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BILL ANALYSIS

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House Bill 4610 (Substitute S-2 as passed by the Senate)  
Sponsor: Representative Jack D. Minore  
House Committee: Agriculture and Resource Management  
Senate Committee: Gaming and Casino Oversight

Date Completed: 5-5-04

## **CONTENT**

**The bill would amend the Lottery Act to do all of the following:**

- Establish the "Michigan Lottery Gaming Control Board" and prescribe its powers and duties.
- Authorize the Board to issue video lottery licenses to race meeting license holders.
- Allow a video lottery licensee to install up to 500 video lottery terminals (VLTs) at licensed race meetings, and apply for permission to install more.
- Provide for the allocation of revenue from video lottery games to the General Fund, the School Aid Fund, commissions to race meeting licensees, local units of government, the Agricultural Enhancement Purse Pool, breeders' awards, and compulsive gambling treatment programs.
- Require the placement of VLTs at a racetrack to be approved in a local election.
- Prescribe penalties for violating provisions related to video lottery.
- Require the Board to suspend or revoke a video lottery license if the holder failed to conduct the number of live race days allocated to the holder under the Horse Racing Law.
- Prohibit a video lottery licensee from making political contributions.
- Require the Board to create a "disassociated persons list" of individuals who wished to be prohibited from engaging in video lottery, and prescribe a penalty for a disassociated person who attempted to do so.

- Provide for the confidentiality of records in the Board's possession.
- Authorize the Board to issue permits to manufacturers and suppliers, and occupational licenses.

Under the bill, "video lottery game" would mean an electronically simulated game of chance, approved and operated by the proposed Board, that was displayed on a video lottery terminal connected to the central control system by an on-line wired, cable, or wireless communication system, and that met other criteria (which would make it essentially the same as a slot machine). "Central control system" would mean a computer or computer system provided to and owned, operated, and controlled exclusively by the Board that communicated with VLTs to retrieve information and activate and disable the terminals.

The bill is described below in further detail. Most of the bill's provisions are found in proposed Article 2 of the Act.

### Michigan Lottery Gaming Control Board

Appointment. The bill would create the Michigan Lottery Gaming Control Board as an autonomous entity within the Lottery Bureau and the Department of Treasury. The board would consist of five members, not more than three of whom could be from the same political party, appointed by the Governor with the advice and consent of the Senate. The Governor would have to designate the chairperson.

A person who was not of good moral character or who had been indicted or

charged with, convicted of, pleaded guilty or no contest to, or forfeited bail concerning a felony or a misdemeanor involving gambling, theft, dishonesty, or fraud could not be appointed or remain as a member of the Board. Individuals who had an interest in a gambling license, as described in the bill, also would be disqualified from Board membership.

The Governor would have to appoint the executive director of the Board to serve a six-year term. After the bill's effective date, the executive director's appointment would require the Senate's approval by a record roll call vote.

The Board would have to employ personnel necessary to perform its functions under the Act. Board members, the executive director, and key employees would have to file financial disclosure statements with the Governor, and Board members would have to disclose additional information.

Notice of Conflict. A member, employee, or agent of the Board would have to provide written notice to the Board or chairperson, as applicable, under certain circumstances, including if he or she, or a family member, gained an employment or financial interest in a holder of or applicant for a video lottery license or manufacturer's permit; he or she was indicted for, charged with, convicted of, pled guilty or nolo contendere to, or forfeited bail concerning certain misdemeanors or any felony; an exchange of anything of value took place between the individual and a license or permit applicant or holder; he or she engaged in conduct that constituted a conflict of interest; or he or she was offered a bribe.

Ex Parte Communications. An applicant for or holder of a video lottery license or manufacturer's permit or a person affiliated with or representative of an applicant or holder could not engage in ex parte communications with a Board member (communications to which the other Board members were not a party). A Board member could not engage in any ex parte communications with an applicant for or holder of a license or permit, or a person affiliated with or representing an applicant or holder. A Board member, a license or permit applicant or holder, or a person affiliated with or representative of an applicant or holder who received an ex parte communication, or who was aware of an

attempted ex parte communication, immediately would have to report the details to the chairperson in writing.

A board member who received an ex parte communication that attempted to influence his or her official action would have to disclose the source and content to the chairperson. The chairperson could investigate or initiate an investigation with the assistance of the Attorney General and the Michigan Department of State Police (MSP) to determine if the communication violated the Act or any other State law. The disclosure and investigation would have to remain confidential. The chairperson would have to advise the Governor and/or the Board of the results and could recommend action he or she determined to be appropriate.

Disciplinary Action. The Board could deny, revoke, or suspend the license of, or take other disciplinary action against, an applicant for or holder of a video lottery license or manufacturer's permit, or a person affiliated with or representative of an applicant or holder for a violation of these provisions. A Board member could be disqualified for or removed from Board membership, or subject to other disciplinary action as the Board determined, for a violation.

An employee's or agent's employment would have to be terminated if any of the following occurred:

- After being offered employment or beginning employment with the Board, the employee or agent intentionally acquired a financial interest in a license or permit applicant or holder, or a person affiliated with or representative of an applicant or holder.
- The individual or his or her family member, through no intentional action of the individual, acquired a financial interest in an license or permit applicant or holder, or a person affiliated with or representative of an applicant or holder, and did not divest himself or herself of, or terminate, the financial interest within 30 days.
- The employee or agent was a relative of a Board member.

## Board Responsibilities

The Board would be subject to the Open Meetings Act, and would have to hold at least one public meeting quarterly. The Board would have to maintain separate and distinct records, including accurate records of all Board meetings and proceedings.

