WEST VIRGINIA CODE CHAPTER 29 ARTICLE 22A

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§29-22A-1. Short title.

This article shall be known and may be cited as the "Racetrack Video Lottery Act."

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§29-22A-2. Legislative findings and declarations.

(a) The Legislature finds and declares that the limited video lottery games authorized by this article are "lotteries" as that term is commonly understood and as that term is used in West Virginia Constitution, article VI, section thirty-six, the video lottery games authorized by this article being lottery games which utilize advanced computer technology; and that the Constitution grants to the Legislature the authority to establish, by general law, the manner of regulation, control, ownership and operation of lottery games in the State of West Virginia.

(b) The Legislature further finds and declares that the state can control, own and operate a video lottery by possessing a proprietary interest in the main logic boards, all erasable, programmable read-only memory chips used in any video lottery equipment or games, and software consisting of computer programs, documentation and other related materials necessary for the video lottery system to be operated. The state may acquire a proprietary interest in video lottery game software, for purposes of this article, through outright ownership or through an exclusive product license agreement with a manufacturer whereby the manufacturer retains copyrighted ownership of the software but the license granted to the state is nontransferable and authorizes the state to run the software program, solely for its own use, on the state's central equipment unit and electronic video terminals networked to the central equipment unit.

(c) The Legislature further finds and declares that the state can control and regulate a video lottery if the state limits licensure to a limited number of video lottery facilities located at qualified horse or dog racetracks, extends strict and exclusive state regulation to all persons, locations, practices and associations related to the operation of licensed video lottery facilities, and provides comprehensive law enforcement supervision of video lottery activities.

(d) The Legislature further finds and declares that since the public has an interest in video lottery operations and since lottery operations conducted pursuant to West Virginia Constitution, article VI, section thirty-six, and under this article represent an exception to the general statutory policy of the state concerning wagering for private gain, participation in a video lottery by a licensee or permittee under this article shall be deemed a privilege conditioned upon the proper and continued qualification of the licensee or permittee and upon the discharge of the affirmative responsibility of each licensee to provide to the regulatory and investigatory authorities established by this article any assistance and information necessary to assure that the policies declared by this article are achieved. Consistent with this policy, it is the intent of this article to preclude the creation of any property right in any license or permit issued by the state under this article, the accrual of any value to the privilege of participation in any video lottery operation, or the transfer of any license or permit, and to require that participation in video lottery operations be solely conditioned upon the individual qualifications of persons seeking such privilege.

(e) The purpose of this article is to define and provide specific standards for the operation of

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video lottery games at pari-mutuel racing facilities licensed by the state Racing Commission pursuant to article twenty-three, chapter nineteen of this code. The Legislature finds and declares that the existing pari-mutuel racing facilities in West Virginia provide a valuable tourism resource for this state and provide significant economic benefits to the citizens of this state through the provision of jobs and the generation of state revenues; that this valuable tourism resource is threatened because of a general decline in the racing industry and because of increasing competition from racing facilities and lottery products offered by neighboring states; and that the survival of West Virginia's pari-mutuel racing industry is in jeopardy unless modern lottery games are authorized at the racetracks.

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§29-22A-3. Definitions.

As used in this article:

(a) "Applicant" means any person applying for any video lottery license or permit.

(b) "Associated equipment" means any hardware located on a licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

(c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

(d) "Central computer," "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs.

(e) "Commission" or "State Lottery Commission" means the West Virginia Lottery Commission created by article twenty-two of this chapter.

(f) "Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

(g) "Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.

(h) "Director" means the individual appointed by the Governor to provide management and administration necessary to direct the State Lottery Office.

(i) "Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.

(j) "Display" means the visual presentation of video lottery game features on a video lottery terminal in the form of video images, actual symbols or both.

(k) "EPROM" and "erasable programmable read-only memory chips" means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and which can also be in the form of CD-ROM, flash RAM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be the property of the State of West Virginia.

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(l) "Floor attendant" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who corrects paper jams and bill jams in video lottery terminals and also provides courtesy services for video lottery players.

(m) "Gross terminal income" means the total amount of cash, vouchers or tokens inserted into the video lottery terminals operated by a licensee, minus the total value of coins and tokens won by a player and game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(n) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia Racing Commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission.

(o) "Lottery" means the public gaming systems or games established and operated by the State Lottery Commission.

(p) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(q) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(r) "Noncash prize" means merchandise which a video lottery player may be given the option to receive in lieu of cash in exchange for a winning redemption ticket and which shall be assigned a redemption value equal to the actual cost of the merchandise to the licensed racetrack.

(s) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(t) "Pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, That, for the purposes of this article, "pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" includes only a facility which was licensed prior to January

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1, 1994, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the Racing Commission in accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this code.

(u) "Permit" means authorization granted by the commission to a person to function as either a video lottery manufacturer, service technician or validation manager.

(v) "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.

(w) "Player" means a person who plays a video lottery game on a video lottery terminal at a racetrack licensed by the commission to conduct video lottery games.

(x) "Service technician" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who performs service, maintenance and repair on licensed video lottery terminals in this state.

(y) "Video lottery game" means a commission approved, owned and controlled electronically simulated game of chance which is displayed on a video lottery terminal and which:

(1) Is connected to the commission's central control computer by an on-line or dial-up communication system;

(2) Is initiated by a player's insertion of coins, currency, vouchers or tokens into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credit entitles a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

(3) Allows the player to win additional game play credits, coins or tokens based upon game rules which establish the random selection of winning combinations of symbols or numbers or both and the number of free play credits, coins or tokens to be awarded for each winning combination of symbols or numbers or both;

(4) Is based upon computer-generated random selection of winning combinations based totally or predominantly on chance;

(5) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal; and

(z) "Validation manager" means a person who holds a permit issued by the commission and who performs video lottery ticket redemption services.

(aa) "Video lottery" means a lottery which allows a game to be played utilizing an electronic

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computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins, currency, vouchers or tokens as consideration in order for play to be available, and through which terminal device the player may receive free games, coins, tokens or credit that can be redeemed for cash, annuitized payments over time, a noncash prize or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game, such as the game "Travel," and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(bb) "Video lottery terminal" means a commission-approved interactive electronic terminal device which is connected with the commission's central computer system, and which is used for the purpose of playing video lottery games authorized by the commission. A video lottery terminal may simulate the play of one or more video lottery games.

