WEST VIRGINIA CODE CHAPTER 29 ARTICLE 22C

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§29-22C-1. Short title.

This article shall be known and may be cited as the West Virginia Lottery Racetrack Table Games Act.

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§29-22C-2. State authorization of table games at licensed racetrack facilities; legislative findings and declarations.

(a) Operation of West Virginia lottery table games. -- Notwithstanding any provision of law to the contrary, the operation of West Virginia lottery racetrack table games and ancillary activities at a licensed racetrack and the playing of those West Virginia lottery table games at a licensed racetrack are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

(b) Legislative findings: --

(1) The Legislature finds that horse racing and dog racing and breeding play a critical role in the economy of this state, enhance the revenue collected at the racetracks, contribute vital revenues to the counties and municipalities in which the activities are conducted, provide for significant employment and protect and preserve greenspace and; that a substantial state interest exists in protecting these industries. Furthermore, it finds that the breeding and racing of thoroughbred horses is an integral part of West Virginia's agriculture, and that agriculture is a critical ingredient in West Virginia's economy. It further finds that the operation of table games pursuant to this article, at racetracks in this state that hold racetrack video lottery licenses and licenses to conduct horse or dog racing, will protect and preserve the horse racing and dog racing industries and horse and dog breeding industries, will protect and enhance the tourism industry in this state and indirectly benefit other segments of the economy of this state.

(2) The Legislature finds that, pursuant to section thirty-six, article VI of the Constitution of the State of West Virginia grants exclusively to the state the right to lawfully own and operate a lottery in this state.

(3) The Legislature finds that recognized principals of ownership allow an owner to maintain ownership while operating an enterprise through agents and licensees.

(4) The Legislature finds that it is in the best interest of the State of West Virginia for the state to operate a lottery in the form of table games.

(5) The Legislature finds that the table games authorized under the provisions of this article are lotteries as each game involves consideration, the possibility of a prize and their outcome is determined predominantly by chance, which the common law of West Virginia has long held are the three essential elements of a lottery.

(6) The Legislature finds that the lottery authorized by the provisions of this article is the exclusive intangible intellectual property of the State of West Virginia as are the other versions of lottery authorized under this chapter.

(7) The Legislature finds that the most effective manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to do so through

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licensees and further that effective operation and regulation requires limiting the number of locations at which the lottery and lottery games so authorized are allowed.

(8) The Legislature finds that limiting such table games as authorized under this article to facilities authorized by the provisions of article twenty-three, chapter nineteen of this code which are licensed pursuant to the provisions of article twenty-two-a of this chapter to operate video lottery terminals is the most efficient and effective manner in which to regulate licensees.

(9) The Legislature finds that the granting of licenses pursuant to the provisions of this article while maintaining all ownership rights and exercising control through strict regulation of all West Virginia lottery table games authorized by the provisions of this article constitutes an appropriate exercise by the Legislature of the power granted it by the Constitution pursuant to the provisions of section thirty-six, article VI of the Constitution of West Virginia.

(10) The Legislature finds that the operation of West Virginia lottery table games at racetracks licensed pursuant to the provision of article twenty-two-a of this chapter and by the provisions of article twenty-three, chapter nineteen of this code serves to protect, preserve and promote the horse and dog racing and breeding industries of this state and will serve to protect, promote and enhance the tourism industry of the state as well as the general fiscal well-being of the state and its subdivisions.

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§29-22C-3. Definitions.

(a) Applicability of definitions. -- For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context in which the word or term is used.

(b) Terms defined. --

(1) "Adjusted gross receipts" means gross receipts from West Virginia Lottery table games less winnings paid to patrons wagering on the racetrack's table games.

(2) "Applicant" means any person who on his or her own behalf, or on behalf of another, has applied for permission to engage in any act or activity that is regulated under the provision of this article for which a license is required by this article or rule of the commission.

(3) "Application" means any written request for permission to engage in any act or activity that is regulated under the provisions of this article submitted in the form prescribed by the commission.

(4) "Background investigation" means a security, criminal and credit investigation of an applicant who has applied for the issuance or renewal of a license pursuant to this article, or a licensee who holds a current license.

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

(6) "Complimentary" means a service or item provided at no cost or at a reduced price.

(7) "Compensation" means any money, thing of value, or financial benefit conferred or received by a person in return for services rendered, or to be rendered, whether by that person or another.

(8) "Contested case" means a proceeding before the commission, or a hearing examiner designated by the commission to hear the contested case, in which the legal rights, duties, interests or privileges of specific persons are required by law or Constitutional right to be determined after a commission hearing, but does not include cases in which the commission issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and does not include rule making.

(9) "Control" means the authority directly or indirectly to direct the management and policies of an applicant for a license issued under this article or the holder of a license issued under this article.

(10) "Designated gaming area" means one or more specific floor areas of a licensed

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racetrack within which the commission has authorized operation of racetrack video lottery terminals or table games, or the operation of both racetrack video lottery terminals and West Virginia Lottery table games.

(11) "Director" means the Director of the West Virginia State Lottery Commission appointed pursuant to section six, article twenty-two of this chapter.

(12) "Disciplinary action" is an action by the commission suspending or revoking a license, fining, excluding, reprimanding or otherwise penalizing a person for violating this article or rules promulgated by the commission.

