

# SUMMARY OF THE NEW VIDEO GAMING ACT

Enacted on July 13, 2009, the Video Gaming Act (the “Act”) legalizes the use of Video Gaming Terminals (“Terminal(s)”) in liquor licensed establishments including bars, restaurants, truck stops, and certain fraternal and veterans organizations (“Establishment(s)”).

The Illinois Gaming Board (the “Board”) has jurisdiction over and must supervise all gaming operations governed by the Act. Accordingly, the Board has all powers necessary and proper to full and effectively execute the provisions of the Act.

*See page 5 of this summary for definitions.*

## Licensing

- ♠ Each video gaming terminal Manufacturer, Distributor, Supplier, Terminal Operator, Technician, Handler, and Establishment must be licensed by the Board.
- ♠ Each licensee may possess only one type of license.
- ♠ Each licensee may only transact with one who also possesses a valid license issued under the Act.
- ♠ No person may be licensed as a Manufacturer, Distributor, Supplier, Terminal Operator, Handler or Establishment if the Board finds that such person:
  - o has a background (including a criminal record, reputation or business association) that poses a threat to the public interests of the State or to the security or integrity of video gaming;
  - o creates or enhances the danger of unsuitable, unfair or illegal practices in the conduct of video gaming; or
  - o presents "questionable" business practices and financial arrangements incidental to the conduct of video gaming.
- ♠ Each license applicant has the burden of proving its qualifications to the satisfaction of the Board by: (i) demonstrating applicant's suitability for licensure, (ii) submitting to a background investigation conducted by the Board with the assistance of the State Police or other law enforcement and (iii) disclosing the identity of each person, association, trust or corporation having a greater than 1% pecuniary interest in the operation for which the license is sought.
- ♠ Each Distributor and Terminal Operator (or a person with a substantial interest therein) must be an Illinois resident. If a non-resident applicant has performed applicant's respective

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business in Illinois for at least 48 months prior to July 13, 2009, applicant will also be eligible for a license, subject to Board approval.

♠ Each Establishment seeking a license must possess a valid liquor license issued by the Illinois Liquor Control Commission at the time of application and at all times thereafter.

♠ Establishments are automatically ineligible for licensing if they are located: (i) within 1,000 feet of a facility operated by an organizational licensee, an intertrack wagering licensee, an intertrack wagering location licensee licensed under the Illinois Horse Racing Act of 1975 or a home dock of a riverboat licensed under the Riverboat Gambling Act, or (ii) within 100 feet of a school or a place of worship under the Religious Corporation Act.

♠ No transfer or assignment of any license is permitted.

## Application and Renewal Fees

♠ A non-refundable application fee is due at the time the application is filed with the Board:

- o \$5,000 for a Manufacturer, Distributor or Terminal Operator;
- o \$2,500 for a Supplier;
- o \$100 for a Licensed Technician; and
- o \$50 for a Terminal Handler.

♠ Each license issued by the Board is renewable annually. An annual fee is due at renewal in an amount to be determined by the Board, but will not exceed:

- o \$10,000 for a Manufacturer or Distributor;
- o \$5,000 for a Terminal Operator;
- o \$2,000 for a Supplier;
- o \$100 for a Technician or Establishment; and

- o \$50 for a Terminal Handler.

## Requirements of Licensed Establishments and Terminal Operators

### ESTABLISHMENTS

♠ Prior to a Terminal being placed in an Establishment, the Establishment must enter into a written use agreement with the Terminal Operator.

♠ An Establishment may operate up to five Terminals on its premises at any one time.

♠ The Establishment must maintain insurance, in an amount to be set by the Board, for each Terminal located on its premises.

♠ Each Establishment must maintain an adequate video gaming fund, in an amount to be determined by the Board.

♠ Terminals must be placed in an area which is restricted to persons over 21 years of age. The entrance to this area must be in view of at least one Establishment employee who is over 21 years of age. Terminals may only be played during the legal hours of operation allowed for the consumption of alcoholic beverages at the Establishment.

♠ An Establishment's liquor license will immediately be revoked if the Establishment operates or permits the operation of a Terminal in violation of the Act.

### TERMINAL OPERATORS

♠ A Terminal Operator may not:

- o Give anything of value, including but not limited to a loan or financing arrangement, to an Establishment to incent or induce the Establishment to

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locate a Terminal in that Establishment; and

- o Own or have a substantial interest in more than 5% of the Terminals licensed in Illinois.

A Terminal Operator that violates either of these provisions is guilty of a Class 4 felony and its license is subject to termination.

(ii) a Terminal Operator or (iii) employed by a Terminal Operator, Distributor or Manufacturer.

- ♠ Terminals must be linked to a central communications system which will permit the Board to audit the Terminals and deactivate the Terminals.

