

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2178**

BY DELEGATES FLUHARTY AND CANESTRARO

[ Introduced January 9, 2019; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended by adding thereto a new article,  
2 designated §29-25A-1, §29-25A-2, §29-25A-3, §29-25A-4, §29-25A-5, §29-25A-6, §29-  
3 25A-7, §29-25A-8 and §29-25A-9, all relating to legalizing interactive gaming; providing  
4 legislative findings; establishing licensing requirements; limiting licensing to existing  
5 gaming facilities; providing that the Lottery Commission regulate interactive gaming;  
6 providing operations controls; providing prohibitions and criminal penalties; assessing  
7 gaming and licensing fees; incorporating rules and statutes applicable to interactive  
8 gaming; and providing a tax and administration of the tax for operation of an interactive  
9 gaming license.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 25A. AUTHORIZED INTERACTIVE GAMING.**

### **§29-25A-1. Legislative findings.**

1 The Legislature finds:

2 (1) The Legislature finds and declares that interactive gaming permitted by this article  
3 constitutes the operation of lotteries within the purview of section thirty-six, article VI of the  
4 Constitution of West Virginia;

5 (2) That legalization of video lottery and table games in West Virginia has delivered  
6 substantial benefits to the state, including the creation of thousands of significant contributions to  
7 racing and agricultural industries;

8 (3) Developments in technology and recent legal decisions have created an opportunity  
9 to legalize interactive poker as a means to further enhance and complement the benefits delivered  
10 by casino gaming and licensed facilities to or for the benefit of the communities in which they  
11 operate;

12 (4) Interactive gaming operates by having players establish and draw funds from an  
13 individual account to place a wager in authorized games through the Internet and similar  
14 communications media. The state currently authorizes gaming in the form of video lottery and

15 table games. These gaming operations provide licensed entities the appropriate level of  
16 experience to introduce a platform for interactive gaming that protects the player and the integrity  
17 of the lottery games;

18 (5) It is a vital public interest that licensed entities retain responsibility for the interactive  
19 gaming software and hardware which shall remain under their ultimate operational and  
20 supervisory control of the state. To ensure that actual control and supervision remains with the  
21 licensed entity, the licensed entity's publicly accessible Internet website or similar public portal  
22 shall be marketed and made available to the public under the licensed entity's own name and  
23 brands and not the brands of third parties;

24 (6) Any interactive gaming enforcement and regulatory structure shall begin from the  
25 premise that participation in a lawful and licensed gaming industry is a privilege, not a right and  
26 that regulatory oversight is intended to safeguard the integrity of the games and participants and  
27 to ensure accountability;

28 (7) The state has entrusted the control and regulation of gaming to the Lottery  
29 Commission. It is therefore appropriate to delegate the responsibility for the implementation and  
30 regulation of interactive gaming to the commission; and

31 (8) Authorized interactive gaming, once fully developed, will allow persons in this state to  
32 participate in interactive games, not only with other persons in this state, but with persons in other  
33 cooperating jurisdictions in the United States where interactive gaming has been authorized.

**§29-25A-2. Definitions.**

1 The following words and phrases when used in this chapter have the meanings given to  
2 them in this section unless the context clearly indicates otherwise:

3 (a) "Authorized game" means any interactive racetrack, video lottery or interactive table  
4 game approved by the commission pursuant to this chapter.

5 (b) "Authorized participant" means a person placing a wager who is either physically  
6 present in this state or located in a jurisdiction with which the state has negotiated an interactive

7 gaming agreement. The intermediate routing of electronic data in connection with interactive  
8 games may not determine the location or locations in which a wager is initiated, received or  
9 otherwise made.

10 (c) "Commission" means the West Virginia Lottery Commission established pursuant to  
11 §29-22-1 et seq. of this code.

12 (d) "Interactive game" means any game offered through the use of communications  
13 technology that allows a person, utilizing money, checks, electronic checks, electronic transfers  
14 of money, credit cards, debit cards or any other instrumentality, to transmit to electronic  
15 information to assist in the placing of a wager and corresponding information related to the display  
16 of the game, game outcomes or other similar information. The term does not include the conduct  
17 of gaming that occurs entirely among participants located within the licensed facility of the  
18 licensee or its affiliate, to the extent that any such gaming may be authorized by the commission,  
19 or nongambling games that do not otherwise require a license under the laws of this state. For  
20 purposes of this definition, "communications technology" means any method used and the  
21 components employed by an establishment to facilitate the transmission of information, including,  
22 but not limited to, transmission and reception by systems based on wire, cable, radio, microwave,  
23 light, optics or computer data networks, including, but not limited to, the Internet and intranets.

