



SUMMARY OF THE NEW ILLINOIS VIDEO GAMING ACT

The Video Gaming Act (the “Act”), enacted on July 13, 2009, legalizes the use of video gaming terminals in licensed establishments, licensed truck stop establishments, licensed fraternal establishments, and licensed veterans establishments (each, an “Establishment” or “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 Illinois video poker, line up, and blackjack, as authorized by the Illinois Gaming Board (the “Board”) utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. This does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only. All video gaming devices falling outside of this definition will be illegal to possess, constituting a felony, under Illinois law.

Video Gaming Terminal Manufacturers, Distributors, Suppliers, Operators, and Establishments

Each video gaming terminal manufacturer, distributor, supplier, operator, and Establishment must be licensed by the Board as follows:

♠ **Manufacturers & Distributors**

A manufacturer is one who manufactures or assembles video gaming terminals. A distributor buys, sells, leases, or distributes video gaming terminals or major components or parts of video gaming terminals to or from terminal operators. Manufacturers and distributors must each be licensed under the Act and may only sell to those distributors and terminal operators which also hold a valid license issued under the Act.

Manufacturers may sell only to distributors, and distributors may contract only with a licensed terminal operator. Neither a manufacturer nor distributor may be licensed as a video gaming terminal operator or own, manage or control an Establishment.

♠ **Suppliers**

A supplier is an individual, partnership, or corporation licensed under the Act to supply major components or parts to video gaming terminals to licensed terminal operators.

♠ **Terminal Operators**

A terminal operator is one who owns, services, and maintains video gaming terminals for placement in Establishments. Terminal operators must also be licensed under the Act and may place video gaming terminals for use only in licensed Establishments. No terminal operator may give anything of value, including but not limited to a loan or financing arrangement, to an Establishment to incite or induce the Establishment to locate a video gaming terminal in that Establishment. The after-tax profits from a

SUMMARY OF THE NEW VIDEO GAMING ACT (cont.)

video gaming terminal are split 50/50 between the terminal operator and the respective Establishment. No terminal operator may own or have a substantial interest in more than 5% of the video gaming terminals licensed in Illinois. A terminal operator that violates one or more of these requirements is guilty of a Class 4 felony and is subject to termination of his or her license by the Board.

A terminal operator may contract only with licensed distributors or an Establishment. A terminal operator may not be licensed as a terminal manufacturer or distributor nor may it own, manage or control an Establishment.

♠ *Licensed Establishments*

Establishments include: licensed establishments, licensed truck stop establishments, licensed fraternal establishments, and licensed veterans 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, or 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.² 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.

The owner of an Establishment, or its agent, must enter into a written use agreement with the terminal operator for placement of the video gaming terminals prior to a video gaming terminal being placed in an Establishment. This agreement must be kept on file in the terminal operator's

place of business and available for inspection by individuals authorized by the Board. An Establishment may operate up to 5 video gaming terminals on its premises at any time.

An owner or manager of an Establishment may contract only with a licensed operator to place and service the equipment and may not be licensed as a video gaming terminal manufacturer, distributor, or operator.

♠ *Licensed Technician*

A licensed technician is an individual who is licensed to repair, service, and maintain video gaming terminals. To service, maintain, or repair a video gaming terminal in Illinois, a person must either (i) have valid technician's license which was issued pursuant to the Act, (ii) be a terminal operator, or (iii) be employed by a terminal operator, distributor, or manufacturer.

♠ *Licensed Terminal Handler*

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. Without possession of a valid terminal handler's license, one may not have possession or control of a video gaming terminal, or access to the inner workings of a video gaming terminal.

Obtaining a License

*To become licensed, the terminal manufacturer, distributor, supplier, operator, handler, or Establishment applicant must:*³

1. Demonstrate its suitability for licensure through its application;

1 The provisions of the Illinois Riverboat Gambling Act, and all rules promulgated thereunder, will apply to the Act, except where there is a conflict between the two. All provisions of the Uniform Penalty and Interest Act will apply, as far as practicable, to the subject matter of the Act to the same extent as if such provisions were included in the Act.

2 As defined in Section 18b-101 of the Illinois Vehicle Code.

3 Any applicant for any license under the Act has the burden of proving his or her qualifications to the satisfaction of the Board. The Board may adopt rules to establish additional qualifications and requirements to preserve the integrity and security of video gaming in Illinois.

SUMMARY OF THE NEW VIDEO GAMING ACT (cont.)