## Video Gaming Terminals

- ♠ Each Terminal must be licensed prior to placement in an Establishment. Once licensed, an annual renewal fee must be paid in an amount to be established by the Board but not more than \$100 per Terminal. Possession of an unlicensed video gaming terminal is a felony.
- ♠ Every Terminal must be tested and approved. The Act enumerates sixteen (16) criteria that each Terminal must meet, subject to increase by the Board.
- ♠ Terminals may not directly dispense coins, cash or tokens. Terminals may only dispense receipt tickets. Each ticket must indicate (i) the total amount of credits, (ii) the cash award, (iii) the time of day, in a 24-hour format, (iv) the date, (v) the Terminal serial number, (vi) the sequential number of the ticket and (vii) an encrypted validation number from which the validity of the prize can be determined.
- ♠ The maximum wager played per hand may not exceed \$2, and no cash award for the maximum wager on any individual hand may exceed \$500. The odds of winning each video game must be posted on or near each Terminal. Terminal must theoretically pay out no less than 80% of amounts played over the expected life of the Terminal.
- ♠ To service, maintain or repair a Terminal, a person must either be (i) a Licensed Technician,

## Net Terminal Income

- ♠ A 30% gaming tax is imposed on all monies put into a Terminal minus credits paid out to players (the “Net Terminal Income”). Notwithstanding any agreement to the contrary, the Terminal Operator and Establishment must split the after-tax profits from a Terminal 50/50.
- ♠ The revenues generated from the play of Terminals must be deposited into a specially created, separate bank account by the Terminal Operator who is responsible for tax payments.
- ♠ The Terminal Operator must report and remit the gaming tax to the Board within 15 days after both (i) the 15th of the month and (ii) the end of each month. All payments not remitted when due will incur a penalty assessment on the unpaid balance at a rate of 1.5% per month. A Terminal Operator who falsely reports or fails to report the amount due is guilty of a Class 4 felony and is subject to termination of its license.

## Additional Illegal Acts

- ♠ Any licensee who knowingly permits a person under the age of 21 to use or play a Terminal is guilty of a business offense and will be fined an amount not to exceed \$5,000.
- ♠ Every unlicensed gambling device will be subject to seizure, confiscation and destruction,

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unless operated for amusement only and bearing a valid amusement tax sticker issued prior to July 13, 2009. Such devices will not be subject to seizure until the earlier of: (i) the expiration of the amusement tax sticker or (ii) 30 days after the Board establishes that the central communications system is functional.

- ♠ It is a Class 4 felony for any person to own, operate, have in his possession, custody or under his control, or permit to be kept in any place under his possession or control, any device that awards credits and contains a circuit, meter or switch capable of removing and recording the removal of credits when the award of credits is dependent upon chance, unless the device is licensed pursuant to the Act.

## Prohibition of Video Gaming by Political Subdivision

- ♠ A municipality or county (with respect to any unincorporated area within that county) may pass an ordinance prohibiting video gaming. Video gaming may also be prohibited in any municipality or county by a referendum if approved by a majority of voters in such municipality or county.

**For more information on this or any other gaming law question, contact Paul T. Jenson, [pjenson@sheskyllaw.com](mailto:pjenson@sheskyllaw.com), 312.836.4046.**

## DEFINITIONS

A “distributor” buys, sells, leases or distributes video gaming terminals or major components or parts of video gaming terminals to or from terminal operators.

### “Establishments”

A “licensed establishment” is any licensed retail establishment where alcoholic liquor is drawn, poured, mixed or otherwise served for consumption on the premises. This does not include a facility operated by an organization licensee, an intertrack wagering licensee, an intertrack wagering location licensee licensed under the Illinois Horse Racing Act of 1975 or a riverboat licensed under the Riverboat Gambling Act.

A “licensed truck stop establishment” is a facility that is at least a 3-acre facility with a convenience store and with separate diesel islands for fueling commercial motor vehicles and parking spaces for commercial motor vehicles (as defined in Section 18b-101 of the Illinois Vehicle Code).

A “licensed fraternal establishment” is a location where a qualified fraternal organization that derives its charter from a national fraternal organization regularly meets.

A “licensed veterans establishment” is a location where a qualified veterans organization that derives its charter from a national veterans organization regularly meets.

A “licensed technician” is an individual who is licensed to repair, service and maintain video gaming terminals.

A “licensed terminal handler” is a person, including but not limited to an employee or independent contractor working for a manufacturer, distributor, supplier, technician or terminal operator, who possesses or controls a video gaming terminal or has access to the inner workings of a video gaming terminal. This does not include an individual, partnership or corporation defined as a manufacturer, distributor, supplier, technician or terminal operator under the Act.

A “manufacturer” is one who manufactures or assembles video gaming terminals.

A “supplier” is one who supplies major components or parts to video gaming terminals to licensed terminal operators.

A “terminal operator” is one who owns, services and maintains video gaming terminals for placement in Establishments.

A “video gaming terminal” is any electronic game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, line up and blackjack, as authorized by the Board utilizing a video display and microprocessors in which 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 or is for amusement purposes only.