act of April  
4 12, 1951 (P.L.90, No.21), known as the Liquor Code, and which is  
5 located within a participating political subdivision.

6 "Machine owner." An individual, partnership or corporation  
7 which is licensed under this act and which owns, services and  
8 maintains video poker machines for placement in licensed  
9 establishments.

10 "Manufacturer." An individual, partnership or corporation  
11 which is licensed under this act and which manufactures or  
12 assembles video poker machines.

13 "Net profits." Gross proceeds after awards have been paid.

14 "Participating political subdivisions." Any city,  
15 incorporated town, township, borough or home rule municipality  
16 where video poker machines are in use in accordance with this  
17 act.

18 "Person." Includes a corporation, partnership and  
19 association, as well as a natural person.

20 "Video poker machines." A device or machine which, upon  
21 insertion of a coin or currency, will play or simulate the play  
22 of the game of poker, utilizing a video display and  
23 microprocessors and in which, by the skill of the player or by  
24 chance, the player may receive free games or credits which may  
25 be redeemed for cash. No machine shall directly dispense any  
26 coins, cash, tokens or anything of value.

27 Section 3. Video Poker Machine Control Commission.

28 (a) Commission created.--An independent commission, to be  
29 known as the Video Poker Machine Control Commission is hereby  
30 created. The commission shall consist of five members, one to be

1 appointed by the Governor, one by the Speaker of the House of  
2 Representatives, one by the President pro tempore of the Senate,  
3 one by the Minority Leader of the House of Representatives and  
4 one by the Minority Leader of the Senate.

5 (b) Members.--Of the original members, two shall be  
6 appointed for a term of two years, two for a term of four years  
7 and one for a term of six years. Those appointed by the Minority  
8 Leader of the House of Representatives and the Minority Leader  
9 of the Senate shall serve the initial two-year term. Those  
10 appointed by the Speaker of the House of Representatives and the  
11 President pro tempore of the Senate shall serve the initial  
12 four-year terms. The Governor's appointment shall serve the  
13 initial six-year term. Thereafter, all appointments shall be for  
14 terms of six years or until successors are appointed and  
15 qualified. All successors shall be appointed by the same  
16 appointing authority as the members whom they are replacing.

17 (c) Salaries and expenses.--The members of the commission  
18 shall receive salaries as determined by the Executive Board and  
19 shall be reimbursed for all actual and necessary expenses  
20 performed in the course of their duties.

#### 21 Section 4. Qualifications.

22 (a) Citizenship and residency.--Each member of the  
23 commission, at the time of appointment and qualification, shall  
24 be a citizen of the United States and a resident of this  
25 Commonwealth and shall have been a qualified elector in this  
26 Commonwealth for a period of at least two years preceding the  
27 member's appointment.

28 (b) Offices.--No member of the commission shall, during the  
29 member's period of service, hold any other office under the laws  
30 of this Commonwealth or the United States or seek elected office

1 of any kind within this Commonwealth of the United States.

2 Section 5. Chairman of commission; quorum.

3 (a) Appointment.--The member appointed by the Governor shall  
4 serve as chairman. The chairman shall, when present, preside at  
5 all meetings. In the chairman's absence, a member designated by  
6 the commission shall preside.

7 (b) Quorum.--Three members of the commission shall  
8 constitute a quorum, and any action or order of the commission  
9 shall require the approval of at least three members.

10 Section 6. Director.

11 The commission shall appoint an executive director to hold  
12 office at its pleasure. The director shall have powers and  
13 duties as the commission shall prescribe and shall receive  
14 compensation as the commission shall determine. The director  
15 shall have the authority to employ personnel necessary to carry  
16 out the duties of office.

17 Section 7. Powers and duties of commission.

18 (a) General powers and duties.--The commission shall:

19 (1) Provide for licensing and for distribution of  
20 revenue.

21 (2) Prescribe all necessary application and reporting  
22 forms.

23 (3) Grant or deny license applications.

24 (4) Prescribe types of video poker machines to be used.

25 (b) License approval.--The commission may not deny any  
26 application or limit, condition or restrict any license except  
27 for nonconformance with this act. An applicant shall not be  
28 granted a license unless:

29 (1) If the applicant is an individual:

30 (i) The applicant is of good character, honesty and

1 integrity and in all respects is qualified and has  
2 adequate financing from suitable sources.

3 (ii) The applicant has been a citizen of the United  
4 States and a resident of this Commonwealth for at least  
5 two years prior to the application.

6 (2) If the applicant is a partnership, all partners  
7 qualify as individuals under paragraph (1).

8 (3) If the applicant is a corporation:

9 (i) It is a registered Pennsylvania corporation for  
10 at lease one year.