(cc) "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

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§29-22A-4. Video lottery games authorized.

The state Lottery Commission is authorized to implement and operate video lottery games at pari-mutuel racing facilities in this state in accordance with the provisions of this article and the applicable provisions of article twenty-two of this chapter. The provisions of article twenty-two of this chapter apply to this article, except in the event of conflict or inconsistency between any of the provisions of this article and the provisions of article twenty-two of this chapter. In that event, the provisions of this article shall supersede any conflicting or inconsistent provisions contained in article twenty-two of this chapter.

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§29-22A-5. Video lottery terminal requirements; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

(a) Video lottery terminals registered with and approved by the commission for use at licensed racetracks may offer video lottery games regulated, controlled, and owned and operated by the commission in accordance with the provisions of this section: Provided, That the Secretary of State shall post on the secretary's website that the rules for video lottery games that have been approved by the commission are available for review at the office of the commission and provide relevant contact information.

(b) A manufacturer may not sell or lease a video lottery terminal for placement at a licensed racetrack in this state unless the terminal has been approved by the commission. Only manufacturers with permits may apply for approval of a video lottery terminal or associated equipment. The manufacturer shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or associated equipment.

(c) The commission may require that two working models of a video lottery terminal be transported to the location designated by the commission for testing, examination, and analysis.

(1) The manufacturer shall pay all costs of testing, examination, analysis, and transportation of such video lottery terminal models. The testing, examination, and analysis of any video lottery terminal model may require dismantling of the terminal and some tests may result in damage or destruction to one or more electronic components of such terminal model. The commission may require that the manufacturer provide specialized equipment or pay for the services of an independent technical expert to test the terminal.

(2) The manufacturer shall pay the cost of transportation of two video lottery terminals to lottery headquarters. The commission shall conduct an acceptance test to determine terminal functions and central system compatibility. If the video lottery terminal fails the acceptance test conducted by the commission, the manufacturer shall make all modifications required by the commission.

(d) After each test has been completed, the commission shall provide the terminal manufacturer with a report containing findings, conclusions, and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with the provisions of this article. Prior to approving a particular terminal model, the commission may require a trial period not in excess of 60 days for a licensed racetrack to test the terminal. During the trial period, the manufacturer may not make any modifications to the terminal model unless such modifications are approved by the

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commission.

(e) The video lottery terminal manufacturer and licensed racetrack are jointly responsible for the assembly and installation of all video lottery terminals and associated equipment. The manufacturer and licensed racetrack shall not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a request for modification of an existing video terminal prototype is approved by the commission. The request must contain a detailed description of the type of change, the reasons for the change, and technical documentation of the change.

(f) Each video lottery terminal approved for placement at a licensed racetrack must conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission. If any video lottery terminal or any video lottery terminal modification, which has not been approved by the commission, is supplied by a manufacturer and operated by a licensed racetrack, the commission shall seize and destroy all of that licensed racetrack's and manufacturer's noncomplying video lottery terminals and shall suspend the license and permit of the licensed racetrack and manufacturer.

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§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) The commission may approve video lottery terminals and in doing so shall take into account advancements in computer technology, competition from nearby states and the preservation of jobs in the West Virginia pari-mutuel racing industry. In approving video lottery terminals licensed for placement in this state, the commission shall ensure that the terminals meet the following hardware specifications:

(1) Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

(2) A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

(3) An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

(4) The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

(5) A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for any legal United States currency. All coin and bill acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

(6) Access to the interior of a video lottery terminal shall be controlled through a series of locks and seals.

(7) The main logic boards and all erasable programmable read-only memory chips (EPROMS) are considered to be owned by the commission and shall be located in a separate locked and sealed area within the video lottery terminal.

(8) The cash compartment shall be located in a separate locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be

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installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal's graphic routines, speed of play, sound and other purely cosmetic features may be approved by the commission.

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission: Provided, That such printing mechanism is optional on any video lottery terminal which is designed and equipped exclusively for coin or token payouts. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. A video lottery terminal may allow the amounts of minimum and maximum wagers on a single game to be determined by licensee or permit holder in the exercise of its business judgment subject to the approval of the commission. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior approval of the commission.

(13) Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission's central computer system by use of a communications protocol provided by the commission to each permitted manufacturer,

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which protocol shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.

(b) Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A selection process is random if it meets the following statistical criteria:

(1) Chi-square test. -- Each symbol or number shall satisfy the ninety-nine percent confidence level using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

(2) Runs test. -- Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the runs test for the existence of recurring patterns within a set of data.

(3) Correlation test. -- Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

(4) Serial correlation test. -- Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval shall be obtained prior to applying for testing of the high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all

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current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:

(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

(2) Number of credits wagered;

(3) Number of total credits, coins and tokens won;

(4) Number of credits paid out by a printed ticket;

(5) Number of coins or tokens won, if applicable;

(6) Number of times the logic area was accessed;

(7) Number of times the cash door was accessed;

(8) Number of credits wagered in the current game;

(9) Number of credits won in the last complete video lottery game; and

(10) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall, directly or through a contract with a third-party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate any

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video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

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§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:

(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code.

(2) An applicant must be a person of good character and integrity.

(3) An applicant must be a person whose background, including criminal record, reputation, and associations, does not pose a threat to the security and integrity of the lottery or to the public interest of the state. All new applicants for licenses and permits issued by the commission shall furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation: *Provided*, That the Lottery Commission shall apply §29-22A-7(g) and §29-22A-7(h) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license or permit being sought.

(4) An applicant must be a person who demonstrates the business ability and experience necessary to establish, operate, and maintain the business for which a video lottery license or permit application is made.

(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least 30 days before the effective date of the change.

(6) A racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a majority of the pari-mutuel clerks and the

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representative of a majority of the breeders or the representative of a majority of the kennel owners for the applicable racetrack who hold permits required by §19-23-2 of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease, or other assignment to the racetrack of video lottery terminals, the electronic computer components of the terminals, the random number generator of the terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or whom the commission determines to have the ability to control the applicant.

(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

(c) Applicants must furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials requested by the commission for purposes of determining qualifications for a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation requested by the commission. The burden of proving qualification for any video lottery license or permit is on the applicant.