(13) "Financial interest" or "financially interested" means any interest in investments, awarding of contracts, grants, loans, purchases, leases, sales or similar matters under consideration for consummation by the commission. A member, employee or agent of the commission will be considered to have a financial interest in a matter under consideration if any of the following circumstances exist:

(A) He or she owns one percent or more of any class of outstanding securities that are issued by a party to the matter under consideration by the commission; or

(B) He or she is employed by an independent contractor for a party to the matter under consideration or consummated by the commission.

(14) "Gaming equipment" means gaming tables, cards, dice, chips, shufflers, drop boxes or any other mechanical, electronic or other device, mechanism or equipment or related supplies used or consumed in the operation of any West Virginia Lottery table game at a licensed racetrack.

(15) "Gross receipts" means the total of all sums including valid or invalid checks, currency, tokens, coupons (excluding match play coupons), vouchers or instruments of monetary value whether collected or uncollected, received by a racetrack with table games from table gaming operations at a race track, including all entry fees assessed for tournaments or other contests.

(16) "Indirect ownership" means an interest a person owns in an entity or in property solely as a result of application of constructive ownership rules without regard to any direct ownership interest (or other beneficial interest) in the entity or property. "Indirect ownership" shall be determined under the same rules applicable to determining whether a gain or loss between related parties is recognized for federal income tax purposes.

(17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility licensed under both article twenty-two-a of this chapter and article twenty-three, chapter nineteen of this code.

(18) "License" means any license applied for or issued by the commission under this article, including, but not limited to:

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(A) A license to act as agent of the commission in operating West Virginia Lottery table games at a licensed racetrack;

(B) A license to supply a racetrack licensed under this article to operate table games with table gaming equipment or services necessary for the operation of table games;

(C) A license to be employed at a racetrack licensed under this article to operate West Virginia Lottery table games when the employee works in a designated gaming area that has table games or performs duties in furtherance of or associated with the operation of table games at the licensed racetrack; or

(D) A license to provide management services under a contract to a racetrack licensed under this article to operate table games.

(19) "Licensee" means any person who is licensed under any provision of this article.

(20) "Lottery" means the public gaming systems or games regulated, controlled, owned and operated by the state Lottery Commission in the manner provided by general law, as provided in this article and in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter.

(21) "Member" means a commission member appointed to the West Virginia Lottery Commission under article twenty-two of this chapter.

(22) "National criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(23) "Own" means any beneficial or proprietary interest in any real or personal property, including intellectual property, and also includes, but is not limited to, any direct or indirect beneficial or proprietary interest in any business of an applicant or licensee.

(24) "Person" means any natural person, and any corporation, association, partnership, limited liability company, limited liability partnership, trust or other entity, regardless of its form, structure or nature other than a government agency or instrumentality.

(25) "Player" or "Patron" means a person who plays a racetrack video lottery game or a West Virginia Lottery table game at a racetrack licensed under this article to have table games.

(26) "Player's account" means a financial record established by a licensed racetrack for an individual racetrack patron to which the racetrack may credit winnings and other amounts due to the racetrack patron and from which the patron may withdraw moneys due to the patron for purchase of tokens, chips or electronic media or other purposes.

(27) "Racetrack table games license" means authorization granted under this article by the commission to a racetrack that is already licensed under article twenty-two-a of this chapter

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to operate racetrack video lottery terminals and holds a valid racing license granted by the West Virginia Racing Commission pursuant to the provision of article twenty-three, chapter nineteen of this code, which permits the racetrack as an agent of the commission for the limited purpose of operation of West Virginia Lottery table games in one or more designated gaming areas in one or more buildings owned by the licensed racetrack on the grounds where live pari-mutuel racing is conducted by the licensee.

(28) "Racetrack Table Games Fund" means the special fund in the state Treasury created in section twenty-seven of this article.

(29) "Significant influence" means the capacity of a person to affect substantially (but not control) either, or both, of the financial and operating policies of another person.

(30) "Supplier" means a person who the commission has identified under legislative rules of the commission as requiring a license to provide a racetrack table games licensee with goods or services to be used in connection with operation of table games.

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

(32) "West Virginia Lottery table game" means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar in design or operation and expressly authorized by rule of the commission, including multiplayer electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.

(33) "Winnings" means the total cash value of all property or sums including currency, tokens, or instruments of monetary value paid to players as a direct result of wagers placed on West Virginia Lottery table games.

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§29-22C-4. Commission duties and powers.

(a) Duties. -- In addition to the duties set forth elsewhere in this article or in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter, the commission shall:

(1) Establish minimum standards for gaming equipment, including, but not limited to, electronic and mechanical gaming equipment;

(2) Enter into licensing agreements with facilities eligible to operate West Virginia Lottery table games for the state, providing criteria and guidelines for preservation of the state's ownership, operation and control interests as provided by general law herein;

(3) Approve, modify or reject game rules of play proposed by the licensee for West Virginia Lottery table games proposed to be operated at a licensed racetrack;

(4) Approve, modify or reject minimum internal control standards proposed by the licensee governing racetrack table game operations, including the maintenance of financial records;

(5) Approve staff considered necessary by the director to oversee, inspect and monitor the operation of table games at any racetrack licensed under this article and article twenty-two-a of this chapter, including, but not limited to, inspection of designated gaming areas, gaming equipment and security equipment used in the operation of table games to assure continuous compliance with the provisions of this article, required license conditions and terms, and applicable rules of the commission;

(6) Determine eligibility of a person to hold or continue to hold a license issued under this article;

(7) Issue all licenses;

(8) Maintain a record of all licenses issued;

(9) Levy and collect the taxes imposed by this article and the fees, surcharges and civil penalties authorized, required or specified in this article or the legislative rules of the commission, and receive, accept and pay all taxes, fees, surcharges and civil penalties collected under this article into the Racetrack Table Games Fund, except as otherwise provided under this article; and

(10) Keep a public record of all commission actions and proceedings with respect to West Virginia Lottery table games.