11 (ii) At least 50% of its directors have been  
12 Pennsylvania residents for at least two years.

13 (iii) All officers qualify as individuals under  
14 paragraph (1).

15 (iv) All stockholders are individuals.

16 (c) Hearing and appeals.--Any person who was denied a  
17 license shall have the right to a hearing before the commission.  
18 The hearing shall be conducted in accordance with the provisions  
19 of 2 Pa.C.S. (relating to administrative law and procedure). An  
20 aggrieved party shall have the right to appeal the decision on  
21 license denial to the court of common pleas in the judicial  
22 district having jurisdiction over the applicant and/or the  
23 licensed premises.

24 (d) Winning percentage.--The commission shall prescribe  
25 winning percentages and necessary machine accounting  
26 information. All video poker machines will be set at a minimum  
27 win percentage of 80%. All video poker machines will have  
28 metering devices to verify the winning percentages.

29 (e) Violations.--The commission shall investigate licensees  
30 for violations of this act and shall hold hearings in which to

1 consider these matters. Hearings and appeals shall be conducted  
2 in the same manner as set forth in subsection (c). The  
3 commission shall have authority to suspend or revoke a license  
4 if it finds that a violation of this act has occurred. No  
5 license shall be suspended or revoked until a hearing is  
6 completed. The fine for a violation of provisions of this act or  
7 of regulations adopted under this act shall not exceed \$5,000  
8 for the first offense and \$15,000 for each subsequent violation.

9 (f) Standards of conduct.--The commission shall prescribe  
10 rules and regulations for the conduct of the officers, employees  
11 and agents of the commission.

12 (g) Regulation.--The commission shall promulgate regulations  
13 to carry out the provisions of this act.

#### 14 Section 8. Use of enforcement agents.

15 (a) Powers.--Employees of the commission designated as  
16 enforcement agents shall be empowered to investigate the  
17 background and associates of every license applicant to whatever  
18 extent is judged necessary by the commission. No investigation  
19 shall be undertaken prior to the submission of an application  
20 for a license by a party, and no investigation shall continue  
21 subsequent to the grant of a license, the denial of a license or  
22 the withdrawal of a license application.

23 (b) Authority.--Enforcement agents are peace officers and  
24 shall have police power and authority throughout this  
25 Commonwealth to arrest, on view or under warrant, any person  
26 tampering with video poker machines, attempting or conspiring to  
27 manipulate the outcome or the payoff of any machine, or  
28 manipulating the outcome or payoff of any machine by physical  
29 tampering or through the interference of the lawful or proper  
30 functioning of the mechanism by any means whatsoever.

1 (c) Investigation and report.--Enforcement agents may  
2 investigate any alleged illegal activities concerning video  
3 poker machines and their operation, maintenance and placement.  
4 Findings shall be reported in writing to the commission, which  
5 shall relay any suspected criminal activity or violations of the  
6 law to the district attorney for prosecution.

7 (d) State and local police.--In addition to any other person  
8 authorized to enforce the provisions of this act, the  
9 Pennsylvania State Police and police of participating political  
10 subdivisions are empowered to enforce this act.

11 Section 9. Unlawful use by minors.

12 (a) Minors.--No person under 21 years of age may use or play  
13 a video poker machine. A minor using or playing or attempting to  
14 use or play a video poker machine commits a summary offense.

15 (b) Licensees.--A licensed establishment in which a person  
16 under 21 years of age plays or uses a video poker machine,  
17 whether or not that licensed establishment is actually aware of  
18 the minor's age, commits a summary offense and shall, upon  
19 conviction, pay a fine of not more than \$5,000. The  
20 establishment of any of the following facts by a person allowing  
21 a minor to operate the video poker machines constitutes a  
22 defense to prosecution under this subsection:

23 (1) The minor falsely represented in writing that the  
24 minor was 21 years of age or older.

25 (2) The appearance of the minor was such that an  
26 ordinary person of prudent judgment would believe the minor  
27 to be 21 years of age or older.

28 Section 10. Direct dispensing.

29 A video poker machine may not directly dispense coins, cash,  
30 tokens or any other article of exchange or value except for



1 receipt tickets. Such tickets shall be dispensed by pressing the  
2 ticket dispensing button on the machine at the end of one's turn  
3 or play. The ticket shall indicate the total amount of credits  
4 and the cash award, and the player shall turn in this ticket to  
5 the appropriate person at the licensed establishment to receive  
6 the cash award. The cost of the credit shall be 25¢, and the  
7 number of credits played per game shall not exceed eight. No  
8 cash award for any individual game shall exceed \$500. All video  
9 poker machines shall be designed and manufactured with total  
10 accountability, to include gross proceeds, net profits, winning  
11 percentages and any other information the commission requires.

