2020 South Dakota Legislature

House Bill 1250

Introduced by: ***Representative*** *Mills*

An Act to increase the state's percentage of video lottery revenues, to provide for the deposit of certain excess revenues, and to repeal provisions regarding video lottery.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added:

42-7A-66. Video lottery repeal and recovery fund--Creation.

There is created in the state treasury the video lottery repeal and recovery fund. The fund consists of all moneys deposited into the fund in accordance with § 42-7A-63, together with any interest or other earnings of the fund. The purpose of the fund is to replace lost revenue for the general fund following the repeal of video lottery. Moneys in the fund may not be expended unless video lottery is repealed.

Section 2. That § 42-7A-63 be AMENDED:

42-7A-63. State's percentage of net machine income--Uses.

The commission shall maximize revenues to the state from video lottery. One-half of one percent of the state's net machine income shall be deposited into the video lottery operating fund. The state's percentage of net machine income shall be fifty percent. ~~The state's percentage of net machine income shall be directly deposited to the general fund, except for one-half of one percent of net machine income authorized for deposit into the video lottery operating fund.~~ Beginning July 1, 2021, the state's percentage of net machine income is fifty-five percent. The remainder of the state's net machine income shall be deposited into the general fund, except that:

(1) During the twelve-month period beginning July 1, 2021, the amount deposited into the general fund under this section may not exceed one hundred nineteen million eight hundred thousand dollars;

(2) During the twelve-month period beginning July 1, 2022, and during each twelve-month period until July 1, 2026. the amount deposited into the general fund under this section is four million dollars less than the amount deposited into the general fund during the immediately preceding twelve-month period; and

(3) During the twelve-month period beginning July 1, 2026, the amount deposited into the general fund under this section is ninety-three percent of the amount deposited into the general fund during the immediately preceding twelve-month period. For each twelve-month period thereafter, the amount deposited into the general fund under this section may not exceed a percent that is one percentage point less than the percent of the amount deposited into the general fund during the immediately preceding twelve-month period.

Any amount in excess of the amount authorized for deposit into the general fund in subdivisions (1) to (3), inclusive, shall be deposited into the video lottery repeal and recovery fund.

Section 3. Section 4 to 16, inclusive, of this Act, are effective upon the repeal of video lottery, which shall occur on or before July 1, 2029.

Section 4. That §§ 42-7A-37 to 42-7A-48 be REPEALED.

Section 5. That §§ 42-7A-62 to 42-7A-64 be REPEALED.

Section 6. That § 10-58-11 be REPEALED.

10-58-11. Exemption for video lottery machines--Gross receipts specifically exempted.

Section 7. That § 35-4-103 be REPEALED.

35-4-103. Annual additional license fee for video lottery machines on licensed premises.

Section 8. That § 42-7A-1 be AMENDED:

42-7A-1. Definitions.

Terms used in this chapter mean:

(1) "Associated equipment," any proprietary device, machine, ~~or part used in the manufacture or maintenance of a video lottery machine,~~ including integrated circuit

chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, and metering devices;

(2) "Commission," the South Dakota Lottery Commission;

(3) "Credit," one, five, ten, or twenty-five cents;

(4) "Executive director," the executive director of the South Dakota Lottery;

(5) "Instant lottery," a game that offers preprinted tickets that indicate immediately or in a grand prize drawing whether the player has won a prize;

(6) "Licensed establishment," a bar or lounge owned or managed by an individual, partnership, corporation, or association licensed to sell alcoholic beverages for consumption upon the premises where sold;

(7) "Lottery" or "state lottery," any lottery operated pursuant to this chapter;

(8) "Lottery retailer," any person with whom the South Dakota Lottery has contracted to sell lottery tickets to the public;

(9) "Lottery vendor" or "vendor," any person who has entered into a major procurement contract with the South Dakota Lottery;

(10) "Major procurement," any contract with any vendor directly involved in providing facilities, equipment, tickets, and services unique to the lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of state agencies;

(11) ~~"Net machine income," money put into a video lottery machine minus credits paid out in cash;~~

~~(12)~~ "On-line lottery," a game linked to a central computer via a telecommunications network in which the player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols as approved by the commission;

~~(13)~~(12) "South Dakota Lottery," the state agency created by this chapter to operate a lottery pursuant to this chapter;

~~(14)~~(13) "Ticket," any tangible evidence issued or authorized by the South Dakota Lottery to prove participation in an instant, on-line, or video lottery game~~;~~

~~(14A) "Video lottery," any video game of chance played on video lottery machines;~~

~~(15) "Video lottery machine distributor," any individual, entity, partnership, corporation, or association that distributes or sells video lottery machines or associated equipment in this state;~~

~~(16) "Video lottery machine manufacturer," any individual, entity, partnership, corporation, or association that assembles or produces video lottery machines or associated equipment for sale or use in this state;~~

~~(17) "Video lottery machine operator," any individual, entity, partnership, corporation, or association that places video lottery machines or associated equipment for public use in this state; and~~

~~(18) "Video lottery machines," or "machine," any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno, and blackjack, authorized by the commission utilizing a video display and microprocessors in which, by chance, the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens~~.