(b) Powers. -- In addition to the powers set forth elsewhere in this article or in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter, the commission may:

(1) Sue to enforce any provision of this article or any rule of the commission, whether by civil action or petition for injunctive relief;

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(2) Hold hearings, administer oaths and issue subpoenas for attendance of witnesses to testify or subpoenas duces tecum for the production of documents or other evidence;

(3) Enter a licensed racetrack with West Virginia Lottery table games at any time and without notice to ensure strict compliance with this article and with the rules of the commission;

(4) Bar, for cause, any person from:

(A) Entering a designated gaming area of a licensed racetrack with table games, or the grounds of a racetrack licensed under this article; or

(B) Participating in any capacity in the play of any West Virginia Lottery table game, or in the operation of West Virginia Lottery table games;

(5) Promulgate, or propose for promulgation, in accordance with the provision of article three, chapter twenty-nine-a of this code, any legislative, interpretive and procedural rules the commission considers necessary for the successful implementation, administration and enforcement of this article, and to amend or revoke any promulgated rule, in accordance with provisions of article three, chapter twenty-nine-a of this code, at the discretion of the commission. Any rule proposed by the commission before September 1, 2007 may be promulgated as an emergency rule;

(6) Upon the effective date of this article and prior to promulgation of emergency rules, the commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses for: racetracks under section eight of this article; suppliers under section eleven of this article; racetrack employees under section twelve of this article; and providers of management services under section thirteen of this article; and

(7) Exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

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§29-22C-5. Appointment of commission staff; conditions of employment.

(a) The director, with the approval of the commission, may appoint any professional, clerical, technical and administrative personnel, who shall be state employees hired in accordance with article six, chapter twenty-nine of this code, which the director considers necessary to carry out the provisions of this article. Prior to his or her appointment, each applicant for a position shall provide his or her fingerprints and shall undergo a thorough background investigation.

(b) No commission employee may directly or indirectly hold an ownership or a financial interest in any racetrack table game license, or a supplier license, or a management services license, or in a holding company that owns the license, or in a business related to the license for federal income tax purposes, or be an applicant for any of these licenses.

(c) No commission employee may knowingly wager or be paid any prize from any wager at any licensed racetrack with West Virginia Lottery table games within this state or at any facility outside this state or this country that is directly or indirectly owned or operated:

(1) By a racetrack table games licensee that is licensed pursuant to this article; or

(2) By any person who directly or indirectly owns the racetrack table games license.

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§29-22C-6. Licenses required.

(a) No person may engage in any activity in connection with a racetrack with West Virginia Lottery table games in this state for which a license is required by this article or rules of the commission unless all necessary licenses have been obtained in accordance with this article and rules of the commission.

(b) Licenses are required for the following purposes:

(1) For any person operating a racetrack West Virginia Lottery table game in the state;

(2) For any person supplying a racetrack table games licensee with gaming equipment or gaming equipment services;

(3) For any individual employed by a racetrack table games licensee in connection with the operation of West Virginia Lottery table games in the state; and

(4) For any person providing management services under a contract to a racetrack table games licensee.

(c) The commission may not grant a license to an applicant until the commission determines that each person who has control of the applicant also meets all of the qualifications the applicant must meet to hold the license for which application is made. 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 who the commission determines to have the ability to control the applicant; and

(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.

(d) Any license required by this article or rules of the commission is in addition to all other licenses or permits required by applicable federal, state or local law.

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§29-22C-7. Local option election.

(a) No racetrack may be licensed under this article to operate West Virginia Lottery table games until a local option election is held in the county in which pari-mutuel wagers are received at a racetrack licensed under article twenty-three, chapter nineteen of this code and the voters of that county voting on the question approve having West Virginia Lottery table games at the racetrack.

(b) The county commission shall place the question on the ballot upon the receipt of a written notice from a licensed racetrack located within that county requesting that the question be placed on the ballot.

(c) The county commission of the county in which table games would be 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 at least thirty days preceding the day of the election. A local option election shall be effective even though the date of the order of the county commission setting the election or the date of publication of notice of the election is prior to the effective date of this article if the election is otherwise held in accordance with the provisions of this section.

(d) On the local option election ballot shall be printed the following:

Shall West Virginia Lottery table games be permitted at the [name of licensed racetrack]?

[ ] Yes[ ] No

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

(e) The local option election shall be held in conjunction with the next primary or general election scheduled more than ninety days following receipt by the county commission of the notice required by this section or at a special election: Provided, That upon written request by the licensed racetrack that a special election be called, the county commission shall order a special election to be held on the question within ninety days after the receipt by the county commission of that request. The county commission may require the licensed racetrack to pay the entire cost incurred by the county to hold the special election. Approval shall be by a majority of the voters casting votes at the election on the question of approval or disapproval of West Virginia Lottery table games at a licensed racetrack.

(f) If the majority votes against allowing table games at a licensed racetrack, no election on the issue shall be held for a period of one hundred four weeks. A local option election may thereafter be held in the manner provided in this section. The process to hold another election on the question shall start anew, as if no prior request for an election on the question had been filed with county commission and as if there had been no prior election on

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the question.

(g) If the majority votes for allowing West Virginia Lottery table games at a licensed racetrack facility in a county, 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 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 table games be permitted at the [name of racetrack]?