12 Section 11. Local options.

13 (a) Election to be held.--In any municipality, an election  
14 may be held on the date of the primary election immediately  
15 preceding any municipal election, but not more than once in four  
16 years, to determine the will of the electors with respect to the  
17 issuance of licenses within the limits of such municipality  
18 under the provisions of this act. Where an election had been  
19 held at the primary election preceding a municipal election in  
20 any year, another election may be held under the provisions of  
21 this act at the primary election occurring the fourth year after  
22 such prior election. When electors equal to at least 25% of the  
23 highest vote cast for any office in the municipality at the last  
24 preceding general election file a petition with the county board  
25 of elections of the county, or when the governing body of the  
26 municipality adopts, by a majority vote, a resolution to place a  
27 question on the ballot and a copy of the resolution is filed  
28 with the board of elections of the county, for a referendum on  
29 the question of issuing licenses, the county board of elections  
30 shall cause a question to be placed on the ballot or on the

1 voting machine board and submitted at the primary election  
2 immediately preceding the municipal election.

3 (b) Vote.--If a majority of the electors voting on the  
4 question under subsection (a) vote "yes", then licenses shall be  
5 issued by the licensing authority in such municipality, but if a  
6 majority of the electors voting on such question vote "no", then  
7 the licensing authority shall have no power to issue or to  
8 renew, upon their expiration, any licenses in such municipality,  
9 unless and until, at a later election, a majority of the voting  
10 electors vote "yes" on such question.

11 (c) Voting procedures.--Proceedings under this section shall  
12 be in accordance with the provisions of the act of June 3, 1937  
13 (P.L.1333, No.320), known as the Pennsylvania Election Code.

14 (d) Applicability.--This act applies only to those licensed  
15 establishments located in municipalities which have adopted the  
16 provisions of this act by an affirmative vote in a municipal  
17 referendum in accordance with the provisions of this section.

18 (e) Withdrawal of approval.--The referendum procedure  
19 contained in this section shall also be available to withdraw  
20 the approval of the issuance of licenses within the municipality  
21 which was granted through a prior referendum.

22 Section 12. Authority to license.

23 (a) Type of licenses.--After approving the proper  
24 applications, the commission shall issue the following licenses:

25 (1) A manufacturer's license to a person that  
26 manufactures or assembles video poker machines for use in  
27 Pennsylvania. The annual fee shall be \$25,000.

28 (2) A distributor's license to a person that buys or  
29 sells video poker machines in Pennsylvania other than an  
30 operator. The annual fee shall be \$10,000.

1           (3) A machine owner's license to a person who owns,  
2       services and maintains video poker machines for placement in  
3       licensed establishments. The annual fee shall be \$25,000 for  
4       the first 50 individual poker machine licenses. For each  
5       additional video poker machine, the annual fee shall be \$500  
6       per machine. Every video poker machine in use in this  
7       Commonwealth must have a current \$500 license displayed.  
8       Every video poker machine licensed under this act must be  
9       manufactured by an individual, partnership or corporation  
10      licensed under paragraph (1).

11          (4) A licensed establishment must obtain a license under  
12      this act in order to have video poker machines on its  
13      premises. The annual fee for the license shall be \$300 for  
14      each machine per year.

15      (b) Commercial establishment requirements.--For any  
16      commercial establishment which is approved by the Commonwealth  
17      and which uses video poker machines, the maximum number of video  
18      poker machines allowed per location shall be five. No video  
19      poker machines may be placed in any commercial establishment  
20      unless the owner of a commercial establishment has entered into  
21      a contract with an operator for the placement of the machine or  
22      machines for a minimum term of one year.

23      (c) Limitations.--

24          (1) No machine owner shall be issued more than one  
25      license.

26          (2) No person may hold more than one class of license,  
27      directly or indirectly, or have any interest therein.

28      (d) Incentives.--No machine owner may give and no licensed  
29      establishment may receive an incentive.

30      Section 13. Distribution of proceeds.

1 (a) Collection.--Gross proceeds shall be collected by the  
2 machine owner for each licensed video poker machine.

3 (b) Distribution of net profits.--From the effective date of  
4 this act, for a two-year period, the net profits derived from a  
5 video poker machine shall be distributed by the machine owner as  
6 follows:

7 (1) 40% to the machine owner.

8 (2) 40% to the licensed establishment where the machine  
9 is located.

10 (3) 20% to the treasurer of the county in which the  
11 machine is located, to be distributed as set forth in section  
12 14.