(d) Each applicant bears all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of any material or information obtained by the commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the commission, the State of West Virginia and the employees of either for damages as a result of any background investigation, disclosure, or publication relating to an application for a video lottery license or permit.

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(e) All application, registration, and disclosure forms and other documents submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer oaths.

(f) An applicant who knowingly fails to reveal any fact material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license or permit.

(g) The Lottery Commission may not disqualify an applicant from an initial license or permit because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring a license or permit. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission shall consider at a minimum:

(1) The nature and seriousness of the crime for which the individual was convicted;

(2) The passage of time since the commission of the crime;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any evidence of rehabilitation or treatment undertaken by the individual.

(h) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from a license or permit because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for an initial license or permit if:

(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from a license or permit, to be determined by the Lottery Commission.

(i) An individual with a criminal record who has not previously applied for a license or permit may petition the Lottery Commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license or permit. This petition shall include sufficient details about the individual's criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determination within 60 days of receiving the petition from the applicant. The

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Lottery Commission may charge a fee to recoup its costs for each petition.

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§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

(a) The commission shall determine the form of applications to be used and shall not consider incomplete applications. The commission may consider an application when the applicant has completed and executed all forms and documents required by the commission and all application fees and costs have been paid.

(b) The question of whether video lottery games shall be permitted at pari-mutuel racetracks shall be determined by local option election in each county in which a pari-mutuel racetrack is located. The local option election on this question may be placed on the ballot in each county at any general election. The county commission of the county in which the racetrack is located shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia Lottery Commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election to the commission.

(c) Upon receipt of the results of the election from the county commission, and if a majority has voted "yes", the commission shall issue the requested license if the applicant is otherwise qualified for the license. If a majority has voted "no", the commission shall notify the applicant of the results, the application shall be denied, and another election on the issue shall not be held for a period of two years: Provided, That for purposes of this section, the term "two years" means the interval between a general election and the next general election, and in no event shall it mean or encompass a period of time in excess of one hundred four weeks. If a majority has voted "yes", another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of

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the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts.

The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident within the county of _____, do hereby petition that a special election be held within the county of _____ upon the following question: Shall West Virginia Lottery Commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

Name Address Date

(Post office or street address)

(d) The commission may not issue any license or permit until background investigations are concluded. The commission shall make an affirmative determination that the applicant is qualified and the applicable license or permit fees have been paid prior to issuing any license or permit.

(e) The commission shall notify the applicant if an application is incomplete and the notification shall state the deficiencies in the application.

(f) The commission shall notify applicants in writing of the denial, suspension or revocation of a permit or license and the reasons for the denial, suspension or revocation in accordance with the provisions of section fifteen of this article.

(g) An applicant may request a hearing to review a license or permit denial, suspension or revocation in accordance with section fifteen of this article.

(h) The following license or permit fees shall be paid annually by each licensed racetrack, or permitted manufacturer, service technician, floor attendant or validation manager:

(1) Racetrack: $1,000

(2) Manufacturer $10,000

(3) Service technician $100

(4) Validation manager: $50

(5) Floor attendant: $50

The fees shall be paid to the commission at the time of license or permit application and on

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or before July 1, of each year thereafter, at which time the license or permit may be renewed.

(i) An applicant for a video lottery license shall, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond shall be issued by a surety company authorized to transact business in West Virginia and the company shall be approved by the Insurance Commissioner of this state as to solvency and responsibility.

(j) The commission shall renew video lottery licenses and permits annually as of July 1, of each year, if each person seeking license or permit renewal submits the applicable renewal fee, completes all renewal forms provided by the commission, and continues to meet all qualifications for a license or permit.

(k) License and permit holders shall notify the commission of any proposed change of ownership or control of the license or permit holder and of all other transactions or occurrences relevant to license or permit qualification. In order for a license or permit to remain in effect, commission approval is required prior to completion of any proposed change of ownership or control of a license or permit holder.

(l) A license or permit is a privilege personal to the license or permit holder and is not a legal right. A license or permit granted or renewed pursuant to this article may not be transferred or assigned to another person, nor may a license or a permit be pledged as collateral. The purchaser or successor of any license or permit holder shall independently qualify for a license or permit. The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission.

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§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

(a) All video lottery license and permit holders shall:

(1) Promptly report to the commission any facts or circumstances related to video lottery operations which constitute a violation of state or federal law;

(2) Conduct all video lottery activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state, and which does not adversely affect the security or integrity of the lottery;

(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a license or permit holder, the commission, the state or the employees thereof, arising from the license or permit holder's participation in the video lottery system authorized by this article;

(4) Assist the commission in maximizing video lottery revenues;

(5) Maintain all records required by the commission;

(6) Upon request by the commission, provide the commission access to all records and the physical premises of the business or businesses where the license or permit holder's video lottery activities occur, for the purpose of monitoring or inspecting the license or permit holder's activities and the video lottery games, video lottery terminals, and associated equipment; and

(7) Keep current in all payments and obligations to the commission.

(b) Manufacturers shall:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in §29-22A-5 and §29-22A-6 of this code;

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed racetracks;

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state;

(4) Provide to licensed racetracks and permitted service technicians technical assistance and training in the service and repair of video lottery terminals and associated equipment so as to assure the continuous authorized operation and play of the video lottery terminals; and

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(5) Obtain certification of compliance under the provisions of part 15 of the Federal Communication Commission rules for all video lottery terminals placed in this state.

(c) Service technicians shall:

(1) Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation of those terminals;

(2) Attend all commission mandated meetings, seminars, and training sessions concerning the repair and maintenance of licensed video lottery terminals and associated equipment; and

(3) Promptly notify the commission of any electronic or mechanical video lottery terminal malfunctions.

(d) Validation managers shall:

(1) Attend all commission mandated meetings, seminars, and training sessions concerning the validation and redemption of video lottery winning tickets and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets; and

(3) Supervise video lottery ticket validation procedures at the applicable licensed racetrack.

(e) Floor attendants shall:

(1) Provide change and assistance to persons playing video lottery games in a licensed racetrack video lottery gaming area;

(2) Open video lottery terminal access doors to clear ticket paper jams and to insert new paper ticket tapes into the video lottery terminals; and

(3) Open video lottery terminal access doors to clear bill jams from the bill acceptors in video lottery terminals.