24 (e) "Interactive gaming agreement" means a negotiated agreement between the state and  
25 one or more of the states or territories of the United States in which interactive gaming is legally  
26 authorized that permits persons located in such other jurisdictions to place wagers on interactive  
27 games with licensees in this state or to permit persons located in this state to place wagers on  
28 interactive games with licensees in such other jurisdictions, or both. Agreements may contain  
29 other provisions the commission considers appropriate, except that only authorized games may  
30 be permitted to be offered to persons located in this state pursuant to an agreement.

31 (f) "Interactive gaming license" means a license issued by the commission pursuant to this  
32 chapter which authorizes the holder to offer authorized games for play by, and to accept bets and

33 wagers associated with authorized games from, authorized participants.

34 (g) "Interactive gaming platform" means the combination of hardware and software  
35 designed and used to manage, conduct or record interactive games or the wagers associated  
36 with those games and which has been approved by the commission for purposes of the conduct  
37 of authorized games.

38 (h) "Interactive gaming skin" means the portal to an interactive gaming platform or Internet  
39 website through which an authorized game is made available to customers in this state.

40 (i) "Internet" means a computer network of interoperable packet-switched data networks.

41 (j) "Key interactive gaming employee" means an individual employed by a licensee,  
42 significant vendor or applicant, or by a holding or intermediary company of a licensee, significant  
43 vendor or applicant, who is involved in the operation of, or of the wagers associated with,  
44 interactive gaming and who is empowered to make discretionary decisions that regulate  
45 interactive gaming operations.

46 (k) "Licensee" means a authorized gaming facility licensed pursuant to §29-22C-1 et seq.  
47 and §29-25-1 et seq. of this code.

48 (l) "Poker" means any of several card games traditionally known as poker, in which players  
49 compete against each other and not against the person operating the game, including a game  
50 using an electronic device that simulates a deck of cards. The term includes cash games and  
51 tournaments. Licensees may assess a rake or any other type of fee associated with the game,  
52 contest or tournament but may not wager with or against any player.

53 (m) "Significant vendor" means a person who offers or proposes to offer any of the  
54 following services with respect to interactive gaming:

55 (1) Management, administration or control of wagers or of the interactive games  
56 themselves;

57 (2) Development, maintenance, provision or operation of an interactive gaming platform  
58 or any discrete component thereof;

59 (3) Sale, licensing or other receipt of compensation for selling or licensing a database or  
60 customer list of individuals residing in the United States selected, in whole or in part, because  
61 they placed wagers or participated in gambling games with or through an Internet website or  
62 operator or any derivative of such a database or customer list;

63 (4) Provision of any product, service or asset to a licensee or significant vendor in return  
64 for a percentage of interactive gaming revenue, not including fees to financial institutions and  
65 payment providers for facilitating a deposit or withdrawal by an authorized participant; or

66 (5) Provision of any trademark, trade name, service mark or similar intellectual property  
67 under which a licensee or significant vendor identifies to customers the authorized games, the  
68 website or equivalent hosting the authorized games, any interactive gaming skin or the interactive  
69 gaming platform, but excluding intellectual property of a person providing only art or graphics.

70 The term does not include any key interactive gaming employee of a licensee or significant  
71 vendor. A significant vendor must be licensed by the commission to provide these services.

**§29-25A-3. Regulation and enforcement by commission.**

1 (a) The commission shall propose rules for legislative approval in accordance with §29A-  
2 3-1 et seq. of this code, for the operation and conduct of interactive gaming pursuant to this article:  
3 Provided, That the rules promulgated by the commission that are necessary to begin the lottery  
4 games are exempt from the provisions of §29A-3-1 et seq. of this code in order that the selected  
5 games may commence as soon as possible.

6 (b) The commission shall authorize licensees and significant vendors to conduct  
7 interactive gaming at gaming facilities as established pursuant to §29-25-1 et seq. of this code.  
8 The commission shall also develop standards for evaluating and approving interactive gaming  
9 platforms for use with interactive gaming. The commission may determine the categories of  
10 employees who satisfy the definition of “key interactive employee” and may exclude from the  
11 scope of this definition any particular licensee, significant vendor, applicant or employee or  
12 category of employee it considers appropriate.

13 (c) The commission may negotiate and enter into interactive gaming agreements on behalf  
14 of the state consistent with this article.

15 (d) To the extent practicable, the commission shall negotiate interactive gaming  
16 agreements with other states, territories or possessions of the United States in which interactive  
17 gaming has been authorized to allow players in this state to participate in authorized games with  
18 players in such other jurisdictions.