The Board would have to promulgate rules necessary to implement, administer, and enforce Article 2; collect all fees imposed under the article; and set the fees, if Article 2 did not set them.

Through its employees or agents, the MSP, or the Attorney General, the Board would have to certify the revenue from video lottery; receive complaints from the public; and conduct other investigations into the conduct of video lottery that the Board considered necessary and proper. The Board also would have to review and rule on complaints by video lottery licensees regarding the Board's or the State's investigative procedures.

The Board would have to review the patterns of wagering and wins and losses by individuals playing video lottery and make recommendations to the Governor and the Legislature in a written annual report and in additional reports as requested by the Governor. The annual report would have to include a statement of receipts and disbursements by the Board, actions taken by the Board, and any additional information and recommendations that the Board considered appropriate or that the Governor requested.

The Board would have to take any other action, including the exercise of a power listed in Section 55, if necessary, to implement and conduct video lottery in accordance with Article 2 and the welfare of the people in this State. Section 55 would authorize the Board to do all of the following:

- Investigate applicants, determine their eligibility for a license or permit, grant licenses and permits, and review and decide renewal applications.
- Exercise jurisdiction over and supervise video lottery operations authorized by Article 2 and all individuals in areas of racetracks where video lottery was conducted.

- Investigate alleged violations of Article 2 or Board rules, and take appropriate disciplinary or legal action against a license or permit holder or any other person for a violation.
- Adopt appropriate standards for video lottery facilities and equipment.
- Adopt standards for issuing licenses and permits and establish license and permit fees.
- Require that license holders annually submitted to the Board a balance sheet and profit and loss statement for the preceding year, a list of the stockholders or other people who had a 1% or greater beneficial interest in the licensee's gambling activities, and any other information the Board considered necessary effectively to administer Article 2, Board rules, and orders and final decisions made under the article.
- Conduct investigative and contested case hearings, and issue subpoenas for witnesses and the production of documents.
- Eject or exclude an individual from an area where video lottery was conducted if he or she violated Article 2, Board rules, or final orders of the Board, or if the Board determined that, because of the individual's conduct or reputation, his or her presence could compromise the integrity or interfere with the orderly conduct of the operation.
- Impose civil penalties of up to \$10,000 or an amount equal to the daily gross terminal income, whichever was greater, against video lottery licensees; or up to \$5,000 against other people for each violation.
- Conduct periodic audits of license holders.

By its investigators, agents, auditors, and the MSP, at any time and without a warrant or notice, the Board could enter premises where video lottery was conducted or related records were located, or other places of business of a license or permit holder, where evidence of compliance or noncompliance with Article 2 or Board rules was likely to be found, to do the following:

- Inspect and examine the premises, including counting and control rooms.
- Examine, audit, assume physical control of, or remove all books, ledgers, documents, photocopies, correspondence, records, videotapes, electronically stored records, money

receptacles, other containers and their contents, equipment in which records were stored, or other gaming-related equipment and supplies on the premises.

- Inspect the person and inspect and seize the personal effects of a license or permit holder on the premises.
- Investigate and deter alleged violations of the Act or Board rules.

In addition, the Board could conduct periodic audits of license holders; establish minimum levels of insurance to be maintained by them; review the business practices of licensees, including the price and quality of goods and services offered to patrons; conduct a review of a licensee who was under review or subject to discipline by a regulatory body in another jurisdiction for a gambling law violation.

The Board could use all or part of application fees received to pay administrative costs.

#### Application Process

An applicant for a license or a license renewal would have to make its application under oath in a form required by the Board. The application would have to contain specified information regarding the applicant's identity and location; people who had a pecuniary interest in the applicant; the applicant's criminal, licensure, bankruptcy, and tax payment history; public officials who had a financial or beneficial interest in the applicant, were the applicant's creditors, or had an interest in a contract or service relationship with the applicant; political contributions made by the applicant and his or her family members in the previous five years; individuals representing the applicant before the Board; a description of the proposed video lottery operation; and any other information the Board required.

The Board would have to use the application information for a thorough background investigation of the applicant. An applicant would have to submit with its application any agreements with or resolutions or letters of support from the governing body of the local unit of government in which the applicant's racetrack was located. The applicant also would have to submit a photograph, two sets of fingerprints, and a handwriting exemplar for each individual having a greater than 1% pecuniary interest in the applicant, and each person who was

an officer, director, or managerial employee of the applicant.

The Board would have to grant a license if it determined that the applicant satisfied certain qualifications. Among other things, the applicant would have to hold a valid race meeting license under the Horse Racing Law, and either 1) have been licensed before January 1, 2003, or 2) be one of the first two new race meeting licensees licensed after January 1, 2003, and before April 30, 2004, and be licensed to conduct its race meetings in a city area, as defined in that Law (a city with a population of 750,000 or more, including the counties wholly or partly within 30 miles of the city's limits).

For an initial license application, the applicant would have to pay a nonrefundable application fee for each VLT the applicant proposed to install and operate. The amount of the fee would have to be determined by the Board after conducting a market analysis of fees, and would have to be at least \$15,000 per VLT.

For an initial application, the racetrack where the applicant conducted its race meetings could not be located within 25 miles of a casino operated by a Federally recognized Indian tribe that was paying to the State 8% of the casino's net profit on electronic games of chance at the time of the application; or within 50 miles of a casino owned by a tribe that had been paying the State 8% of the profits for the three years preceding the application.

The Board could not issue a video lottery license if it determined that any of the following applied:

- The applicant had been convicted of any felony, or of a misdemeanor involving gambling, theft, dishonesty, or fraud.
- The applicant license application was incomplete or contained false information.
- The applicant was a Board member.
- The applicant held an elective office of a governmental unit of any state, or the United States; was a member of or employed by a gaming regulatory body; or was employed by a governmental unit of Michigan.
- The applicant or affiliate of the applicant had more than a 10% ownership interest in another person licensed under Article 2.