(f) The specific duties required of all licensed racetracks are as follows:

(1) Acquire video lottery terminals by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of the video lottery terminals;

(2) Pay for the installation and operation of commission-approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission’s central control computer;

(3) Permit no person to tamper with or interfere with the operation of any video lottery

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terminal;

(4) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the licensed racetrack are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines;

(5) Ensure that video lottery terminals are within the sight and control of designated employees of the licensed racetrack;

(6) Ensure that video lottery terminals are placed and remain placed in the specific locations within the licensed racetrack which have been approved by the commission. No video lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the commission;

(7) Monitor video lottery terminals to prevent access to or play by persons who are under the age of 18 years or who are visibly intoxicated;

(8) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(9) Accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

(10) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(11) Report promptly to the manufacturer and the commission all video lottery terminal malfunctions and notify the commission of the failure of a manufacturer or service technician to provide prompt service and repair of such terminals and associated equipment;

(12) Conduct no video lottery advertising and promotional activities without the prior written approval of the director;

(13) Install, post, and display prominently at locations within or about the licensed racetrack, signs, redemption information, and other promotional material as required by the commission;

(14) Permit video lottery to be played only during those hours established and approved by the commission;

(15) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least $2 million per claim;

(16) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

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(17) Assume liability for lost or stolen money from any video lottery terminal; and

(18) Submit an audited financial statement, which has been approved by the commission, to the commission when applying for a license or permit and annually thereafter prior to the time a license or permit may be renewed.

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§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission 30 days' advance notice of any proposed account changes to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission:

(1) The commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: *Provided*, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011, through June 30, 2030, the term "actual costs and expenses" may include transfers of up to $9 million in surplus allocations for each fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), of this subsection. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

(2) A Licensed Racetrack Modernization Fund is created within the Lottery Fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2030, the commission shall deposit such amounts as are available according to subdivision (1) of this subsection into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit shall be calculated in the same ratio as each racetrack's apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1) of this subsection for that year. For each $2 expended by a licensed racetrack

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for facility modernization improvements or capital improvements at facilities located in this state that are on or contiguous to the premises of the licensed racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive $1 in recoupment from its facility modernization account. If the licensed racetrack's facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization improvements" includes acquisitions of new and unused video lottery terminals and related equipment, and the term "capital improvements" means real property that is expected to replace or modernize buildings, equipment, machinery and other tangible property used in connection with the operation of the gaming, hospitality, or entertainment at the facility. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive 30 percent of net terminal income, which shall be paid into the State Lottery Fund as provided in §29-22A-10a of this code;

(2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in §19-23-1 *et seq*. of this code, on and after July 1, 2005, the rate shall be seven percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided*, That:

(A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, said 50 percent to be divided among the municipalities on a per capita basis as determined by the

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most recent decennial United States census of population; and

(B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this subdivision is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or (B) of this subdivision is located and where the racetrack has been located within that county since on or before January 1, 1999, and where the racetrack is not located in a municipality, the two percent of net terminal income shall be divided, if applicable, as follows:

(i) The county shall receive one percent; and

(ii) The remaining one percent shall be distributed in equal shares to all municipalities within the county. Per capita population has no effect on distributions under this paragraph;

(4) One percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) (A) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of this code shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks;

(B) Effective July 1, 2026, the West Virginia Greyhound Breeding Development Fund created pursuant to §19-23-10 of this code shall receive one and one-half percent of the net terminal income originating at licensed greyhound tracks;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive 46 and one-half percent of net terminal income;

(8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund $5 million of the three percent of the net terminal income described in this section and §29-22A-10b of this code into the fund administered by the West Virginia Economic Development Authority

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pursuant to §31-15-7 of this code, $5 million into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code, and $5 million into the Tax Reduction and Federal Funding Increased Compliance Fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the three percent of net terminal income described in §29-22a-10b(a)(8)(B) of this code shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant to §5B-2-12 of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Development Office Promotion Fund created pursuant to §5B-2-3b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant to §18B-1B-10 of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage Fund administered by the Department of Administration pursuant to §5A-4-5a of this code;

(9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided*, That in any fiscal year when the amount of money generated by this subdivision totals $11 million, all subsequent distributions pursuant to this subdivision shall be deposited in the special fund established by the licensee and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the seven percent of net terminal income into the Workers' Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service provided for; and (ii) that an independent certified actuary has determined that the unfunded liability

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of the old fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning July 1, 2003, the Veterans Memorial Program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created pursuant to §29-1I-3 of this code: *Provided*, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than $20,000 of the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the John F. "Jack" Bennett Fund. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans' grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans' grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, $100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created pursuant to §29-1I-3 of this code and be expended by the Division of Culture and History to establish a West Virginia veterans memorial archives within the Cultural Center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided, however*, That $500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code.

(B) For each fiscal year beginning after June 30, 2004:

(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as

follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a total of $1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions

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for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements, and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

(j) If a court of competent jurisdiction finds that the provisions of this section as amended and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be harmonized, the provisions of §29-22A-10d of this code shall control.

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§29-22A-10a. Lottery commission income to be deposited in state lottery fund.

Notwithstanding the provisions of subdivision one, subsection (c), section ten of this article, beginning on July 1, 1995 and continuing thereafter, the net terminal income received by the commission shall be paid into the state Lottery Fund created by section eighteen, article twenty-two of this chapter, to be appropriated by the Legislature: Provided, That income deposited pursuant to this section shall not be subject to the provisions of subsections (b), (c), (d) or (e), section eighteen, article twenty-two of this chapter.