Name Address Date

(Post office or street address)

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§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 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.

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

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(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

(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

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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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§29-22C-9. State ownership of table games.

All table games authorized by this article shall be West Virginia lottery games owned by the State of West Virginia. A racetrack table games license granted to a pari-mutuel racetrack by the commission pursuant to this article shall include the transfer by the commission to the racetrack limited license rights in and to the commission's intellectual property ownership of the West Virginia lottery games which includes granting licensees limited lawful authority relating to the conduct of lottery table games for consideration, within the terms and conditions established pursuant to this article and any rules promulgated under this article.

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§29-22C-10. Duties of racetrack table games licensee.

(a) General. -- All racetrack table games licensees shall:

(1) Promptly report to the commission any facts or circumstances related to the operation of a racetrack with West Virginia Lottery table games which constitute a violation of state or federal law;

(2) Conduct all table games 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 operation of West Virginia Lottery table games;

(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 racetrack licensee, the commission, the state or employees thereof, arising from the licensee's actions or omission while acting as an agent of the commission by operation of West Virginia Lottery table games pursuant to this article;

(4) Assist the commission in maximizing table games revenues;

(5) Give preference in hiring to existing employees who have expressed an interest in transferring to an entry level West Virginia Lottery Table games job and who have demonstrated the potential to succeed in that job. To enable these employees to develop the skills necessary to fill an entry level West Virginia Lottery table games position, a licensee shall provide customary industry training for entry level West Virginia Lottery table games jobs. The dates, times, place and manner of providing such training, the appropriate qualifications and certifications, the number of existing employees to be trained, the determination of standards for evaluating successful performance in live auditions for such positions and the determination of who shall be given West Virginia Lottery table game jobs shall be within the sole business discretion of the licensee's management, provided that among equally qualified applicants, as determined by the licensee, length of service shall be the determining factor;

(6) Maintain all records required by the commission;

(7) Upon request by the commission, provide the commission access to all records and the physical premises where the licensee's table games activities and related activities occur, for the purpose of monitoring or inspecting the licensee's activities and the table games, gaming equipment and security equipment;

(8) Keep current in all payments and obligations to the commission; and

(9) Conduct no 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,

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chapter nineteen of this code, and otherwise keep in good standing, all licenses and permits granted by the Racing Commission pursuant to section six, article twenty-three, chapter nineteen of this code, and any rules promulgated thereunder.

(b) Specific. -- All racetrack table games licensees shall:

(1) Acquire West Virginia Lottery table games and gaming equipment by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the table games and gaming equipment;

(2) Permit no person to tamper with or interfere with the operation of any West Virginia Lottery table game;

(3) Ensure that West Virginia Lottery table games are within the sight and control of designated employees of the licensed racetrack with West Virginia Lottery table games and under continuous observation by security equipment in conformity with specifications and requirements of the commission;

(4) Ensure that West Virginia Lottery table games are placed and remain placed in the specific locations within designated gaming areas at the licensed racetrack which have been approved by the commission. West Virginia Lottery table games at a licensed racetrack shall only be relocated in accordance with the rules of the commission;

(5) Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or other electronic media;

(6) Install, post and display conspicuously at locations within or about the licensed racetrack with West Virginia Lottery table games, signs, redemption information and other promotional material as required by the commission; and

(7) Assume liability for stolen money from any table game.

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§29-22C-11. Reports by a racetrack table games licensee.

A racetrack table games licensee shall maintain daily records showing the gross receipts and adjusted gross receipts of the racetrack from West Virginia Lottery table games and shall timely file with the commission any additional reports required by rule promulgated by the commission or required by other provisions of this code.

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§29-22C-12. License to supply a racetrack with gaming equipment or services.

(a) License. -- The commission may issue a license to a person to supply a racetrack licensed under this article with gaming equipment or services when the commission determines that the person meets the requirements of this section and any applicable rules of the commission.

(b) License qualifications. -- Each applicant who is an individual and each individual who controls an applicant, as provided in subsection (c) section six of this article, shall be of good moral character, honesty and integrity and shall have the necessary experience and financial ability to successfully carry out the functions of a West Virginia Lottery table games supplier. The commission may adopt rules establishing additional requirements for a West Virginia Lottery table games supplier. The commission may accept licensing by another jurisdiction, specifically determined by the commission to have similar licensing requirements, as evidence the applicant meets West Virginia Lottery table games supplier licensing requirements.

(c) Supplier specifications. -- An applicant for a license to supply gaming equipment or services to a racetrack table games licensee shall demonstrate that the gaming equipment or services that the applicant plans to offer to the racetrack table games licensee conform or will conform to standards established by rules of the commission and applicable state law. The commission may accept gaming equipment or services approval by another jurisdiction, specifically determined by the commission to have similar equipment standards, as evidence the applicant meets the standards established by the commission and applicable state law.

(d) License application requirements. -- An applicant for a license to supply a racetrack table games licensee shall:

(1) Submit an application to the commission in the form the commission requires including adequate information to serve as a basis for a thorough background check;

(2) Submit 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; and

(3) Pay to the commission a nonrefundable application and license fee for deposit into the Racetrack Table Games Fund in the amount of $100, which shall be in lieu of the first year's license fee provided in subsection (g) of this section.

(e) Authorization. -- A license to supply a racetrack table games licensee authorizes the

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licensee to sell or lease gaming equipment or offer services to a racetrack with West Virginia Lottery table games while the license is active. The commission may by rule establish the conditions which constitute an emergency under which the commission may issue provisional licenses pending completion of final action on an application.