2. Submit to a background investigation conducted by the Board with the assistance of the State Police or other law enforcement;⁴
3. Disclose the identity of every person, association, trust, or corporation having a greater than 1% direct or indirect pecuniary interest in the video gaming terminal operation to which the license is sought;⁵ and
4. Pay a non-refundable application fee at the time the application is filed with the Board. The amount of the non-refundable application fee is determined by the type of license the applicant is seeking. The non-refundable application fee is \$5,000 for a manufacturer, distributor, or terminal operator, \$2,500 for a supplier, \$100 for a technician, and \$50 for a terminal handler.

Further licensing requirements include:

1. Each licensed distributor, terminal operator, or a person with a substantial interest in a distributor or terminal operator must have resided in Illinois for a minimum of 24 months prior to application, unless he has performed his respective business in Illinois for at least 48 months prior to the effective date of the Act, and
2. Each Establishment must possess a valid liquor license issued by the Illinois Liquor Control Commission. The liquor license must be in effect at the time of application and at all times thereafter during which a video gaming terminal is made available to the public for play at that location.

However, no person may be licensed as a video gaming terminal manufacturer, distributor, supplier, operator,

handler, or Establishment if that person has been found by the Board to:

1. Have a background, including a criminal record, reputation, habits, social or business associations, or prior activities that pose a threat to the public interests of the State or to the security and integrity of video gaming;
2. Create or enhance the dangers or unsuitable, unfair, or illegal practices, methods, and activities in the conduct of video gaming; or
3. Present questionable business practices and financial arrangements incidental to the conduct of video gaming activities.

Unless sooner cancelled or terminated, all licenses issued by the Board under the Act are renewable annually. No license under the Act is transferable or assignable. Once licensed, an annual fee will be due at the time the license is renewed. Like the non-refundable application fee, the annual fee will be determined by the type of license held. The annual license fee amounts have not yet been finalized, but the Board will establish an annual fee for each license, not to exceed: \$10,000 for a manufacturer or distributor, \$5,000 for a terminal operator, \$2,000 for a supplier, \$100 for a technician, Establishment, or a video gaming terminal, and \$50 for a terminal handler.

Using the same criteria as set forth in the Riverboat Gambling Act,⁶ the Board may issue or deny a license under the Act to any person. However, those Establishments 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 the home dock of a riverboat licensed under the Riverboat Gambling Act, or (ii)

⁴ The background investigation must include each beneficiary of a trust, each partner of a partnership, and each director and officer and all stockholders of 5% or more in a parent or subsidiary corporation of a video gaming terminal manufacturer, distributor, supplier, operator, or Establishment.

⁵ If the disclosed entity is a trust, the application must disclose the names and addresses of the beneficiaries; if a corporation, the names and addresses of all stockholders and directors; if a partnership, the names and addresses of all partners, both general and limited.

⁶ Section 9 of the Riverboat Gambling Act. Criteria for issuing a license includes attaining the age of at least 21, not having been convicted of any felony offense, and having demonstrated a level of skill or knowledge which the Board determines to be necessary... Criteria for denying a license includes the person is unqualified to perform the duties required of such applicant, failed to disclose or states falsely any information called for in the application, or has been found guilty of a violation of the Riverboat Gambling Act.

SUMMARY OF THE NEW VIDEO GAMING ACT (cont.)

within 100 feet of a school or a place of worship under the Religious Corporation Act, are automatically ineligible to operate a video gaming terminal.

♠ *Video Gaming Terminals*

Each video gaming terminal must be licensed by the Board prior to placement or operation on the premises of an Establishment. To be licensed, every video gaming terminal offered for play must be tested and approved pursuant to the rules of the Board. This ensures that each video gaming terminal offered in Illinois for play conforms to an approved model.⁷

***Each approved model must, at a minimum, meet criteria, which includes:*⁸**

1. Conforming to all requirements of federal law and regulations, including FCC Class A Emissions Standards;
2. Theoretically paying out a mathematically demonstrable percentage during the expected lifetime of the machine of all amounts played, which must not be less than 80%. Video gaming terminals that may be affected by skill must meet this standard when using a method of play that will provide the greatest return to the player over a period of continuous play;
3. Using a random selection process to determine the outcome of each play of a game. The random selection process must meet 99% confidence limits using a standard chi-squared test for (randomness) goodness of fit;
4. Not being adversely affected by static discharge or other electromagnetic interference; and

5. Housing nonresettable meters in a locked area of the terminal that keep a permanent record of all cash inserted into the machine, all winnings made by the terminal printer, credits played in for video gaming terminals, and credits won by video gaming players. The video gaming terminal must provide the means for on-demand display of stored information as determined by the Board.