-- The applicant failed to meet other criteria the Board considered appropriate, including integrity, moral character, reputation, personal and business probity, financial ability and experience, and responsibility.

In deciding whether to grant a license application, the Board also would have to consider the prospective revenue the State would derive; whether the applicant had adequate capitalization; the sources of the capitalization; the applicant's ability to pay its debts; the extent and adequacy of any compulsive gambling programs the applicant would conduct or support financially; the applicant's and its affiliates' past compliance with licensing and regulatory requirements of this State or any other jurisdiction; whether the applicant had been charged with or indicted or arrested for a criminal offense, other than a traffic violation, that was not the basis for a license denial; whether the applicant had been a debtor in a bankruptcy case; whether the applicant had been served with a complaint or notice regarding the delinquent payment, nonpayment, or underpayment of tax; and the applicant's involvement in civil litigation.

The Board would have to conduct a criminal history investigation of an applicant by obtaining all available information related to the applicant in the files of the MSP and the Federal Bureau of Investigation (FBI).

The Board would have to review all complete license applications, hold a public investigative hearing, and decide on an application in a reasonable period of time. The applicant would have the burden of establishing its suitability for a license by clear and convincing evidence.

A license would be valid for one year. An application for renewal would have to be made after November 1 of each year after the initial license was granted.

#### License Issuance; VLT Placement

The Board could issue a video lottery license that only allowed video lottery to be conducted at licensed race meetings. The Board could allow a video lottery licensee to conduct video lottery only at one location.

If a video lottery license were granted to a race meeting licensee that was first licensed to conduct race meetings after the bill's

effective date, video lottery could not be conducted at the racetrack until 90 days after the first day of horse racing completed by the licensee.

The Board would be prohibited from placing VLTs or granting a video lottery license unless a majority of the electors of the county where the racetrack was located voting on the question approved VLT operation. The Board also could not place VLTs in, or grant a license to a person that conducted its race meetings at a racetrack located in, a city with a population of more than 6,000 but less than 15,000 unless a majority of the electors of the city voting on the question approved the operation of VLTs at the racetrack.

The bill would prohibit a person from constructing, as part of changes or improvements under these provisions, a building or structure to be used as a meeting, conference, convention, or exposition space that had a total floor area of more than 30,000 square feet.

#### Permits & Occupational Licenses

The application process, eligibility criteria, and disqualifications for a manufacturer's or supplier's permit would be similar to those proposed for a video lottery license. (A manufacturer would be a person engaged in the business of designing, building, assembling, or manufacturing VLTs and their parts, whose products were intended for sale, lease, or other transfer to the Board for placement at racetracks. A supplier would be a person providing video lottery licensees with goods or services regarding the realty, construction, maintenance, or business of a proposed or existing video lottery operation or related facility.)

An applicant for a permit would have to pay an application fee set by the Board in an amount to cover all actual costs of obtaining information and reviewing the application; submit a complete application; and pay a \$5,000 annual permit fee. A permit would be valid for one year and could be renewed annually.

The bill also would provide for the licensure of individuals performing an occupation related to the conduct of video lottery, if the Board determined they should be licensed. The Board would have to promulgate rules identifying each occupation requiring licensure. The Board would have to issue an

occupational license if an applicant had paid the application fee set by the Board in an amount that covered actual costs; the Board determined that the individual was eligible for a license under Article 2 and Board rules; and the individual had paid the biennial license fee set by the Board.

An occupational licensee would have to be at least 21 years old, and could not have been convicted of any felony or of a misdemeanor involving gambling, dishonesty, theft, or fraud. He or she would have to submit two sets of his or her fingerprints and photograph with the application. The Board could deny a license on grounds similar to those for which a video lottery license could be denied. An occupational license would be valid for two years.

#### License Sanction; Fine; Disciplinary Action

The Board could revoke, suspend, or restrict licenses and permits. The Board could suspend a license or permit without notice or hearing upon a determination that the safety or health of patrons or employees would be jeopardized if the licensee or permit holder were allowed to continue to operate video lottery. If the Board suspended a license without notice or hearing, it would have to hold a hearing promptly after the suspension. A suspension could be indeterminate and remain in effect until the Board determined that the cause for it had been abated. The Board could revoke the license or permit if it determined that the owner had not made sufficient progress toward abating the cause for the suspension.

The Board could revoke, suspend, or restrict a video lottery license or impose a fine or other disciplinary action for any of the following:

- The licensee had violated the Michigan Liquor Control Code or rules promulgated under it.
- The Board determined that the licensee no longer met the eligibility requirements or no longer was suitable to hold the license.
- Failure to act would undermine the public's confidence in the operation of video lottery in this State.

#### License & Permit Holder Requirements

A license or permit holder would be subject to requirements set forth in the bill. Among other things, a license or permit holder would have to report to the Board promptly any facts or circumstances related to video lottery operations that constituted a violation of State or Federal law; conduct all video lottery activities and functions in a manner that did not pose a threat to the public health, safety, or welfare of the citizens of this State, and that did not adversely affect the security or integrity of the lottery; and assist the Board in maximizing video lottery revenues.

In addition to other requirements, a license holder would have to monitor a VLT to prevent access to or play at the terminal by an individual who was under 21 or visibly intoxicated; and conduct a background check before hiring a prospective employee to determine whether he or she had been convicted of a crime or whether criminal charges were pending. A licensee also would have to post conspicuously at each entrance and exit of the premises a visually prominent sign with a toll-free compulsive gaming helpline number, and include the number on all its printed advertisements and promotional material.