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§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after July 1, 2001, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on June 30, 2001, shall be divided as follows:

(1) The commission shall receive 41 percent of net terminal income, which the commission shall deposit in the state Excess Lottery Revenue Fund created in §29-22-18a of this code;

(2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in §19-23-1 *et seq.* of this code; on and after July 1, 2005, the rate shall be four percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: *Provided*, That:

(A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipalities of the county shall receive 50 percent of the excess amount, the 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

(i) The county shall receive 50 percent of the excess amount; and

(ii) The municipality shall receive 50 percent of the excess amount; and

(C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or (B) of this subdivision is located and where the racetrack has been located within that county since on or before January 1, 1999, and where the racetrack is not located in a municipality, the two percent of net terminal income shall be divided, if applicable, as follows:

(i) The county shall receive one percent; and

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(ii) The remaining one percent shall be distributed in equal shares to all municipalities within the county. Per capita population has no effect on distributions under this paragraph;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) (A) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of this code shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks;

(B) Effective July 1, 2026, the West Virginia Greyhound Breeding Development Fund created pursuant to §19-23-10 of this code shall receive one and one-half percent of the net terminal income originating at licensed greyhound tracks;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

(7) A licensee shall receive 42 percent of net terminal income;

(8) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30, 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(8)(B) of this code;

(9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals $11 million, all subsequent distributions under this subdivision during that fiscal year shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in §19-23-1 *et seq.* of this code;

(B) The deposit of the four percent of net terminal income into the Worker's Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds, which shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have been retired or payment of the debt service is provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided in its entirety; and

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(10) (A) One percent of the net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under §5A-4-2 of this code and cultural facilities and capitol resources matching grant program fund created under §29-1-3 of this code; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

(b) The commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and §29-22A-10 of this code.

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§29-22A-10c. Surcharge; Capital Reinvestment Fund.

(a) For all fiscal years beginning on or after July 1, 2001, there shall be imposed a surcharge of ten percent against the excess of total net terminal income generated from a licensed racetrack for that fiscal year over total net terminal income from that licensed racetrack for the fiscal year ending June 30, 2001.

(b) A Capital Reinvestment Fund is hereby created within the Lottery Fund. Forty-two percent of the surcharge amount attributable to each racetrack shall be retained by the commission and deposited into a separate Capital Reinvestment Account for that licensed racetrack. For each dollar expended by a licensed racetrack for capital improvements at the racetrack, at the location of any amenity associated with the licensed racetrack's destination resort facility operations, or at adjacent facilities owned by the licensee, having a useful life of three or more years and placed in service after April 1, 2001, the licensed racetrack shall receive $1 in recoupment from its Capital Reinvestment Fund Account: Provided, That in the case of thoroughbred horse tracks, four cents of every dollar in recoupment shall be reserved into a separate account, which shall only be spent on capital improvements and upgrading to facilities used for the housing and care of horses, facilities located inside the perimeter of the racing surface, including the surface thereof, facilities used for housing persons responsible for the care of horses, and that any such capital improvements and upgrading shall be subject to recoupment under this section only if they have been approved by the Horsemen's Benevolent and Protective Association acting on behalf of the horsemen: Provided, however, That in the case of greyhound race tracks, four cents of every dollar in recoupment shall be spent on capital improvements and upgrading in the kennel area or other areas at the track. If a licensed racetrack's unrecouped capital improvements exceed its capital reinvestment fund account at the end of any fiscal year, the excess improvements may be carried forward to fifteen subsequent fiscal years.

(c) Fifty-eight percent of the surcharge amount plus any moneys remaining in a racetrack's Capital Reinvestment Fund Account at the end of any fiscal year shall be deposited in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

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§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22A-10(b) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to $9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of §29-22A-10(c) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to §29-22A-10(c) (1), (2), (3), (4), (5) and (7) of this code, shall be reduced by 100 percent. Payments may not be made pursuant to §29-22A-10 of this code, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by §29-22-18a of this code.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of §29-22A-18a, §29-22A-18d, and §29-22A-18e of this code and in the priority as defined by §29-22A-18f(c) of this code.

(f) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22A-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of §29-22A-10(c)(9)(B) of this code, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-10(c)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than $100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before

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July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq*. of this code, or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq*. of this code, or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety.

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§29-22A-10e. Changes in distribution of excess net terminal income; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22A-10b(a) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to §29-22A-10b(a) (1), (2), (3), (4), (5) and (7) of this code, shall be reduced by 100 percent. Payments shall not be made pursuant to §29-22A-10b of this code, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this code.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the §29-22-18a, §29-22-18d, and §29-22-18e of this code and in the priority as defined by §29-22-18f(c) of this code.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of §29-22A-10b(9)(a)(B) of this code, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-10b(a)(9)9A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater than $100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016, and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq*. of this code, or in any other provision of this code.

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(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq*. of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety.

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§29-22A-10f. Changes in distribution of surcharge.

(a) Notwithstanding any provision of subsection (b), section ten-c of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution made pursuant to section ten-c of this article shall be reduced by ten percent.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

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§29-22A-10g. Redirection of certain amounts from net terminal revenue.

(a) The Governor may, by Executive Order, redirect seventy-five percent of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2017, and ending before July 1, 2018, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety.

(b) The Governor is authorized to redirect deposits of revenues, pursuant to subsection (a) of this section, notwithstanding the following provisions of code:

(1) Paragraph (B), subdivision (9), subsection (c), section ten of this article;

(2) Paragraph (B), subdivision (9), subsection (a), section ten-b of this article;

(3) Subdivision (1), subsection (g), section ten-d of this article;

(4) Subdivision (1), subsection (f), section ten-e of this article; or

(5) Any other provision of this code to the contrary.

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§29-22A-11. Maintenance of video lottery terminals; manufacturers required to provide training; notice of availability of training; reports and certificates of training programs; terminals to be maintained in the condition approved; maintenance log required; keys to video lottery terminals; notice of repairs to the logic area; notice of broken seals on logic board.

(a) No video lottery terminal may be placed in operation in this state until the manufacturer provides training in the service and repair of each approved video lottery terminal model and service technicians complete such training. Manufacturers must submit to the commission the following information on each training program conducted:

(1) An outline of the training curriculum;

(2) A list of the instructors and their qualifications;

(3) Instructional materials; and

(4) The time, dates and location of the training programs.

(b) Manufacturers shall notify all licensed racetracks who have purchased or leased that manufacturer's video lottery terminals of all scheduled training programs. Training programs must be scheduled at convenient locations within this state to facilitate attendance by service technicians. Manufacturers must inform licensed racetracks of any new developments in the service and repair of video lottery terminals and provide appropriate subsequent training programs.