13 (c) Manner of distribution after two-year period.--After the  
14 two-year period set forth in subsection (b), the net profits  
15 derived from a video poker machine shall be distributed by the  
16 machine owner as follows:

17 (1) 35% to the machine owner.

18 (2) 35% to the licensed establishment where the machine  
19 is located.

20 (3) 30% to the treasurer of the county in which the  
21 machine is located, to be distributed as set forth in section  
22 14.

23 (d) Reports.--The machine owner shall make a monthly  
24 duplicate report to the county treasurer and to the commission  
25 with the following information:

26 (1) The serial number of each video poker machine.

27 (2) The name and address of premises where machine is  
28 located.

29 (3) A computer printout of the net profits of each  
30 machine.

1 Section 14. Government revenues.

2 Those net profits collected by the county treasurer, as set  
3 forth in section 13, shall be distributed as follows:

4 (1) 2% to the county treasurer for the county for  
5 collecting and distributing funds as directed by this act.

6 (2) 44% to the political subdivision where the video  
7 poker machine is located.

8 (3) 44% to the school district where the video poker  
9 machine is located.

10 (4) 10% to the office of Attorney General to be used for  
11 drug enforcement and/or drug education.

12 Section 15. Creation of account.

13 All revenues from licenses and fines shall be placed in a  
14 restricted revenue account to fund the total operation of the  
15 commission, including, but not limited to, salaries and  
16 administrative expenses. The commission shall allocate a minimum  
17 of \$1,000,000 annually to be used for the treatment of  
18 compulsive behaviors in accordance with regulations adopted by  
19 the commission.

20 Section 16. Preemption of local taxes and license fees.

21 Video poker machines and coin-operated amusement machines  
22 shall be exempt from taxes levied under the act of August 5,  
23 1932 (Sp.Sess., P.L.45, No.45), referred to as the Sterling Act,  
24 the act of December 31, 1965 (P.L.1257, No.511), known as The  
25 Local Tax Enabling Act, or the act of April 13, 1972 (P.L.184,  
26 No.62), known as the Home Rule Charter and Optional Plans Law,  
27 or under any other statute which confers taxing authority to any  
28 political subdivision.

29 Section 17. Prohibition and penalties.

30 (a) Manufacture.--A person may not manufacture, assemble or

1 produce a video poker machine in this Commonwealth unless the  
2 person has a valid manufacturer's license issued under section  
3 12(a)(1).

4 (b) Distribution.--A person may not sell, distribute, lease  
5 or market a video poker machine in this Commonwealth unless the  
6 person has a valid distributor's license issued under section  
7 12(a)(2).

8 (c) License required.--A person may not own, service,  
9 maintain, lease or place a video poker machine unless he has a  
10 valid owner's license issued under section 12(a)(3).

11 (d) Use.--A person may not offer, enable or allow the  
12 playing of video poker at an establishment unless that  
13 establishment has a valid establishment license issued under  
14 section 12(a)(4). A person with a valid establishment license  
15 may not have more than five video poker machines in a licensed  
16 establishment at the same time.

17 (e) Tampering.--A person may not manipulate the outcome or  
18 payoff of a video poker machine through interference with the  
19 proper functioning of the mechanism.

20 (f) Penalties.--

21 (1) A person who violates this section commits a  
22 misdemeanor of the third degree and shall, upon conviction,  
23 be sentenced to pay a fine of \$1,000, or to imprisonment for  
24 not more than one year, or both.

25 (2) A person who violates this section a second time  
26 commits a misdemeanor of the second degree and shall, upon  
27 conviction, be sentenced to pay a fine of \$2,000, or to  
28 imprisonment for not more than two years, or both.

29 (3) A person who violates this section a third or  
30 subsequent time commits a misdemeanor of the first degree and

1       shall, upon conviction, be sentenced to pay a fine of \$5,000,  
2       or to imprisonment for not more than five years, or both.

3   Section 18.   Exemption from State gambling laws.

4       Video poker machines and their use are exempt from 18 Pa.C.S.  
5   § 5513 (relating to gambling devices, gambling, etc.).

6   Section 19.   Exemption from Federal regulation.

7       The General Assembly declares that the Commonwealth is exempt  
8   from section 2 of the Gambling Devices Transportation Act (64  
9   Stat. 1134, 15 U.S.C. § 1172). Shipments of video devices into  
10  this Commonwealth in compliance with sections 3 and 4 of the  
11  Gambling Devices Transportation Act (64 Stat. 1134, 15 U.S.C. §§  
12  1173 and 1174) shall be deemed legal shipments into this  
13  Commonwealth.

14  Section 20.   Effective date.

15       This act shall take effect in 60 days.