In addition to conforming to the approved model, video gaming terminals may not directly dispense coins, cash, tokens, or any other article of exchange or value except for receipt tickets. The tickets, which must be dispensed by the press of a button on the video gaming terminal at the end of one's turn or play, must indicate the total amount of credits and the cash award, as well as the time of day in a 24-hour format showing hours and minutes, the date, the terminal serial number, the sequential number of the ticket, and an encrypted validation number from which the validity of the prize may be determined.

Once approved and placed in an Establishment, video gaming terminals must be located in an area restricted to persons over 21 years of age. The entrance to this area must be in the view of at least one Establishment employee, who is over 21 years of age.⁹ Video gaming terminals may only be played during the legal hours of operation allowed for the consumption of alcoholic beverages at the Establishment, or the Establishment is subject to termination of its license by the Board.

The cost of video gaming terminal credits must be between 5 cents and 25 cents, with the maximum wager played per hand not to exceed \$2. Additionally, no cash award for the maximum wager on any individual hand may exceed \$500. For a player to receive their cash reward, the ticket must be turned into the appropriate person at the Establishment. The odds of winning each video game must be posted on or near each video gaming terminal.¹⁰

⁷ The Board may utilize the services of an independent outside testing laboratory for the examination of video gaming machines and associated equipment. Every video gaming terminal offered in this State for play must meet minimum standards set by an independent outside testing laboratory approved by the Board.

⁸ See the Act for the complete list of approved model requirements. The Board may adopt rules to establish additional criteria to preserve the integrity and security of video gaming in Illinois.

⁹ The placement of video gaming terminals in Establishments will be subject to the rules promulgated by the Board pursuant to the Illinois Administrative Procedure Act.

¹⁰ The manner in which the odds are calculated and how they are posted shall be determined by the Board by rule.

SUMMARY OF THE NEW VIDEO GAMING ACT (cont.)

Imposition and Distribution of Tax and License Fees

A tax of 30% is imposed on all monies put into a video gaming terminal minus credits paid out to players (the “net terminal income”). Five-sixths of the tax collected is deposited into the Capital Projects Fund, with the remaining deposited into the Local Government Video Gaming Distributive Fund. Revenues generated from the play of video gaming terminals must be deposited by the terminal operator, who is responsible for tax payments, in a specially created, separate bank account maintained by the video gaming terminal operator to allow for electronic fund transfers. Each Establishment must maintain an adequate video gaming fund, with the amount to be determined by the Board.

Illinois’ percentage of net terminal income must be reported and remitted to the Board within 15 days after the 15th day of each month and within 15 days after the end of each month by the video terminal operator. A video 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 his or her license by the Board. Each video terminal operator shall keep a record of net terminal income in such form as the Board may require. All payments not remitted when due shall be paid together with a penalty assessment on the unpaid balance at a rate of 1.5% per month.

Twenty-five percent of license fees will be paid, subject to appropriation by the General Assembly, to the Department of Human Services for the administration of programs for the treatment of compulsive gambling, while the remaining funds will be used for the administration of the Act.

Prohibition of Video Gaming by Political Subdivision

A municipality or county may pass an ordinance prohibiting video gaming within the corporate limits of the municipality or unincorporated area of the country, respectively. Video gaming can also be prohibited through a majority vote for the passage of a referendum seeking to ban video gaming in that municipality or county.

Those municipalities and counties which do not prohibit video gaming will be allocated funds monthly by the

Department of Revenue. The amount of such funds allocable to each such municipality and county will be in proportion to the tax revenue generated from video gaming within the eligible municipality or county as compared to the tax revenue generated from video gaming statewide. The funds may be used for any general corporate purpose authorized for that municipality or county.

Illegal Acts

Any licensee who knowingly permits a person under the age of 21 to use or play a video gaming terminal is guilty of a business offense and will be fined an amount not to exceed \$5,000.

Except those devices or electronic video game terminals licensed pursuant to the Act, every gambling device found in an Establishment operating gambling games in violation of the Act will be subject to seizure, confiscation, and destruction.¹¹ However, a video gaming terminal operated for amusement only and bearing a valid amusement tax sticker issued prior to the effective date of the amendatory Act of the 96th General Assembly will not be subject to this provision until the sooner of (i) the expiration of the amusement tax or (ii) 30 days after the Board establishes that the central communications system is functional.

Any license issued under the Liquor Control Act of 1934 to an owner or operator of an Establishment that operates or permits the operation of a video gambling terminal within its establishment in violation of the Act will be immediately revoked.

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 was licensed pursuant to the Act.

For more information on this or any other gaming law question, contact Paul T. Jenson, pjenson@shesfaskylaw.com, 312.836.4046.

¹¹ As provided for in Section 28-5 of the Criminal Code of 1961.

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.