(c) The manufacturers shall issue training certificates to each person upon successful completion of a video lottery training program. The certificate shall include the name of the person who completed the training program and the date and the location of the training program. A person who successfully completes training is eligible for a service technician's permit. No person may conduct maintenance on any video lottery terminal or associated equipment unless the commission has issued a service technician permit to that person.

(d) Each manufacturer shall file with the commission the following information within two weeks after the completion of a training program:

(1) The name of each person who attended and completed the training program;

(2) The name of the manufacturer offering the course;

(3) The manufacturer's video lottery terminal models on which training for service and repair was provided;

(4) The date and location of the training program; and

(5) Copies of all certificates of completion.

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(e) A written maintenance log shall be kept within the main cabinet access area in each video lottery terminal. Every person, including lottery personnel, who gains entry into any internal space of a video lottery terminal must sign the log, record the time and date of entry, record the mechanical meter readings and list the areas inspected or repaired. The maintenance log forms shall be retained by licensed racetracks for a period of three years from the date of the last entry. The maintenance logs shall be available upon request for inspection by the commission.

(f) Licensed racetracks shall provide the commission with a master key for access into the main cabinet door of each video lottery terminal placed in operation. A logic box seal shall be provided by the commission. The seal shall be affixed by commission personnel to prevent unauthorized access to the video lottery terminal logic unit.

(g) No repairs to, or replacement of, the logic board or circuitry within the logic area may occur unless authorized commission personnel are present and observe the repairs or replacement. The logic area seal shall not be broken by anyone other than authorized commission personnel. Each service technician shall submit a written report within twenty-four hours after the repairs or replacement are completed and the report shall include the serial number of any replacement board and the new logic area seal number.

(h) The software eproms on the logic board of each video lottery terminal shall be tested by the commission prior to sealing the logic area. Licensed racetracks or permit holders shall notify the commission in writing of any discovered damage, tears or breaks in the logic area seal and, upon notice, the video lottery terminal shall be disabled. The video lottery terminal shall remain disabled until completion by the commission of an investigation of the seal damage.

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§29-22A-12. Number and location of video lottery terminals security.

(a) A racetrack which has been licensed to conduct video lottery games has the right to install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed racetrack may apply to the commission for authorization to install and operate more than four hundred video lottery terminals. If the commission determines that the installation of additional machines is in the best interest of the licensed racetrack, the Lottery Commission and the citizens of this state, the commission may grant permission to install and operate additional machines.

(b) All video lottery terminals in licensed racetracks shall be physically located as follows:

(1) The video lottery location shall be continuously monitored through the use of a closed circuit television system capable of recording activity for a continuous 24-hour period. All video tapes shall be retained for a period of at least thirty days;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without prior approval from the commission; and

(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of article twenty-three, chapter nineteen of this code: Provided, That if the commission, before November 1, 1993, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission.

(c) A licensee shall allow video lottery games to be played only on days when live racing is being conducted at the racetrack and/or on televised racing days: Provided, That this restriction shall not apply to any racetrack authorized by the commissioner prior to November 1, 1993, to operate video lottery terminals and conduct video lottery games.

(d) Security personnel shall be present during all hours of operation at each video lottery terminal location. Each license holder shall employ the number of security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery facilities and the safety and well-being of the players.

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§29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.

(a) No payment for credits awarded on a video lottery terminal may be made unless the ticket meets the following requirements:

(1) The ticket is fully legible and printed on paper approved by the commission and the ticket contains all information required by this article;

(2) The ticket is not mutilated, altered, unreadable or tampered with in any manner;

(3) The ticket is not counterfeit, in whole or in part; and

(4) The ticket is presented by a person authorized to play video lottery pursuant to this article.

(b) Each licensed racetrack shall designate validation managers and employees authorized to redeem tickets and to sell and redeem tokens during the business hours of operation. Credits shall be immediately paid in cash, by check, by annuitized payments over time or in the form of a noncash prize, when a player presents a valid ticket for payment.

(c) Licensed racetracks shall not redeem tickets for credits awarded on video lottery terminals which are not located on its premises. A ticket must be presented for payment no later than ten days after the date the ticket is printed. The commission is not liable for the payment of any video lottery ticket credits.

(d) All tickets redeemed by a licensed racetrack shall be defaced in a manner which prevents any subsequent presentment and payment.

(e) The commission is not responsible for any video lottery terminal malfunction which causes a credit to be wrongfully awarded or denied to players. The licensed racetrack is solely responsible for any wrongful award or denial of credits.

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§29-22A-14. Transportation and registration of video lottery.

(a) Trucking companies or common carriers shipping video lottery terminals shall be bonded and shall ship all terminals in sealed trailers.

(b) A manufacturer transporting one or more video lottery terminals into this state shall, prior to shipment, provide the commission with the following information on forms prescribed by the commission:

(1) The full name, address and permit number of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name, address and license number of the licensed racetrack to which the video lottery terminals are being sent and the destination of the terminals if different from the address;

(4) The number of video lottery terminals in the shipment;

(5) The serial number of each video lottery terminal in the shipment;

(6) The model number and description of each video lottery terminal in the shipment; and

(7) The expected arrival date of the video lottery terminals at their respective destination within this state.

(c) A licensed racetrack which purchases or leases a video lottery terminal shall, upon receipt of the terminal, provide the commission with the following information on forms prescribed by the commission:

(1) The full name, address and license number of the licensed racetrack receiving the video lottery terminal;

(2) The full name, address and permit number of the manufacturer from whom the video lottery terminal was received;

(3) The serial number of each video lottery terminal received;

(4) The model number and description of each video lottery terminal received;

(5) The expected date and time of video lottery terminal arrival; and

(6) The expected date and time of video lottery terminal installation, and if a video lottery terminal is not placed in operation, the licensed racetrack must notify the commission of the location where the terminal is stored.

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(d) Any person transporting a video lottery terminal from one location to another in this state, other than for repair or servicing purposes, shall notify the commission in writing prior to the transportation of the terminal and provide the following information on forms required by the commission:

(1) The full name, address and license number of the person or entity transporting the video lottery terminal;

(2) The reason for transporting the video lottery terminal;

(3) The full name, address and license number of the person or entity to whom the terminal is being sent and the destination of the video lottery terminal if it is different from the address;

(4) The serial and model number of the video lottery terminal;

(5) The video lottery terminal license number, if affixed;

(6) The manufacturer of the video lottery terminal; and

(7) The expected date and time of video lottery terminal installation or reinstallation.