A license holder could not provide access to an automated teller machine within 50 feet of the area where video lottery games were played; accept a credit card or debit card from a player for the exchange or purchase of video lottery game credits or for a cash advance to play video lottery games; extend credit, in any manner, to a player to enable him or her to play a video lottery game; accept from a wagerer a lien on real or personal property; or move the location of its video lottery operation from the initial Board-approved location.

#### VLT Approval

A manufacturer could not sell, lease, or place a VLT in this State unless the Board approved the terminal. Only a manufacturer with a permit could apply for approval of a VLT or associated equipment. A VLT approved for placement in this State would have to comply with all Federal, State, and local laws and ordinances and rules promulgated by the Board.

Video lottery terminals and related equipment would be subject to testing, as provided in the bill. If a VLT failed the test, the manufacturer would have to make all modifications required by the Board.

A video manufacturer and a license holder would be jointly responsible for the assembly and installation of a VLT and associated equipment, and could not modify a VLT's assembly or operational functions without Board approval.

A VLT approved for placement would have to conform to the exact specifications of the VLT model tested and approved by the Board. The Board, acting through its employees or agents, the MSP, or the Attorney General, would have to seize and destroy a VLT or modification that had not been approved by the Board, and would have to suspend the license of a license holder or the permit of a manufacturer that operated or manufactured an unapproved VLT or modification.

A VLT registered with and approved by the Board could allow only the play of video lottery games regulated and controlled by the Board that used specific game rules promulgated by the Board.

The Board would own and have primary responsibility for the control and regulation of a video lottery game or VLT operated under Article 2. The Board, directly or through a contract with a third party vendor other than a licensee, would have to maintain a central control system to monitor lottery terminals using an on-line wired, cable, or wireless communication method. The system would have to be capable of monitoring the operation of and immediately disabling each VLT. A licensee would have to pay a portion, as determined by the Board, of the cost of the central control system as part of the license holder's licensing requirement.

#### Number of Terminals

A license holder could install and operate the number of VLTs for which it had paid the application fee, up to 500, at the racetrack where the licensee held race meetings. A licensee could install and operate machines in addition to the number for which it had paid the application fee, up to 500, or replace machines already on its premises, only if it paid an additional nonrefundable

license fee equal to the initial application fee, for each additional or replaced machine, of which \$10,000 for each machine would have to be deposited by the Board into the School Aid Fund (SAF). A license holder could apply to the Board for authorization to install and operate more than 500 VLTs at the time of a renewal application or during the license period.

If the application to install additional machines in excess of 500 were made during the license period, the license holder would have to submit a new statement of the impact of the additional machines on the community where the racetrack was located. If the Board determined that it was in the best interest of the licensee, the Board, and the citizens of the State, the Board could grant permission to install and operate the additional VLTs.

#### Distribution of Video Lottery Income

A license holder would have to remit its gross terminal income to the Board by electronic transfer of funds on dates the Board established. The Board would have to deduct from the gross terminal income an amount sufficient to reimburse the Board, the MSP, and the Department of Attorney General for estimated administrative costs.

The Board would have to combine net terminal income from all license holders for distribution. If the amount paid into the Michigan Strategic Fund under gaming compacts between Indian tribes and the State in the preceding fiscal year were less than the amount paid into the Fund under the gaming compacts in the last full fiscal year before the first video lottery license was granted, the Board first would have to deposit an amount equal to that difference into the Fund.

After making the deposit in the Strategic Fund, the Board would have to distribute 70% of the balance to the State Treasurer, of which 6% would go to the SAF and 94% would be deposited in the General Fund.

Of the remaining 30%, 19% would be paid as commissions to race meeting licensees, the portion paid to a licensee being equal to the percentage of the total amount wagered in video lottery games in Michigan during the previous year that was wagered at the racetrack where the licensee conducted its race meetings. A race meeting licensee

would have to use at least one-third of the money to make capital improvements to the racetrack, grandstand, or other equine-related structure or facility on the premises, and would have to pay 4% of the money, quarterly, as follows:

- To the local unit of government in which the racetrack was located.
- If the race meeting licensee relocated its racetrack from one local unit to another in the same county after the bill's effective date, to both local units of government, dividing the money equally between them.

Eight percent would go to the Agricultural Enhancement Purse Pool (described below); 2% would go to the payment of breeders' awards; and 1% would go to the Compulsive Gaming Prevention Fund, which was created under the Compulsive Gaming Prevention Act.

A local unit of government that received money would have to distribute up to one-fourth of it to the local community mental health entity to provide grants to local community health organizations that provided treatment and counseling for compulsive gambling. Any funds not distributed in grants would have to be returned to the local unit.

#### Agricultural Enhancement Purse Pool; Breeders' Awards

The bill would provide for the distribution of money into the Agricultural Enhancement Purse Pool. All certified horsemen's organizations participating in the distribution of this money would have to select a depository as the recipient of the money. The escrow agent selected by the participating horsemen's organizations would have to distribute the money as described below.

One percent would have to be divided between all mixed breed purse pools. This amount would have to be at least \$1,200,001 for the first full calendar year in which the distribution was made. For each subsequent year, the amount would have to be at least the minimum amount for the previous year adjusted in proportion to the increase or decrease of the simulcast purse pool.

If no race meeting licensee were conducting thoroughbred racing in a city area, 45% of the balance of the Agricultural Enhancement Purse Pool money would have to be distributed to thoroughbred purse pools and 55% would have to be distributed to standardbred purse pools.