Section 9. That § 42-7A-4 be AMENDED:

42-7A-4. Functions of executive director.

The executive director may, subject to policy established by the commission:

(1) Supervise and administer the operation of the state lottery in accordance with the provisions of this chapter;

(2) Employ all other employees of the South Dakota Lottery;

(3) Enter into contracts for promotional services; annuities or other methods deemed appropriate for the payment of prizes; data processing and other technical products, equipment and services; and facilities as needed to operate the South Dakota Lottery including, without limitation, tickets and other services involved in major procurements;

(4) Contract with and license persons for the sale of lottery tickets ~~and the offering of video lottery games~~ to the public, as provided by this chapter and rules adopted pursuant thereto;

(5) Make demographic studies of lottery players and studies of reactions of citizens to existing and potential features of the lottery;

(6) Require lottery retailers and persons licensed pursuant to this chapter to furnish proof of financial stability or furnish surety in an amount based upon the expected volume of sales of lottery tickets ~~or net machine income~~;

(7) Provide for secure facilities to house the South Dakota Lottery;

(8) Provide for separate, distinct, and secure data processing facilities to be used for the reliable operation of the state lottery;

(9) Examine, or cause to be examined by any agent or representative designated by the executive director, any books, papers, records, or memoranda of any lottery retailer or person licensed pursuant to this chapter for the purpose of ascertaining

compliance with any provision of this chapter or any rule adopted pursuant to this chapter;

(10) Issue subpoenas to compel access to or for the production of such books, papers, records, or memoranda in the custody or control of any lottery retailer or person licensed pursuant to this chapter, or to compel the appearance of any of their employees, for the purpose of ascertaining compliance with any provision of this chapter or any rule adopted pursuant to this chapter;

(11) Administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the circuit court;

~~(11A) The lottery commission shall operate a video lottery undertaken pursuant to this chapter and may not contract or assign this responsibility to any other person;~~

(12) Impose civil fines not to exceed ten thousand dollars per violation and fifteen thousand dollars for any subsequent violation of any provision of this chapter or any rule adopted pursuant to this chapter; and

(13) Enter into written agreements or compacts with one or more other states for the operation, marketing and promotion of a joint lottery or joint lottery games.

Section 10. That § 42-7A-13 be AMENDED:

42-7A-13. Qualifications of lottery retailer.

To be selected as a lottery retailer ~~or video lottery machine operator~~, a natural person acting as a sole proprietor shall:

(1) Be at least eighteen years of age;

(2) Be of good character and reputation;

(3) Have sufficient financial resources to support the activities required to sell lottery tickets ~~or place and service video lottery machines~~; and

(4) Be current in payment of all taxes, interest, and penalties owed to the State of South Dakota, excluding items under formal dispute or appeal pursuant to applicable statutes.

A lottery retailer ~~or video lottery machine operator~~ may not be a lottery vendor or an employee or agent of any lottery vendor doing business with the South Dakota Lottery.

Section 11. That § 42-7A-15 be AMENDED:

42-7A-15. Partnership as lottery retailer.

For a partnership to be selected as a lottery retailer ~~or video lottery machine operator~~, the partnership shall meet the requirements of subdivisions 42-7A-13(3) and (4), and each partner thereof shall meet the requirements of subdivisions 42-7A-13(1) and (2) and subdivisions 42-7A-14(1) to (5), inclusive.

Section 12. That § 42-7A-16 be AMENDED:

42-7A-16. Association or corporation as lottery retailer.

For an association or corporation to be selected as a lottery retailer ~~or video lottery machine operator~~, the association or corporation shall meet the requirements of subdivisions 42-7A-13(3) and (4), and each officer and director and each stockholder who owns five percent or more of the stock of such association or corporation shall meet the requirements of subdivisions 42-7A-13(1) and (2) and subdivisions 42-7A-14(1) to (5), inclusive.

Section 13. That § 42-7A-21 be AMENDED:

42-7A-21. Promulgation of rules--Establishment and operation of state lottery.