(f) Inventory. -- A licensed table games supplier shall submit to the commission a list of all gaming equipment and services sold, delivered to or offered to a racetrack with West Virginia Lottery table games in this state when required by the commission.

(g) Fees, expiration date and renewal. -- A licensed table games supplier shall pay to the commission an annual license fee of $100 for an initial term beginning prior to the date of the supplier's first sale to a racetrack table games licensee and continuing through the end of the twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The commission shall renew a license to supply a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games licensee may continue to use supplies acquired from a licensed table games supplier while that supplier was licensed, notwithstanding the expiration of the supplier's license, unless the commission finds a defect in those gaming supplies.

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§29-22C-13. License to be employed in a racetrack with West Virginia Lottery table games.

(a) Licenses. -- The commission shall issue a license to be employed in the operation of racetrack table games to a person who meets the requirements of this section.

(b) License qualifications. -- To qualify for a license to be employed in the operation of West Virginia Lottery table games, the applicant shall be an individual of good moral character, honesty and integrity, and have been offered employment by the racetrack table games licensee contingent upon licensure pursuant to the provisions of this section. The commission by rule may establish different specific requirements for each job classification that may be created by the commission to recognize the extent to which a particular job classification has the ability to impact the proper operation of West Virginia Lottery table games.

(c) License application requirements. -- An applicant for a license to be employed by a racetrack with West Virginia Lottery table games in a position or to perform duties for which a license is required under this article or rules of the commission shall:

(1) Submit an application to the commission in the form required by the commission for each job classification including adequate information to serve as a basis for a thorough background check;

(2) Submit 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; and

(3) Pay to the commission a nonrefundable application fee for deposit into the Racetrack Table Games Fund in the amount of $100. The fee may be paid on behalf of an applicant by the employer.

(d) Authorization. -- A license to be employed by a racetrack with West Virginia Lottery table games permits the licensee to be employed in the capacity designated by the commission with respect to the license while the license is still active.

(e) Renewal fee and form. -- Each licensed employee shall pay to the commission an annual license fee set by the commission by rule by June 30 of each year. The fee may vary based on the job classification of the applicant, but in no event shall it exceed $100. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee shall submit a renewal application on the form required by the

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§29-22C-14. License to be a provider of management services.

(a) License. -- The commission may issue a license to a person providing management services under a management services contract to a racetrack table games licensee when the commission determines that the person meets the requirements of this section and any applicable rules of the commission.

(b) License qualifications. -- Each applicant who is an individual and each individual who controls an applicant, as provided in subsection (c), section six of this article, shall be of good moral character, honesty and integrity and shall have the necessary experience and financial ability to successfully carry out the functions of a management services provider. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept licensing by another jurisdiction, specifically determined by the commission to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) Management service provider specifications. -- An applicant for a license to provide management services to a racetrack table games licensee shall demonstrate that the management services that the applicant plans to offer to the racetrack table games licensee conform or will conform to standards established by rules of the commission and applicable state law. The commission may accept management services provider approval by another jurisdiction, specifically determined by the commission to have management services, as evidence the applicant meets the standards established by the commission and applicable state law.

(d) License application requirements. -- An applicant for a license to provide management services to a racetrack table games licensee shall:

(1) Submit an application to the commission in the form required by the commission including adequate information to serve as a basis for a thorough background check;

(2) Submit 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; and

(3) Pay to the commission a nonrefundable application and license fee for deposit into the Racetrack Table Games Fund in the amount of $100, which shall be in lieu of the first year's license fee provided in subsection (f) of this section.

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(e) Authorization. -- A license to provide management services to a racetrack table games licensee authorizes the licensee to provide management services to a racetrack with West Virginia Lottery table games while the license is active. The commission may by rule establish the conditions which constitute an emergency under which the commission may issue provisional licenses pending completion of final action on an application.

(f) Fees, expiration date and renewal. -- A licensed provider of management services shall pay to the commission an annual license fee of $100 for an initial term beginning prior to the date of the provider's first contract with a racetrack table games licensee and continuing through the end of the twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The commission shall renew a license to provide management services to a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games licensee may continue to use the management services provided by the management services provider while that provider was licensed, notwithstanding the expiration of the provider's license, unless the commission finds the services provided are not conforming to standards established by rule of the commission and applicable state law.

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§29-22C-15. License or registration prohibitions.

(a) The commission may not grant any license or registration pursuant to the provisions of this article if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license or registration revoked by any governmental authority of a state of the United States having responsibility for the regulation of gambling or gaming activities; or

(3) Has been convicted of a crime, a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order: *Provided*, That the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(b) In the case of an applicant for a license to supply a racetrack with West Virginia Lottery table games, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for a racetrack table games license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee knowingly employs an individual in a job classification which includes West Virginia Lottery table games management duties who has been convicted of a gambling-related offense, or a theft, or fraud offense under the laws of this state, another state, the United States or a territory of the United States or knowingly employs any individual in a job classification which includes West Virginia Lottery table games

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management duties who has had a license relating to the operation of a gaming activity revoked by this state or any other state: *Provided*, That the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession.

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation, which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article, unless the sale has been approved in advance by the commission.

(d) The Lottery Commission may not disqualify an applicant from initial licensure 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 licensure. 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.

(e) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the Lottery Commission shall permit the applicant to apply for initial licensure 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 licensure, to be determined by the Lottery Commission.