If a race meeting licensee were conducting thoroughbred racing in a city area, the balance of the Agricultural Enhancement Purse Pool money would have to be distributed equally between thoroughbred and standardbred purse pools.

Of the money designated under the bill for distribution to breeders' awards, 1% would have to be used for payment of mixed breed awards. The balance would be divided between standardbred breeders' awards and thoroughbred breeders' awards in the same proportion as the division of Agricultural Enhancement Purse Pool money. Money distributed for thoroughbred breeders' awards would have to be administered by the Thoroughbred Certified Breeders' Organization.

Money distributed to a breed's purse pools or a breed's breeders' awards would have to be divided between all race meeting licensees that held races in which that breed participated. Each licensee's portion would be determined by the percentage of the total amount wagered on races of that breed conducted in this State during the previous year that was wagered on races of that breed conducted by the licensee during the previous year.

#### Penalty

A person who did any of the following would be guilty of a felony punishable by imprisonment for up to 10 years and/or a maximum fine of \$100,000, and would be barred from receiving or holding a license, permit, or occupational license:

- Conducted a video lottery operation without a license, or in a manner that violated Article 2.
- Knowingly made a false statement on an application for a license, permit, or occupational license; or knowingly provided false testimony under oath to the Board.
- Willfully failed to report, pay, or truthfully account for a fee imposed by Article 2 or willfully attempted to evade or defeat a



fee or payment. (A person convicted of this violation also would be subject to a penalty of three times the amount of the unpaid license fee or tax.)

- Made or aided or abetted the making of a political contribution in violation of Article 2.

A person who did any of the following would be guilty of a felony punishable by imprisonment for up to 10 years and/or a maximum fine of \$100,000, and would be barred for life from any video lottery operation under the Board's jurisdiction:

- Offered, promised, or gave, anything of value or benefit to a person connected with a license or permit holder or affiliate, under an agreement or arrangement or with the intent that it would influence the person to affect or attempt to affect the outcome of a video lottery game.
- Solicited or knowingly accepted or received a promise of anything of value or benefit while employed by or connected with a licensee or permit holder, under an agreement or arrangement or with the intent that the promise or thing of value or benefit would influence the person to affect the outcome of a video lottery game.
- Offered, promised, or gave anything of value or benefit to a member, employee, or agent of the Board or a State or local official with the intent that it would influence the person in administering, licensing, regulating, or enforcing the Act.
- Solicited or knowingly accepted or received a promise of anything of value or benefit while a Board member, employee, or agent or a State or local official, under an agreement or arrangement or with the intent that the promise, thing of value, or benefit would influence the person in enforcing the Act.
- Cheated at video lottery games.
- Manufactured, sold, or distributed a device that was intended to be used to violate the Act.
- Claimed, collected, took, or attempted to claim, collect, or take money or anything of value in or from a video lottery game with the intent to defraud, without having made a wager contingent on winning the game, or claimed, collected, or took an amount of money or thing of greater value than the amount won.
- Used counterfeit vouchers in a video lottery game.

- Possessed a key or device designed to open, enter, or affect the operation of a video lottery machine or to remove coins or other contents of a machine, unless the person was an employee acting within the scope of his or her employment.

A person who did any of the following would be guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail and/or a fine of \$10,000:

- Knowingly made a wager on a video lottery game if he or she were under 21, or permitted a person under 21 to make a wager.
- Willfully failed to appear before or provide an item to the Board at the time and place specified in a subpoena or summons issued by the Board or executive director.
- Willfully refused, without just cause, to testify or provide items in answer to a subpoena, subpoena duces tecum (for a document), or summons issued by the Board or executive director.
- Conducted or permitted a person who was not licensed to conduct activities required to be licensed under Article 2 or Board rules.
- Leased, pledged, borrowed, or loaned money against a license, permit, or occupational license.

In addition to other penalties under the Act, a person who conducted a video lottery operation without a license, a license holder that continued to conduct video lottery after the license was revoked, or a license holder that conducted or allowed an unauthorized video lottery game or any other unauthorized gaming on its premises, would be subject to a civil penalty equal to the gross terminal income derived from video lottery conducted by the person, whether authorized or unauthorized, and income from any unauthorized gaming, on the day that the improper operation occurred.

In addition to the power to seize and destroy property granted under the bill, the Board, the MSP, and the Attorney General could cause to be forfeited, seize, confiscate, and destroy a VLT, associated equipment, other gambling equipment or supplies, money, proceeds, substituted proceeds, and real or personal property used, obtained, or received in violation of Article 2.

### Appointment of Conservator

If the Board revoked or suspended a video lottery license for more than 120 days or refused to renew a license, regardless of whether an appeal was pending, the Board would have to appoint a conservator to take into his or her possession and control all of the licensee's video lottery-related property that was on the premises where the race meetings were conducted. This would not apply if the licensee's operation had not been open to the public.

Subject to a specific order issued by and the general supervision of the Board, a conservator, among other things, would have the power to take into his or her possession all the property of the former or suspended license holder relating to its video lottery operation, including books, records, and papers. The conservator also could continue the business of the former or suspended licensee.

A conservator would have to sell, pledge, or otherwise transfer, in bulk, the ownership of all of the property of a former licensee that was part of its video lottery operation, to a person who met all of the requirements of Article 2 and rules to receive a video lottery license, subject to prior Board approval, consultation with the former licensee, and written notice to all creditors and others required to be notified by court rule or statute. The conservator could not conduct a sale, assignment, or transfer, however, if a suspension of the video lottery license were pending, an appeal from an action that precipitated the conservatorship were pending, or the Board had not approved a sale, assignment, or transfer.