The commission shall promulgate rules pursuant to chapter 1-26 governing the establishment and operation of a state lottery as necessary to carry out the purposes of this chapter. The commission shall promulgate rules concerning the following:

(1) The types of ticket lottery games to be conducted as authorized pursuant to this chapter;

(2) The manner of selecting the winning tickets. However, if a lottery game utilizes a drawing of winning numbers, a drawing among entries, or a drawing among finalists, such drawings shall always be open to the public and shall be recorded on both video and audio tape;

(3) The manner of payment of prizes to the holders of winning tickets;

(4) The frequency of the drawings or selections of winning tickets;

(5) The types of locations at which tickets may be sold;

(6) The methods to be used in selling tickets;

(7) Additional qualifications for the selection of lottery retailers~~, video lottery machine manufacturers, distributors, or operators~~ and the amount of application fees to be paid by each;

(8) The amount and method of compensation to be paid to lottery retailers, including special bonuses and incentives;

(9) Deadlines for claims for prizes by winners of each lottery game. However, in no instance may such deadline be for more than one year;

(10) ~~The mechanical and electronic specifications for each video lottery machine. At a minimum, each video lottery machine shall meet the requirements of § 42-7A-37;~~

~~(11) Machine security testing and inspection procedures;~~

~~(12) Liability for machine malfunction;~~

~~(13) Machine maintenance and repair;~~

~~(14)~~ Financial responsibility of persons licensed under this chapter;

~~(15) Accounting procedures for net machine income;~~

~~(16)~~(11) Licensing procedures under this chapter; and

~~(17)~~(12) Such other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public.

Section 14. That § 42-7A-24 be AMENDED:

42-7A-24. Transfer of net proceeds--Transfer to state general fund.

Net proceeds from the sale of instant lottery tickets shall be transferred to the state general fund on an annual basis after July first each year. The commission shall maximize the net proceeds to the state from the sale of instant and on-line lottery tickets. In no event may yearly lottery expenses for the sale of lottery tickets, excluding expenditures from retained earnings, exceed the amount of combined net proceeds transferred to the state general fund and the state capital construction fund. ~~Net machine income from video lottery games shall be directly deposited in the general fund upon receipt.~~ Net proceeds are funds in the lottery operating fund which are not needed for the payment of prizes, lottery expenses, and total retained earnings up to one and one-half million dollars cash deemed necessary by the executive director and commission for replacement, maintenance, and upgrade of business systems, product development, legal, and operating contingencies of the lottery.

In fiscal year 2019, the commission shall transfer twenty-five percent of the net proceeds from the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the general fund and seventy-five percent of the net proceeds from the sale of on-line lottery tickets shall be transferred to the state capital construction fund created in § 5-27-1. In fiscal year 2020, the commission shall transfer thirty-five percent of the net proceeds from the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the general fund and

sixty-five percent of the net proceeds from the sale of on-line lottery tickets shall be transferred to the state capital construction fund created in § 5-27-1. In fiscal year 2021, the commission shall transfer thirty-five percent of the net proceeds from the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the general fund and sixty-five percent of the net proceeds from the sale of on-line lottery tickets shall be transferred to the state capital construction fund created in § 5-27-1. In fiscal year 2022, the commission shall transfer fifty percent of the net proceeds from the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the general fund and fifty percent of the net proceeds from the sale of on-line lottery tickets shall be transferred to the state capital construction fund created in § 5-27-1. In fiscal year 2023 and each year thereafter, the commission shall transfer seventy percent of the net proceeds from the sale of on-line lottery tickets collected pursuant to § 42-7A-24 to the general fund and thirty percent of the net proceeds from the sale of on-line lottery tickets shall be transferred to the state capital construction fund created in § 5-27-1.

Section 15. That § 42-7A-50 be AMENDED:

42-7A-50. Confidentiality of lottery records.

Information and records of the South Dakota Lottery are confidential, except for official purposes, and may not be disclosed except to officers, employees, or legal representatives of the Department of Revenue for the purpose of and only to the extent necessary in the investigation and audit procedures authorized by Title 10 or in accordance with a judicial order. No person may use a subpoena, discovery, or other applicable statutes to obtain such information or records. Information and records considered confidential include:

(1) Applications, credit, and security checks of lottery retailers, licensees, and persons seeking or doing business with the lottery;

(2) Marketing, financial, or sales data, the disclosure of which may be harmful to the competitive position of the South Dakota Lottery, its retailers, licensees, or persons seeking or doing business with the lottery;

(3) Audit work papers, worksheets, and auditing procedures used by the lottery, its agent, or employees; and

(4) Tax returns of individual licensees.

~~However, this section may not be construed to make confidential the name of any video lottery operator including, if the video lottery operator is a partnership, the name of any partner and, if the video lottery operator is an association or corporation, the name~~

~~of any director, any officer, and any stockholder who owns five percent or more of the stock in the association or a parent or subsidiary corporation.~~

Section 16. That § 42-7A-56 be AMENDED:

42-7A-56. Public policy declared.

The Legislature hereby finds, and declares to be the public policy of this state that:

(1) The success of the South Dakota Lottery is dependent upon public confidence and trust that it is conducted honestly and free from criminal and corruptive elements;

(2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations, and activities related to the sale of lottery products~~ and the operation, manufacturing, and distribution of video lottery games and equipment~~; and

(3) No applicant for a license or other affirmative commission action has any right to a license or to the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this chapter is a revocable privilege, and no holder acquires any vested interest or property right therein or thereunder.