(f) An individual with a criminal record who has not previously applied for licensure may

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

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§29-22C-16. License or registration denial, revocation, suspension, and reprimand.

(a) Notwithstanding any provision of §29-22C-13(b) of this code to the contrary, the commission may deny a license or registration to any applicant, reprimand any licensee or registrant, or suspend or revoke a license or registration if the applicant, licensee, registrant, or any person having control of the applicant, licensee, or registrant:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or registration for the applicant, licensee, registrant, or another person;

(2) Fraudulently or deceptively uses a license or registration;

(3) Is or has been convicted of a felony under the laws of this state, another state, the United States, or a territory of the United States: *Provided,* That in the event an applicant is seeking initial licensure, the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession; or

4) Is or has been convicted of a misdemeanor under the laws of this state, another state, the United States or a territory of the United States for gambling or a gambling related activity: *Provided,* That in the event an applicant is seeking initial licensure, the Lottery Commission shall apply §29-22C-15(d) and §29-22C-15(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the licensed profession.

(b) Instead of or in addition to reprimanding a licensee or registrant or suspending or revoking a license or registration, the commission may impose a civil penalty under §29-22C-31 of this code.

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§29-22C-17. Hearing procedures.

(a) Right to a hearing. -- Except as otherwise provided by law, before the commission takes any adverse action involving a licensee under the provisions of this article, it shall give the persons against whom the action is contemplated an opportunity for a hearing before the commission or a hearing examiner designated by the commission.

(b) Notice of hearing and right to counsel. -- The commission shall give notice and hold the hearing in accordance with article five, chapter twenty-nine-a of this code. The notice shall be sent to the person by certified mail addressed to the last known address of the person at least thirty days before the hearing. The person may be represented at the hearing by legal counsel.

(c) Failure to comply with subpoena. -- If a person fails to comply with a subpoena issued for purposes of this section, on petition of the commission, the circuit court may compel obedience to the subpoena. If after due notice the person against whom the action is contemplated fails or refuses to appear or provide the item or items for which a subpoena duces tecum was issued, the commission or the commission's designated hearing examiner may hear and determine the matter.

(d) Appeal. -- Any person aggrieved by a final order or decision of the commission in a contested case may file a petition for appeal in the circuit court of Kanawha County within thirty days after the person received notice of the final order or decision, as provided in section four, article five, chapter twenty-nine-a of this code.

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§29-22C-18. Notice of license expiration and renewal.

(a) At least two months before any license issued under this article expires, the commission shall send to the licensee, by mail addressed to the last known address of the licensee, a renewal application form and notice that states:

(1) The date on which the current license expires;

(2) The date by which the commission must receive the renewal application for the renewal to be issued and mailed before the existing license expires; and

(3) The amount of the renewal fee.

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§29-22C-19. Miscellaneous license provisions.

(a) The commission shall include on each license that it issues:

(1) The type of license;

(2) The identity and address of the licensee;

(3) The effective date of the license;

(4) For employee licenses, the picture of the licensee; and

(5) Any other information the commission considers appropriate.

(b) Each racetrack table games licensee, licensed supplier of a racetrack with West Virginia Lottery table games or a licensed management services provider shall display the license conspicuously in its place of business or have the license readily available for inspection at the request of any agent of the commission or of a state, local or municipal law-enforcement agency.

(c) Each holder of a license to be employed by a racetrack with West Virginia Lottery table games shall carry the license on his or her person at all times when present in a racetrack with West Virginia Lottery table games and, if required by rules adopted by the commission with respect to the particular capacity in which the licensee is employed, have some indicia of licensure prominently displayed on his or her person in accordance with the rules of the commission.

(d) Each person licensed under this article shall give the commission written notice of any change of address or any change of any other information provided in the licensee's application for a license or for renewal of a license, as soon as the effective date of the change is known to the licensee but not later than thirty days after the change occurs.

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§29-22C-20. Game rules of play; disputes.

(a) Each racetrack licensed as an agent of the commission authorized to operate West Virginia Lottery table games shall have written rules of play for each table game it operates that are approved by the commission before the table game is offered to the public. Rules of play proposed by a racetrack table games licensee may be approved, amended or rejected by the commission.

(b) All West Virginia Lottery table games shall be conducted according to the specific rules of play approved by the commission. All wagers and pay-offs of winning wagers shall be made according to those rules of play, which shall establish any limitations necessary to assure the vitality of table games operations.

(c) Each racetrack table game licensee shall make available in printed form to any patron, upon request of the patron, the complete text of the rules of play of any West Virginia Lottery table game in operation at its racetrack facility, pay-offs of winning wagers and any other advice to the player required by the commission.

(d) Patrons are considered to have agreed that the determination of whether the patron is a valid winner is subject to the game play rules and, in the case of any dispute, will be determined by the commission. The determination by the commission shall be final and binding upon all patrons and shall not be subject to further review or appeal.

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§29-22C-21. Betting limits; operations and services.

(a) Notwithstanding anything to the contrary contained elsewhere in this article, a racetrack licensee may, as agent of the commission, in the exercise of its business judgment, determine and establish with the approval of the commission, with respect to West Virginia lottery table games, the following:

(1) Minimum and maximum wagers;

(2) Advertising and promotional activities, and the offering of any complimentary to a player, subject to the standards provided in section twenty-three of this article and rules of the commission;

(3) Hours of operation;

(4) The days during which games may be played; and

(5) Currency denominations accepted by any mechanical or electronic bill acceptors.