After a sale, assignment, or transfer, the conservator would have to pay to the former licensee the net proceeds remaining after payment of all obligations owing to the State or any of its political subdivisions. The conservatorship would have to be discontinued after the sale, assignment, or transfer. The Board also could discontinue a conservatorship upon determining that the reason for instituting it no longer existed.

### Prohibition on Political Contributions

A restricted person could not make a contribution to a candidate, the holder of a State or local elective office, or a committee.

("Restricted person" would mean a person who was one or more of the following:

- An applicant for or holder of a license or permit.
- An officer, director, shareholder who owned more than a 1% interest in the applicant or holder, partner, member, or managerial employee of or person with an ownership interest in an applicant or holder; or if any such person were not an individual, an officer, director, shareholder who owned more than a 1% interest in the person, partner, member, or managerial employee of or person with an ownership interest in the person.
- A person established, directed, or controlled by any such person.
- The spouse, parent, child, or spouse of a child of any such individual.

"Candidate" and "committee" would mean those terms as defined in the Michigan Campaign Finance Act.)

A restricted person could not make a contribution to a candidate, officeholder, or committee after the person ceased to be a restricted person. A restricted person also could not make a contribution within one year before becoming a restricted person, unless the person became a restricted person by becoming a permit holder.

A person who knowingly violated the prohibition would be guilty of a felony punishable by imprisonment for up to five years and/or a maximum fine of \$25,000.

### Annual Study

A license holder would have to conduct and provide to both houses of the Legislature, the Governor, the Department of Attorney General, the MSP, and the Lottery Bureau an annual study on underage individuals and compulsive gaming at the location where it conducted video lottery. The study would have to contain information described in the bill.

### Disassociated Persons List

The Board would have to create a list of disassociated persons; and create and make available an application for placement on the list. The application would have to contain a statement that an individual believed that he or she was a problem gambler and was seeking treatment, and would have to

include specified identifying information about the individual. An individual's name would have to be placed on the list if, among other things, he or she signed a form stating that he or she understood and authorized that a criminal complaint for trespassing would be filed against him or her if he or she were found on the premises where video lottery was conducted; and that the Board would confiscate any winnings he or she won by playing video lottery. An individual who had his or her name placed on the list would remain on the list for the remainder of his or her life.

A copy of the list would have to be provided to each licensee, the Department of Attorney General, and the MSP.

A license holder could not extend credit, offer check cashing privileges, offer coupons, market its services, or send advertisements to, or otherwise solicit the patronage of, people whose names were on the list. If a license holder identified a listed person on the premises, the licensee immediately would have to notify the Board, a Board representative, or an MSP representative. The licensee immediately would have to seize the individual's winnings, remove him or her from the premises, and report the incident to the prosecutor for the county in which the racetrack was located. Any winnings collected by the Board would have to be deposited into the Compulsive Gaming Prevention Fund.

An individual who had placed his or her name on the list who entered premises where video lottery was conducted would be guilty of criminal trespass punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

The bill states that this section of the Act would not create any right or cause of action in favor of the listed individual against the State, the Board, or a video lottery licensee.

#### Support Arrearage & Liability to the State

Under the Act, before paying a prize of \$1,000 or more, the Lottery Bureau must determine whether Department of Treasury records show that the lottery winner has a current liability to the State or a support arrearage. If a person who wins at least \$1,000 has a current liability to the State, including a delinquent account of money due to a court that has been assigned to the

State for collection, or a support arrearage, the Lottery Bureau must apply the amount of the prize first to the liability to the State, next to a support arrearage, and then to an assigned delinquent account of money due to a court. The remainder of the prize, if any, is paid to the lottery winner.

Under the bill, the prize would be applied first to a support arrearage, next to the State liability, and then to the delinquent account of money owed to a court. Any remainder would be paid to the lottery winner.

For prizes won under Article 2, the Lottery Gaming Control Board would be responsible for determining the winner's liability, and applying the winnings as specified.

#### Legislative Determination

The bill contains a legislative determination that "video lottery gaming constitutes the operation of a lottery as previously authorized by Section 41 of Article IV of the State Constitution of 1963 and by this act and is exempt from the application of the Michigan gaming control and revenue act...". The bill also states, "It is not the intent or purpose of the legislature, by enacting article 2 of this act, to amend the Michigan gaming control and revenue act...".

(Article IV, Section 41 of the Constitution allows the Legislature to authorize lotteries and permit the sale of lottery tickets in the manner provided by law.)

MCL 432.3 et al.

Legislative Analyst: Julie Koval

#### **FISCAL IMPACT**

The bill would increase revenue to the General Fund and to selected local units, and decrease revenue to the School Aid Fund, the City of Detroit, and other selected local units. The degree to which revenue would change depends on a variety of unknown factors, such as how much video lottery terminals (VLTs) would reduce existing gaming at American Indian casinos and the Detroit casinos, and other forms of gaming currently allowed, such as the lottery; as well as how many machines would be operated, the prize payouts, and the amount of new gaming activity generated.

Video Lottery Terminals

Data from other states were examined to estimate the impact of these bills. However, none of the states that currently have VLTs matches Michigan's gaming landscape particularly well: Five of the states do not have tribal or commercial casinos; two offer VLTs only in bars or liquor-licensed establishments; none has more than four racetracks (while Michigan has seven); and few states have casinos near or in major urban areas. As a result, compared with Michigan, the VLTs in none of the other states have as much competition as would exist in Michigan. Among states that permit VLTs in racetracks only, the racetracks average approximately 1,200 machines per track, although each state's average varies widely. Generally, the more competition for gaming dollars (a higher number of racetracks and/or casinos, a wider proliferation of locations where VLTs can be placed, and/or more machines per track) and/or the more machines per capita, the lower the average daily win is per machine.