**§29-25A-4. Prohibition on unauthorized Internet gaming; criminal penalties.**

1 (a) It is unlawful for any person to willfully and knowingly operate, carry on, offer or expose  
2 for play or to knowingly or willfully provide services for any interactive game or to accept any bet  
3 or wager associated with any interactive game from any person physically located in this state at  
4 the time of the play that is not within the scope of a valid and current license issued by the  
5 commission pursuant to this chapter or by another state, territory or possession of the United  
6 States with which the state has an interactive gaming agreement that permits that activity. It is  
7 unlawful for any person to willfully and knowingly provide services with respect to any interactive  
8 game, bet or wager:

9 (1) For a first violation of subsection (a), a person is guilty of a misdemeanor and, upon  
10 conviction thereof, shall be fined not less than \$75,000 nor more than \$150,000 or confined in jail  
11 not more than one year, or both fined and confined;

12 (2) For a second or subsequent violation of subsection (a), a person is guilty of a felony  
13 and, upon conviction thereof, shall be fined not less than \$150,000 nor more than \$300,000 or  
14 imprisoned in a state correctional facility not less than one nor more than three years, or both  
15 fined and imprisoned.

16 (b) An unlicensed person offering interactive games to persons in this state is liable for all  
17 taxes required by this chapter in the same manner and amounts as if that person were a licensee.  
18 Timely payment of the taxes does not constitute a defense to any prosecution or other proceeding  
19 in connection with unauthorized interactive gaming, except for a prosecution or proceeding

20 alleging failure to make such payment.

**§29-25A-5. Application for license.**

1 Ninety days from the effective date of this section, the commission shall permit filing of  
2 applications for licenses pursuant to this article by entities currently licensed by §29-25-1 et seq.  
3 of this code.

**§29-25A-6. Commission consideration of application.**

1 Current gaming facilities, whose licenses to offer video lottery games and table games are  
2 in good standing, are suitable to be issued an interactive gaming license by the commission. An  
3 applicant that was not licensed as an authorized gaming facility pursuant to §29-25-1 et seq. of  
4 this code or did not hold a valid racing license granted by the Racing Commission prior to January  
5 1, 1994, pursuant to the provisions of §19-23-1 et seq. of this code is not eligible for a license.  
6 Within 60 days of entry of the commission's order granting a license, the successful applicant  
7 shall pay a licensing fee of \$50,000.

**§29-25A-7. Accounting and operational internal controls.**

1 Each interactive gaming license applicant shall submit to the commission and department,  
2 in such manner as the commission requires, a description of its administrative and accounting  
3 procedures in detail, including its written system of internal control. In addition to other such  
4 standards that the commission may choose to require. The commission shall require licensees  
5 to implement appropriate safeguards:

6 (1) To ensure, to a reasonable degree of certainty, that authorized participants are not  
7 less than 21 years of age;

8 (2) To ensure, to a reasonable degree of certainty, that authorized participants are  
9 physically located within this state or such other jurisdiction that is permissible under this chapter;

10 (3) To protect, to a reasonable degree of certainty, the privacy and online security of  
11 authorized participants;

12 (4) To ensure, to a reasonable degree of certainty, that the interactive games are fair and



13 honest and that appropriate measures are in place to deter, detect and, to the extent reasonably  
14 possible, to prevent cheating, including collusion and use of cheating devices, including the use  
15 of software programs, sometimes referred to as “bots,” that make bets or wagers according to  
16 algorithms;

17 (5) To minimize compulsive gambling and to provide notice to authorized participants of  
18 resources to help problem gamblers; and

19 (6) To ensure authorized participants' funds are held in accounts segregated from the  
20 funds of licensees and otherwise are protected from corporate insolvency, financial risk or criminal  
21 or civil actions against the licensee.

**§29-25A-8. Taxes on gaming activities.**

1 (a) The tax rate which shall be assessed and collected by the commission with respect to  
2 any wagers placed by residents of this state with an interactive gaming operator outside of this  
3 state, but authorized pursuant to an interactive gaming agreement, are governed by the  
4 agreement but may not exceed fourteen percent of gross interactive gaming revenue derived from  
5 residents of this state.

6 (b) Each licensee shall report to the department and pay from its daily gross interactive  
7 gaming revenue, on a form and in a manner prescribed by the department, a tax of fourteen  
8 percent of its daily gross interactive gaming revenue, which shall be payable to the department  
9 on a weekly basis and shall be based upon gross interactive gaming revenue for the previous  
10 week.

**§29-25A-9. Applicable gaming facility laws and rules apply.**

1 If federal law authorizes interactive gaming which establishes a tax based on gross  
2 interactive gaming revenue, deposits or the substantial equivalent of or intended substitute for  
3 either of them, of which a portion is allocated to the states, that tax shall supersede, in its entirety,  
4 the tax imposed by this section. All moneys collected pursuant to this article shall be deposited  
5 in the account created in §29-22-1 *et seq.* and §29-25-1 *et seq.* of this code: *Provided, That*

- 6 moneys collected from an authorized gaming facility shall be deposited in the account created in  
7 §29-25-22 of this code. The commission shall establish by rule and maintain minimum internal  
8 control standards that incorporate any applicable rules and statutes regulating gaming facilities  
9 necessary to effectuate the provisions of this article.

NOTE: The purpose of this bill is to authorize Internet gaming managed and licensed through existing authorized gaming facilities in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.