(b) Notwithstanding anything to the contrary contained elsewhere in this chapter, the commission may establish the following parameters for any commission regulated lottery game of any kind which is played at a licensed racetrack:

(1) Minimum and maximum payout percentages;

(2) Any probability limits of obtaining the maximum payout for a particular play; and

(3) Limitations on the types and amounts of financial transactions, including extension of credit to a patron, which a racetrack can enter into with its patrons.

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§29-22C-22. Posting of betting limits.

A racetrack table game licensee shall conspicuously post a sign at each West Virginia Lottery table game indicating the permissible minimum and maximum wagers pertaining at that table. A racetrack table games licensee may not require any wager to be greater than the stated minimum or less than the stated maximum. However, any wager actually made by a patron and not rejected by a racetrack table games licensee prior to the commencement of play shall be treated as a valid wager.

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§29-22C-23. Complimentary service, gift, cash or other item.

(a) No racetrack table games licensee may offer or provide any complimentary service, gift, cash or other item of value to any person unless:

(1) The complimentary consists of room, food, beverage or entertainment expenses provided directly to the patron and his or her guests by the racetrack table games licensee or indirectly to the patron and his or her guests on behalf of the licensee by a third party;

(2) The complimentary consists of documented transportation expenses provided directly to the patron and his or her guests on behalf of a racetrack table games licensee by a third party, provided that the licensee complies with the rules promulgated by the commission to ensure that a patron's and his or her guests' documented transportation expenses are paid for or reimbursed only once; or

(3) The complimentary consists of coins, tokens, cash or other complimentary items or services provided through any complimentary distribution program, the terms of which shall be filed with the commission upon implementation of the program or maintained pursuant to commission rule. Any change in the terms of a complimentary program shall be filed with the commission upon implementation of the change.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, a racetrack table games licensee may offer and provide complimentary cash or noncash gifts that are not otherwise included in that subsection to any person: Provided, That any complimentary cash or noncash gifts in excess of an amount per trip to be set by interpretive rule of the commission, are supported by documentation regarding the reason the gift was provided to the patron and his or her guests, including where applicable a patron's player rating. The documentation shall be maintained by a racetrack table games licensee in accordance with commission rules. For purposes of this subsection, all gifts presented to a patron and a patron's guests directly by the racetrack table games licensee or indirectly on behalf of the licensee by a third party within any five-day period shall be considered to have been made during a single trip.

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§29-22C-24. Law enforcement.

(a) Generally. – Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to gaming as such occurs at facilities of the type authorized by this article that are necessary to enforce the provisions of this article.

(b) Costs. – The cost of services provided by the West Virginia State Police pursuant to a contract or cooperative agreement entered into pursuant to the provisions of subsection (a) of this section, including, but not limited to necessary training costs, shall be paid by the commission as an administrative expense.

(c) Notwithstanding any provision of this code to the contrary, the West Virginia State Police shall have exclusive jurisdiction over felony offenses committed on the grounds of any racetrack licensed under the provisions of this article.

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§29-22C-25. Inspection and seizure.

As a condition of licensure, to inspect or investigate for criminal violations of this article or violations of the rules promulgated by the commission, the commission's agents and the West Virginia State Police may each, without notice and without warrant:

(1) Inspect and examine all premises of the racetrack with West Virginia Lottery table games, gaming devices, the premises where gaming equipment is manufactured, sold, distributed or serviced or any premises in which any records of the activities are prepared or maintained;

(2) Inspect any gaming equipment in, about, upon or around the premises of a racetrack with West Virginia Lottery table games;

(3) Seize summarily and remove from the premises and impound any gaming equipment for the purposes of examination, inspection or testing;

(4) Inspect, examine and audit all books, records, and documents pertaining to a racetrack table games licensee's operation;

(5) Summarily seize, impound or assume physical control of any book, record, ledger, table game, gaming equipment or device, cash box and its contents, counting room or its equipment or West Virginia Lottery table games operations; and

(6) Inspect the person, and the person's personal effects present on the grounds of a licensed racetrack with West Virginia Lottery table games, of any holder of a license issued pursuant to this article, while that person is present on the grounds of a licensed racetrack with West Virginia Lottery table games.

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§29-22C-26. Tax on the privilege of holding a license to operate West Virginia Lottery table games.

(a) Imposition and rate of tax. -- For the privilege of holding a license under this article to operate table games, there is levied and shall be collected from the racetrack table games licensee the annual privilege tax imposed by this section. The tax shall be thirty-five percent of the licensee's adjusted gross receipts from the operation of West Virginia Lottery table games. For purposes of calculating the amount of tax due under this section, the licensee shall use the accrual method of accounting.

(b) Tax returns and payment of tax. --

(1) The annual tax levied by subsection (a) of this section is due and payable to the commission in weekly installments on or before the Wednesday of the calendar week following the week in which the adjusted gross receipts were received and the tax accrued.

(2) The racetrack table games licensee shall, on or before Wednesday of each week, make out and submit by electronic communication to the commission, a return for the preceding week, in the form prescribed by the commission, showing:

(A) The total gross receipts and adjusted gross receipts from operation of West Virginia Lottery table games during that week;

(B) The amount of tax for which the racetrack table games licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax required by the commission.

(3) The amount of tax shown to be due on the return shall be remitted by electronic funds transfer simultaneously with the filing of the return. All payments received pursuant to this section shall be deposited in the Racetrack Table Games Fund in accordance with the provisions of section twenty-seven of this article.