Using the averages for other states' experiences with VLTs and making adjustments to reflect the Michigan economy, a range for the amount of revenue that would be generated can be estimated given assumptions about how many machines would operate in this State. Video lottery terminals could be placed only at racetracks, of which there are seven currently operating in Michigan. The bill would limit the number of racetracks that could employ VLTs to: 1) those tracks licensed to conduct race meetings before January 1, 2003, and 2) one of the first two entities licensed to conduct race meetings between January 1, 2003, and April 30, 2004, if that entity is licensed to conduct its races in a city area. The bill would limit each location to 500 machines unless the Michigan Lottery Gaming Control Board authorized additional machines. The bill would not limit the number of additional machines the Board could authorize.

An application fee would be required for all VLT machines, as well as any replacement machines. The fee would be based on a market analysis, but would be not less than \$15,000 per machine. For additional machines beyond those requested in the initial application, \$10,000 of the application fee for each machine would be deposited into the School Aid Fund. It is unknown if

keeping the same physical device but replacing the games operated by the device would trigger the application fee for replacement machines.

Table 1 presents estimates of the revenue that would be raised under the application fee, under two scenarios for the initial number of machines for which racetracks are assumed to apply. As indicated, the School Aid Fund would be expected to receive \$0 (if 500 machines) and \$105.0 million (if 2,000 machines) from the application fees, while the General Fund would likely receive no additional funds from the application fees and actually could incur expenses.

Table 1  
Estimated VLT Application Fee Revenue  
(dollar amounts in millions)

	500/ Track	2,000/ Track
VLTs Per Track	500	2,000
Total Number of VLTs	3,500	14,000
Start-up Estimates		
License & Application Fees	\$52.5	\$210.0
Administrative Expenses	(\$58.8)	\$179.5)
Terminal/Central System Cost	(\$36.0)	(\$141.0)
Other Administrative Costs	(\$22.8)	(\$38.5)
Net License/ Application Revenue*	(\$6.3)	\$30.5
Earmarked to School Aid Fund	\$0.0	\$105.0
Not Earmarked	(\$6.3)	(\$74.5)
*Note: Assumes average terminal price of \$10,000, central system cost of \$1 million, and refundable fees totaling \$15,000 per machine. Positive net revenue apparently would be available to the General Fund.		

When the State would receive the application revenue is unclear, but the revenue is unlikely to be received during FY 2003-04 and potentially could not occur during FY 2004-05. Several issues could delay receipt of any application revenue. The applications would be submitted to the Board, which would be appointed by the Governor and subject to confirmation by the Senate. Applicants would have to provide any information required and otherwise comply with requirements specified in rules that the Board would need to promulgate. The experience of other states and Michigan's Gaming Control Board for the Detroit casinos suggests that rule

promulgation could take six months or more.

An additional complication may reflect the risk assumed by applicants. Under the Senate Fiscal Agency's estimates, in the initial year of operation, a VLT could generate between approximately \$40,000 and \$50,000 in gross income after prizes were paid. The bill would provide to the track (which would be responsible for paying the application fee) 19% of the revenue after administrative expenses were paid and the Michigan Strategic Fund was held harmless for any reduction in revenue from the level in the fiscal year before a VLT license was granted. Administrative costs are estimated at between approximately \$3,000 and \$7,000 per machine per year (assuming the State did not purchase the machine), while the loss due to holding the Michigan Strategic Fund harmless is estimated between approximately \$1,100 and \$4,600 per machine, leaving between about \$36,000 and \$39,000 per machine per year to be distributed. Under these estimates, an individual VLT would be expected to generate, after a racetrack had made required payments to local units of government from its share of the net terminal income, approximately \$6,600 to \$7,100 in income for the track (excluding the required one third earmarking of this money for specified capital improvements at the track). Racetracks therefore would need to operate a VLT for slightly more than 3.5 years before breaking even on the combined investment of an estimated \$10,000 purchase price for the VLT and a \$15,000 per machine application fee. The average useful life of a given set of games on a VLT is unknown, although some information suggests that individual games traditionally do not have marketable lives as long as 3.5 years.

Furthermore, racetracks could not place VLTs or be granted a license until the placement of VLTs had been approved in a county-wide election within the county where the racetrack is located. The election would occur during the first regularly scheduled election (which occurs four times a year) or during a special election called for the purpose of approving VLTs, after the application for VLTs was submitted. For a racetrack seeking to place 2,000 machines, the bill thus would require a \$30 million nonrefundable application fee even before

an election was held--an election that could prevent the racetrack from receiving a license for VLTs. As a result, it is expected that racetracks would not submit their applications until they were reasonably confident the election would approve the placement of VLTs at the track. It is unknown the degree to which these risk factors, both in terms of the financial return from the machine and from the election, would delay submission of any applications and the associated fees.

The bill does not provide significant detail for the payment of certain costs. License holders would be required to pay for the full cost of any background checks, so additional payments would be required if the application fee were insufficient to cover those costs. Racetracks also would be required to pay a portion of the cost of the central system used to control all VLTs, but that portion would be determined by the Board and both the portion and the cost of the central control system are unknown. The bill does not specify whether the Board would be responsible for the purchase of any VLTs, although the Board would own, test, and control the machines. The analysis above does not include any costs for the central control system and assumes that the tracks would purchase the VLT machines.

