WEST VIRGINIA CODE: §29-22C-8

§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.

(a) *Racetrack table games licenses*. — The commission may issue up to four racetrack table games licenses to operate West Virginia Lottery table games in accordance with the provisions of this article. The Legislature intends that no more than four licenses to operate a racetrack with West Virginia Lottery table games in this state shall be permitted in any event.

(b) *Grant of license*. — Upon the passage of a local option election in a county in accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant a West Virginia Lottery table games license, and a license for the right to conduct West Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee to conduct West Virginia Lottery table games at the licensed pari-mutuel racetrack identified on the local option election ballot, provided that racetrack holds a valid racetrack video lottery license issued by the commission pursuant to §29-22A-1 *et seq*. of this code and a valid racing license granted by the West Virginia Racing Commission pursuant to the provisions of §19-23-1 *et seq*. of this code and has otherwise met the requirements for licensure under the provisions of this article and the rules of the commission.

(c) *Location*. — A racetrack table games license authorizes the operation of West Virginia Lottery table games on the grounds of the particular licensed facility identified in the racetrack video lottery license issued pursuant to §29-22A-1 *et seq*. of this code and the license to conduct horse or dog racing issued pursuant to §19-23-1 *et seq*. of this code.

(d) *Floor plan submission requirement*. — Prior to commencing the operation of any table games in a designated gaming area, a racetrack table games licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which table games gaming equipment will be located and its proposed arrangement of the table games gaming equipment. Any floor plan submission that satisfies the requirements of the rules promulgated by the commission shall be considered approved by the commission unless the racetrack table games licensee is notified in writing to the contrary within one month of filing a detailed floor plan.

(e) *Management service contracts*. —

(1) *Approval*. — A racetrack table games licensee may not enter into any management service contract that would permit any person other than the licensee to act as the commission’s agent in operating West Virginia Lottery table games unless the management service contract is: (A) With a person licensed under this article to provide management services; (B) is in writing; and (C) the contract has been approved by the commission.

(2) *Material change*. — The licensed racetrack table games licensee shall submit any

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material change in a management service contract previously approved by the commission to the commission for its approval or rejection before the material change may take effect.

(3) *Prohibition on assignment or transfer*. — A management services contract may not be assigned or transferred to a third party.

(4) *Other commission approvals and licenses*. — The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted, or transferred to a third party to perform without the prior approval of the commission. Third parties must be licensed under this article before providing service. The commission may by rule clarify application of this subdivision and provide exceptions to its application. The commission shall license and require the display of West Virginia Lottery game logos on appropriate game surfaces and other gaming items and locations as the commission considers appropriate.

(f) *Coordination of licensed activities*. — In order to coordinate various licensed activities within racetrack facilities, the following provisions apply to licensed racetrack facilities:

(1) The provisions of this article and of §29-22A-1 *et seq*. of this code shall be interpreted to allow West Virginia Lottery table games and racetrack video lottery operations under those articles to be harmoniously conducted in the same designated gaming area.

(2) On the effective date of this article, the provisions of §29-22C-23 of this code apply to all video lottery games conducted within a racetrack facility, notwithstanding any inconsistent provisions contained in §29-22A-1 *et seq*. of this code to the contrary.

(3) On and after the effective date of this article, vacation of the premises after service of beverages ceases is not required, notwithstanding to the contrary any inconsistent provisions of this code or inconsistent rules promulgated by the Alcohol Beverage Control Commissioner with respect to hours of sale of those beverages, or required vacation of the premises.

(g) *Fees, expiration date, and renewal*. —

(1) An initial racetrack table games license fee of $1,500,000 shall be paid to the commission at the time of issuance of the racetrack table games license, regardless of the number of months remaining in the license year for which it is issued. All licenses expire at the end of the day on September 30 each year.

(2) The commission shall annually renew a racetrack table games license as of October 1 of each year, provided the licensee:

(A) Successfully renews its racetrack video lottery license under §29-22A-1 *et seq*. of this code before October 1;

(B) Pays to the commission the annual license renewal fee of $2,500,000 required by this

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section at the time it files its application for renewal of its license under §29-22A-1 *et seq*. of this code; and

(C) During the current license year, the licensee complied with all provisions of this article, all rules adopted by the commission, and all final orders of the commission applicable to the licensee.

(3) *Annual license surcharge for failure to construct hotel on premises*. — It is the intent of the Legislature that each racetrack for which a racetrack table games license has been issued be or become a destination tourism resort facility. To that end, it is important that each racetrack for which a racetrack table games license has been issued operate a hotel with significant amenities. Therefore, in addition to all other taxes and fees required by the provisions of this article, there is hereby imposed, upon each racetrack for which a racetrack table games license has been issued an annual license surcharge, payable to the commission in the amount of $2,500,000 if that racetrack does not operate a hotel on its racing property that contains at least 150 guest rooms with significant amenities within three years of the passage of the local option election in its county authorizing table games at the racetrack, provided the time for completion of the hotel shall be extended by the same number of days as the completion of the hotel is delayed by force majeure events or conditions beyond the reasonable control of the racetrack licensee. The surcharge shall be paid upon each renewal of its racetrack table games license made after the expiration of the three year period, and may be extended by the above force majeure events or conditions, until the racetrack opens a qualifying hotel.

(4) If the licensee fails to apply to renew its license under §19-23-1 *et seq*. and §29-22A-1 *et seq*. of this code until after the license expires, the commission shall renew its license under this article at the time it renews its license under §29-22A-1 *et seq*. of this code, provided the licensee has paid the annual license fee required by this section and during the preceding license year the licensee complied with all provisions of this article, all rules adopted by the commission and all final orders of the commission applicable to the licensee.

(h) *Facility qualifications*. — A racetrack table games licensee shall demonstrate that the racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission.

(i) *Surety bond*. — A racetrack table games licensee shall execute a surety bond to be given to the state to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission. The surety bond shall be:

(1) In the amount determined by the commission to be adequate to protect the state against nonpayment by the licensee of amounts due the state under this article;

(2) In a form approved by the commission; and

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(3) With a surety approved by the commission who is licensed to write surety insurance in this state. The bond shall remain in effect during the term of the license and may not be canceled by a surety on less than 30 days' notice in writing to the commission. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(j) *Authorization*. — A racetrack table games license authorizes the licensee act as an agent of the commission in operating an unlimited amount of West Virginia Lottery table games while the license is active, subject to subsection (d) of this section. A racetrack table games license is not transferable or assignable and cannot be sold or pledged as collateral.

(k) *Audits*. — When applying for a license and annually thereafter prior to license renewal, a racetrack table games licensee shall submit to the commission an annual audit, by a certified public accountant, of the financial transactions and condition of the licensee's total operations. The audit shall be made in accordance with generally accepted accounting principles and applicable federal and state laws.

(l) *Commission office space*. — A racetrack table games licensee shall provide to the commission, at no cost to the commission, suitable office space at the racetrack facility for the commission to perform the duties required of it by this article and the rules of the commission.

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