(e) Any person shipping video lottery terminals to a destination outside of this state shall, prior to the shipment, provide the commission with the following information on forms prescribed by the commission:

(1) The full name, address and license or permit number of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name and address of the person to whom the video lottery terminals are being sent and the destination of the video lottery terminals if different from the address;

(4) The serial number of each video lottery terminal being shipped;

(5) The model number and description of the video lottery terminal being shipped;

(6) The video lottery terminal control number, if affixed;

(7) The manufacturer of the video lottery terminal being shipped; and

(8) The expected date and time of the shipment.

(f) Each video lottery terminal placed in operation in this state must have a commission registration decal permanently affixed, with a video lottery terminal registration control number placed thereon. A decal registration fee is hereby imposed. The amount of the fee

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shall equal six percent of the total consideration paid to the manufacturer for the use or the ownership of the video lottery terminal. The fee shall be paid by the manufacturer to the commission prior to the receipt of the registration decal. The registration decal fee shall be collected by the commission and deposited to the credit of the General Revenue Fund of the state. No person other than authorized commission personnel shall affix or remove a registration control number. The affixing of the commission decal on a video lottery terminal evidences that the decal registration fee has been paid and that the terminal has been registered, inspected and approved for operation in this state. No terminal may be transported out of this state until authorized commission personnel have removed the commission registration control number.

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§29-22A-15. Hearing and appeal procedure; order refusing license or permit or suspending or revoking same; petition for hearing; petition requirements; cost of hearings; subpoenas and subpoenas duces tecum; no stay of suspension or revocation order; hearing date; place of hearing; continuances; absence of petitioner; hearing; argument and briefs; evidence admissible at hearing; record of proceedings; commission's decision; appeal to circuit court.

(a) If the commission refuses to issue a license or permit, or suspends or revokes a license or permit, it shall make and enter an order to that effect including a statement of the reasons for that action and shall, by certified mail, return receipt requested, mail a copy of the order to the applicant, or the license or permit holder, or serve the same in the manner provided for the service of legal process.

(b) Any applicant or licensee or permit holder adversely affected by such order has the right to a hearing thereon before the commission or a person designated as hearing examiner, if a petition in writing requesting a hearing is served upon the commission within ten days following the receipt of the order by such applicant, or license or permit holder.

(c) The petition for a hearing shall be in writing and shall include an original and one copy. The petition must contain the following:

(1) A clear and concise statement of each error which the petitioner alleges to have been committed by the commission in refusing to issue a license or permit, or suspending or revoking a license or permit, with each assignment of error being shown in separately numbered paragraphs.

(2) A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the petitioner.

(5) Verification by the petitioner.

(d) The person demanding a hearing shall give security for the cost of the hearing in the amount of $300 in the form of certified check, cashier's check or money order, which shall accompany the petition demanding a hearing.

(e) In all hearings held under this article, oral and documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Subpoenas or subpoenas duces tecum may be issued by either the commission or its duly appointed hearing examiner and the following provisions shall govern and control:

(1) Every subpoena or subpoena duces tecum must be served at least five days before the return date thereof, either by personal service made by any person eighteen years of age or

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older, or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

(2) All subpoenas and subpoenas duces tecum shall be issued in the name of the commission. Service of subpoenas and subpoenas duces tecum issued at the insistence of the commission are the responsibility of the commission, but any party requesting issuance of a subpoena or subpoena duces tecum is responsible for service of any such subpoena. Any person who serves a subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state.

(3) All fees shall be paid by the commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the commission.

(4) All fees related to any subpoenas or subpoena duces tecum issued at the insistence of an interested party shall be paid by the interested party.

(5) All requests by an interested party for a subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(6) Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it were issued by a circuit court of this state and shall appear as a witness or produce such books, records or papers as are requested in response to a subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, shall, upon application by the commission, compel obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify therein.

(f) The service of a petition for hearing upon the commission shall not operate to suspend the execution of any suspension or revocation of a video lottery license or permit with respect to which a hearing is being demanded.

(g) The commission shall set a date for any hearing demanded and notify the person demanding a hearing not later than seven days before the hearing date of the date and time of the hearing, which hearing shall be held within thirty days after receipt of the petition.

(h) Hearings may not be delayed by a motion for continuance made less than ten days before the date set for the hearing.

(i) The commission may designate a hearing examiner to conduct any hearing.

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(j) The petitioner may appear individually, or by legal counsel.

(k) The petitioner, or his duly authorized representative, may, with the approval of the commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Waivers and agreements must be in writing or upon the record.

(l) The petitioner shall be given an opportunity for argument within the time limits fixed by the commission following submission of evidence. The commission, upon request of the petitioner, shall accept briefs in addition to or in lieu of argument. Briefs must be filed within ten days after the hearing date.

(m) The commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The commission may exclude any evidence which is irrelevant, unduly repetitious or lacking in substantial probative effect.

(n) There shall be a record made of all hearings held pursuant to this article.

(o) After the conclusion of the hearing and within ten days of receipt of the transcript thereof and receipt of any briefs, the person designated by the commission as hearing examiner shall prepare a recommended decision, supported by findings of fact and conclusions of law, affirming, modifying or vacating the earlier order of the commission. Thereafter, the commission, within ten days of receipt of the recommended decision, shall either accept or reject the recommended decision, and if it accepts the decision, it shall cause the director to sign and acknowledge the recommended decision as its own, after having reviewed the transcript and all exhibits attached and affixed thereto; and if it shall reject the same, it shall within ten days of receipt of the recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either event, the decision shall be final unless vacated or modified upon judicial review thereof. A copy of the decision shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

(p) A petition for appeal by an applicant, licensee or permit holder may be filed with the circuit court of Kanawha County, West Virginia, or with the circuit court of the county in which the racetrack is located, if filed no later than thirty days after the date upon which the petitioner receives notice of the final decision of the commission.

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§29-22A-16. Offenses and penalties.

(a) A licensee who places a video lottery game or video lottery terminal into play without authority of the commission to do so is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than $5,000, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than $25,000.

