

The Video Gaming Act

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G&R Review



On July 13, 2009, Governor Pat Quinn passed into law the Illinois Video Gaming Act ("Act"), legalizing the operation of video gambling machines in "any licensed retail establishment where alcoholic liquor is drawn, poured, mixed, or otherwise served for consumption on the premises"[1] including bars, truck stops and fraternal and veterans organizations ("Establishments") throughout the State. Passage of the Act has created a great deal of both excitement and confusion among individuals and business entities interested in participating in the burgeoning industry.

The Illinois Gaming Board (IGB) is responsible for the administration and enforcement of the Act, including promulgating rules governing the operation and regulation of the video gaming terminals (VGTs). These VGTs are essentially the same state-of-the-art video poker, blackjack and slot machines found in Las Vegas and Atlantic City casinos and Illinois riverboat casinos. The Board issued an initial set of emergency rules in October 2009, and simultaneously issued an identical (initial) set of rules to go through the administrative rulemaking process. Those rules were subject to public comment, and the initial set of adopted rules, modified based on said comments, will be in place upon expiration of the emergency rules.

Video Game Terminals (VGTs)

Video Gaming Terminals are defined in the Act as "any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game...utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash." [2] VGTs do not include machines that directly dispense coins, cash, or tokens, or are for amusement purposes only. The only item of value that a VGT is permitted to dispense is receipt tickets. The player shall turn in his tickets to the Establishment to receive his winnings.

The odds of winning each video game must be posted on or near each VGT. The manner in which these odds are calculated shall be determined by the Board. The maximum number of VGTs permitted in any one Establishment is five. On any one hand, the maximum wager is two dollars and the maximum payout cannot exceed \$500. No VGT may be played except during the legal hours of operation allowed for the consumption of alcoholic beverages at the particular Establishment.

The IGB has selected an independent laboratory to establish minimum standards for the VGTs and test for satisfaction of these standards. The Act sets forth a number of additional requirements that each VGT must

satisfy, including that it must:

- pay out at least 80% of all amounts played over its expected life;
- use a random selection process with 99% confidence limits to determine the outcome of each play of a game;
- not have any means of manipulation that affects the random selection process or probabilities of winning a game;
- have a payback percentage incapable of being changed without changing hardware or software; and
- have non-resettable meters in a locked area of the machine that keep a permanent record of all cash inserted, winning receipts printed, and credits played and won.

License Types

The Act creates a four-tiered structure, with the entities at each tier requiring licensure by the Board: (i) Manufacturers, (ii) Distributors, (iii) Operators and (iv) Establishments.^[3] The responsibilities of the various licensed parties include, without limitation, the following:

- Manufacturers. Shall manufacture and assemble VGTs and sell them to licensed Distributors.
- Distributors. Shall sell, lease or distribute VGTs to licensed Operators.
- Operators. Shall (i) own the VGTs, install them in licensed bars and other Establishments; (ii) maintain and repair the VGTs; (iii) enter into a written use agreement with each licensed Establishment in which it places VGTs, (iv) obtain and install all hardware and software necessary to connect its VGTs to the central communications system (the "Central Server"); and (v) maintain a bank account for the deposit of VGT revenues that allows for tax payments to the State by EFT.
- Establishments. Shall (i) possess and maintain in good standing a valid liquor license; (ii) provide a secure, approved location for the placement, operation and play of VGTs, which location must be within the view of at least one employee over 21; (iii) if minors are allowed to enter the Establishment, place the VGTs in a separate area inaccessible by minors; and (iv) prevent play of VGTs by persons under 21 or who are visibly intoxicated.

Operators are expressly prohibited from offering or providing anything of value to an Establishment as an incentive or inducement to allow the Operator to place VGTs at the Establishment. For example, offering to provide a loan or free flat screen televisions to an Establishment or even wining and dining an Establishment owner would run afoul of this prohibition. Similarly, Establishments are prohibited from accepting any such incentives or inducements for the placement of VGTs.

Licensing

Each entity seeking a gaming license must submit to a background investigation conducted by the IGB. The

burden is on each applicant to demonstrate its suitability for licensure. Each applicant must disclose the identity of every individual or entity having a greater than 1% direct or indirect interest therein. The applicant must disclose all directors and shareholders (if a corporation), general and limited partners (if a partnership) or members and managers (if an LLC), as well as all persons with significant influence or control over said applicant.

The Board may not grant any license until it is convinced that the applicant has satisfied a number of additional qualifications, including that said applicant (i) is of good character, honesty and integrity; (ii) does not have a background, reputation or associations that would adversely affect public confidence and trust in gaming or pose a threat to the security and integrity of video gaming; (iii) does not associate with or employ persons of notorious or unsavory reputation; and (iv) has demonstrated that it has adequate financing for the proposed business and that the source of financing satisfies the same list of qualifications.

Taxes and Distribution of Revenue

The State imposes a tax of 30% on VGT revenues: 5/6 of which (25% of VGT revenues) shall be deposited with the State, and 1/6 of which (5% of VGT revenues) shall be deposited with the local municipality. The remaining 70% of VGT revenues shall be divided evenly between Operator and Establishment.

Central Server

All VGTs shall be linked by the Central Server to provide auditing program information. The Central Server shall enable the IGB to activate or deactivate individual VGTs from a central location.

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Peter Spier represents corporate clients in the structuring and negotiation of sophisticated commercial transactions, including asset transfers, stock purchase agreements and PIPE (Private Investment in Public Equity) financings. His practice is particularly focused on the representation of gaming clients in a broad range of transactions, including distribution and supply agreements, location agreements and secured financing transactions, as well as in licensing matters. He is a member of the International Association of Gaming Advisors and serves on the Gaming Law Subcommittee of the Business Law Section of the American Bar Association. Mr. Spier can be reached at or atpspier@gouldratner.com.

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[1] 230 ILCS 40/5

[2] Id.

[3] In addition to the four primary license types, the Act also provides for the issuance of a technician's license (for servicing/repairing VGTs) and a terminal handler's license (for possessing and accessing the inner workings of VGTs).