If the Board had to purchase the VLTs under the bill, there would be a significant chance that the application fee would be insufficient to cover the expense. Additional funding could be required from applicants to cover the background checks, but if the background checks cost less than \$15,000, the bill does not authorize the Board to require additional payments to fund the purchase of VLTs. The data in Table 1 assume that the Board would have to purchase the machines, and in all cases the application fee would be insufficient to cover the cost of purchasing the VLTs and operating the Board in the absence of gross terminal income being generated.

Table 2 presents estimates under two scenarios, given a midpoint assumption regarding VLT popularity: 1) Racetracks would place an average of 500 machines per track, and 2) racetracks would receive increases to allow an average of 2,000 machines per track.

Table 2  
 Estimated Impact of Video Lottery Terminals  
 First and Second Full Years of Operation  
 (dollar amounts in millions)

	1st Full Year of Operation		2nd Full Year of Operation	
	500/Track	2,000/Track	500/Track	2,000/Track
VLTs Per Track	450	1,800	500	2,000
Total Number of VLTs	3,150	12,600	3,500	14,000
Revenue Distribution				
General Fund	\$80.5	\$301.7	\$85.2	\$318.0
School Aid Fund	(\$8.9)	(\$21.2)	(\$9.5)	(\$22.7)
Michigan Strategic Fund*	\$0.0	\$0.0	\$0.0	\$0.0
Compulsive Gaming Prevention Fund	\$1.2	\$4.6	\$1.3	\$4.8
City of Detroit	(\$5.8)	(\$19.2)	(\$6.1)	(\$20.2)
Local Units (Tribal Casinos)	(\$0.4)	(\$1.4)	(\$0.4)	(\$1.5)
Local Units (Racetracks)	\$0.9	\$3.5	\$1.0	\$3.7
Commissions to Tracks (Net)	\$22.3	\$83.6	\$23.6	\$88.2
Agricultural Interests	\$12.2	\$45.9	\$12.9	\$48.3
Total Net Revenue	\$102.3	\$397.5	\$108.1	\$418.6
*Note: Assumes VLTs are determined to trigger clause in Gaming Compacts regarding 8% payments to the State.				

In the first full year of operation, the analysis assumes for the year's average that only 90% of the estimated total number of machines would be in place and operational. Partial-year estimates could be developed by assuming a given date the VLTs would begin operating. Assuming no legal challenges to the legislation or other delays due to elections or other matters, and based on the experiences of other states, implementation of VLTs could take at least six to 18 months. When voters approved Proposal E, in November 1996, the first revenue from the Detroit casinos was not received until July 1999. As a result, given potential dates for which the bill would be enacted and the delays suggested above, it is unlikely the bill would result in a partial-year of revenue during FY 2003-04.

Table 2 illustrates that, under these assumptions, in the initial year of operation, the bill would be expected to reduce School Aid Fund (SAF) revenue by \$8.9 million to \$21.2 million, and City of Detroit revenue by \$5.8 million to \$19.2 million. Private agricultural interests would receive, through purse pools, grants, and breeders' awards, between \$12.2 million and \$45.9 million, while tracks would receive between \$22.3 million and \$83.6 million in commissions (after \$0.9 million to \$3.5 million in required payments to local units in which the racetracks are located). The General Fund

would receive between \$80.5 million and \$301.7 million.

In the second full year of operation, the bill would be expected to decrease SAF revenue by \$9.5 million to \$22.7 million, and City of Detroit revenue by \$6.1 million to \$20.2 million. Private agricultural interests would receive between \$12.9 million and \$48.3 million, while racetracks would receive between \$23.6 million and \$88.2 million in commissions (after \$1.0 million to \$3.7 million in required payments to local units in which the racetracks are located). The General Fund would receive between \$85.2 million and \$318.0 million.

The estimates in Table 2 do not include the cost of purchasing VLTs and thus assume either that those costs would be included in the start-up estimates regarding the application fees or that the racetracks would be responsible for purchasing the VLTs. To the extent that the State had to purchase the machines, the costs would likely be included under administrative costs and thus would reduce the revenue available to the General Fund, the School Aid Fund, commissions to tracks, agricultural interests, and local units in which the tracks are located. The losses identified in Table 2 to the City of Detroit and to local units with

tribal casinos would not be affected, nor would the Michigan Strategic Fund. The degree of the reduction would depend upon how many machines the State would be required to purchase.

Another significant aspect regarding who would be responsible for purchasing the VLTs relates to revenue. Some information indicates that making the State the primary party responsible for purchasing would reduce revenue, primarily because: 1) states are generally required to submit such purchases to bid and must weight price heavily in the selection of a vendor and machine, although the best machine for revenue generation may not be the best machine from a bidding selection point of view; 2) states may lack sufficient understanding of consumer preferences to select (and rotate) machines optimally, given the highly differentiated nature of products available on the market; and 3) the long-term nature of the contracts and/or leasing arrangements tends to lock states into fixed obligations, while the market is realizing shorter machine replacement cycles and consumer preferences are becoming increasingly volatile. On the other hand, while shifting the purchase responsibility to the racetracks may reduce or eliminate these largely unquantifiable effects, it increases the costs to the operator and, for any given distribution of revenue, requires a longer period for the racetrack to recoup its costs. Such a shift also reduces the level of control states may be able to exert over VLT operations.

#### Penalties

The penalty provisions in House Bill 4610 (S-2) would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders would be convicted of the proposed felonies and misdemeanors identified in the bill. The fiscal impact for each offender would depend upon the sentence and the incarceration option chosen by the court. Local units would incur the costs of misdemeanor probation and/or incarceration in a local facility, both of which vary by county. The State would incur the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility, at an average annual cost of \$28,000.

Public libraries would benefit from any additional penal fine revenue raised due to the proposed changes.

This estimate is preliminary and will be revised as new information becomes available.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.