(b) A person who operates, carries on or exposes for play a video lottery game or video lottery terminal after the person's license has expired and prior to the actual renewal thereof is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than $5,000, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than $25,000.

(c) A licensee who possesses any video lottery terminal or other device, equipment or material which the person knows has been manufactured, distributed, sold, tampered with or serviced in violation of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than $5,000, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than $25,000.

(d) A licensee who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play any video lottery game, video lottery terminal, or other device, equipment or material which has in any manner been tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the video lottery game which could determine or alter the result of the game is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than $5,000, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than $50,000.

(e) A licensee who employs or continues to employ an individual, not issued a permit under the provisions of this article, in a position with duties which would require a permit under the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than $5,000, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than $25,000.

(f) A person who, without obtaining the requisite permit as provided for in this article, works or is employed in a position with duties which would require a permit under the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than $10,000.

(g) A person who, while a video lottery game is being played at a licensed racetrack, uses, or assists another in the use of, an electronic, electrical, or mechanical device which is

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designed, constructed, or programmed specifically for use in obtaining an advantage at playing any video lottery game is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than $1,000, or both.

(h) A person who knowingly violates a provision of this article, or the rules of play or game rules of a video lottery game and who profits thereby in an amount equal to $1,000 or more, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than $2,500. If the person profits thereby in an amount less than $1,000, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed $2,500, or both.

(i) A person who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article shall be subject to a civil penalty as may be determined by the commission, not to exceed $10,000.

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§29-22A-17. Disagreement as to duties of Racing Commission and Lottery Commission.

In the event of a disagreement between the Racing Commission and the Lottery Commission with regard to their respective duties or responsibilities in carrying out the purposes of this article, such disagreement shall be resolved by the secretary of the Department of Tax and Revenue in a manner not inconsistent with the provisions of this article, article twenty-two-a of this chapter and article twenty-three, chapter nineteen of this code.

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§29-22A-18. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.

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§29-22A-19. Compulsive Gambling Treatment Fund; contract requirements for compulsive gamblers treatment program.

(a) There is established a separate special account to be known as the "Compulsive Gambling Treatment Fund". The fund shall be appropriated from the Commission's administrative expense account and shall be not less than $150,000 nor more than $500,000 per fiscal year, as determined by the commission, as well as other amounts designated for in this chapter to provide funds for compulsive gambling treatment programs in the state.

(b) The Department of Human Services shall administer the grants and funds issued from the "Compulsive Gambling Treatment Fund".

(c) The Department of Human Services shall develop criteria consistent with this section which a treatment program for compulsive gamblers must meet in order to become eligible for a grant from the funds made available for treatment programs pursuant to this provision.

(d) The Department of Human Services is not subject to the purchasing requirements as set forth in the legislative rule of the Purchasing Division of the Department of Administration: *Provided*, That the Department of Human Services shall comply with all contract requirements set forth in this section.

(e) The Department of Human Services shall develop procedures for bidding and awarding the contract, which must include:

(1) The procedures to be followed for submitting bids and the procedures for making awards;

(2) The proposed general terms and conditions for the contract;

(3) The description of the commodities and services required for the contract, with sufficient clarity to assure that there is a comprehensive understanding of the project's scope and requirements, including, but not limited to, the following elements:

(A) Services to be provided, including education, prevention, crisis intervention, outreach, assessment, referral and treatment for problem gamblers, and protocols for emergency treatment;

(B) Requirements for the business and professional licensing of providers, parameters for media-related advertising and public service announcements;

(C) Training, licensing, monitoring, evaluation and reporting requirements;

(D) Requirements for maintaining the confidentiality of the client population; and

(E) Rights to conduct financial and performance audits;

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(4) A proposed time schedule commencement and completion of the contract;

(5) A budget for the contract;

(6) Requirements or restrictions for the subletting of specific portions of the contract, if any; and

(7) Requirements for professional liability and other insurance coverage.

(f) The Department of Human Services may award the contract based on low bid, best value, sole source or other basis, or may choose to reject all bids and reissue an invitation for bids: *Provided*, That the Department of Human Services shall document the basis of its decisions under this subsection and shall report its decisions in the annual report required in subsection (j) of this section.

(g) The Department of Human Services shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of department and contractor key personnel, and discussion of the following items:

(1) The scope of the contract, including specifications of requirements set forth in the bid request;

(2) The contract terms and conditions, particularly any special contract provisions;

(3) The technical and reporting requirements of the contract;

(4) The contract administration procedures, including contract monitoring and progress measurement;

(5) The rights and obligations of both parties and the contractor performance evaluation procedures;

(6) An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

(7) Potential contract problem areas and possible solutions;

(8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to outcomes achieved by the contractor; and

(9) An explanation of the limits of authority of the personnel of both the department and the contractor.

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(h) The Department of Human Services shall develop a comprehensive and objective monitoring checklist which:

(1) Measures treatment outcomes;

(2) Monitors compliance with contract requirements; and

(3) Assesses contractor performance on a quarterly and annual basis.

(i) The commission may not influence or interfere with the operation of the program or the advertising and marketing decisions of the contractor.

(j) The Department of Human Services may monitor contract performance, review compliance with the contract's terms and conditions, request and review pertinent information in support of tendered invoices and conduct other investigation so as to enable it to properly assess whether the project's objectives and the contract's terms and conditions are being met. However, the Department of Human Services may not unduly influence or interfere with the operation of the program or the advertising and marketing decisions of the contractor.

(k) Once any contract to render services under a compulsive gambling treatment program is awarded pursuant to this section, the contract shall be administrated by the Department of Human Services, and the department shall maintain all records pertaining to each request for reimbursement and disbursement for under said contract for a minimum of five (5) years.

(l) The contractor may prominently promote, display or advertise the Compulsive Gambler's Treatment Program, its purpose, its hotline or its program events in any location in which the Lottery Commission promotes, displays, advertises or conducts operations or in any other location: *Provided*, That the Lottery Commission's name, logo or other indicia may not appear on any advertising, marketing or promotional material of the contractor.

(m) The Department of Human Services shall report annually to the Joint Committee on Government and Finance on the amount of program funds distributed, the amount of administrative fee retained by the department and its use of the fee, the number of persons served by the program, and on each requirement set forth in this section.

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