(4) When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the racetrack's West Virginia Lottery table games exceeds the racetrack's gross receipts from the purchase of table game tokens, chips or electronic media by patrons, the commission shall allow the licensee to, pursuant to rules of the commission, carry over the negative amount of adjusted gross receipts to returns filed for subsequent weeks. The negative amount of adjusted gross receipts may not be carried back to an earlier week and the commission is not required to refund any tax received by the commission, except when the licensee surrenders its license to act as agent of the commission in operating West Virginia lottery table games under this article and the licensee's last return filed under this section shows negative adjusted gross receipts. In that case, the commission shall multiply the amount of negative adjusted gross receipts by the applicable rate of tax and pay the amount to the licensee, in accordance with rules of the commission.

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(c) Tax imposed by this section is in lieu of other taxes. --

(1) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all other state taxes and fees imposed on the operation of, or the proceeds from operation of West Virginia Lottery table games, except as otherwise provided in this section.

The Consumers Sales and Services Tax imposed pursuant to article fifteen, chapter eleven of this code, shall not apply to the licensee's gross receipts from any wagering on West Virginia Lottery table games authorized pursuant to this article or to the licensee's purchase of gaming equipment, supplies or services directly used in operation of the table games authorized by this article. These purchases are also exempt from the Use Tax imposed by article fifteen-a, chapter eleven of this code.

(2) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all local taxes and fees levied on or imposed with respect to the privilege of offering West Virginia Lottery table games to the public, including, but not limited to, the municipal business and occupation taxes and amusement taxes authorized by article thirteen, chapter eight of this code, and the municipal sales and service tax and use taxes authorized by article thirteen-c, chapter eight of this code.

(d) Prohibition on credits. -- Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the tax imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment, or for any investment in real property, or in improvements to the real property, that is used in the operation of West Virginia Lottery table games.

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§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.

(a) (1) The special fund in the State Treasury known as the West Virginia Lottery Racetrack Table Games Fund is continued and all tax collected under this article shall be deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the commission pursuant to section eight of this article shall be deposited into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the purpose of enabling the aged and disabled citizens of this state to maintain their residency in the community-based setting through the provision of home and community-based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection (e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games

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are located. County commissions may pledge this money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code. The one percent transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: Provided, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in section two, article two-h, chapter thirteen of this code or to make payments on lottery revenue bonds issued to finance public projects;

(5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located. Municipalities may pledge the money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code. This money shall be allocated as follows:

(A) One half of the amounts transferred under this subdivision shall be allocated to the municipalities within each county having a racetrack table games licensee, based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section; and

(B) One half of the amounts transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) A municipality which received funds above its pro rata share pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph: Provided, however, That the county board of education of a

growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in section two, article two-h, chapter thirteen of this code, or to make payments on lottery revenue bonds issued to finance the public projects;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: Provided, That distribution under this subdivision may not be made to any municipality which did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: Provided, however, That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision. The municipality may pledge this money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer West Virginia Lottery racetrack table games under this article, subsection (b) of this section shall be superseded and replaced by this subsection for distribution of the balances in the fund established by subsection (a) of this section. From the gross amounts deposited into the fund, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection(e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this

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code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The money transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: Provided, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive one half of that county's share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

(5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section.

(B) One half of the money transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: Provided, That: (i) A municipality which received funds above its pro rata share pursuant to subparagraph (iii), paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table

games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph.

(C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a racetrack is located in a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the county board of education shall receive two thirds of the share of adjusted gross receipts from West Virginia Lottery table games from the racetrack in the county as provided in this subdivision and the municipalities within the county shall share the remaining one third of the total amount allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population. All money transferred under this paragraph shall be used by the county board of education and by the municipalities for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: Provided, That distribution under this subdivision may not be made to any municipality that did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: Provided, however, That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(d) From the net amounts in the Racetrack Table Games Fund, the commission shall:

(1) Transfer seventy-six percent to the State Debt Reduction Fund which is hereby continued in the State Treasury. Moneys of the fund shall be expended solely for the purpose of accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall be expended or transferred only upon appropriation of the Legislature;

(2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from the individual licensed racetracks for and on behalf of all employees of each licensed racing association, into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of each licensed racing association;

(3) Transfer ten percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this section: Provided, That funds transferred to county commissions under this

subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements: Provided, however, That up to fifty percent of these funds may be pledged to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code; and

(4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6), subsection (b) of this section: Provided, That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements: Provided, however, That up to fifty percent of these funds may be pledged to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code.

(e) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-enforcement agencies for services performed at the request of the commission pursuant to this article. The commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed three percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article and for the fiscal year thereafter, the commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed four percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least $100,000 but not more than $500,000 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.

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§29-22C-27a. Changes in distribution of adjusted gross receipts; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22C-27 of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to subdivision (1), subsection (d) of that section shall be reduced by 100 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 §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 provisions of §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.

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§29-22C-28. Prohibition on unauthorized wagering.

(a) A racetrack table games licensee may receive wagers only from an individual physically present in a designated gaming area at a licensed racetrack with West Virginia Lottery table games.

(b) All racetracks with West Virginia Lottery table games shall use a method of wagering whereby the table game player's money for wagering on table games is, at the request of the player, converted to tokens, electronic cards or other electronic media, or chips at the table or elsewhere at the licensed racetrack.

(1) The tokens, electronic cards or other electronic media, or chips issued by a licensee racetrack with West Virginia Lottery table games can only be used for wagering at that racetrack.

(2) Wagering on West Virginia Lottery table games may not be conducted with money or other negotiable currency or with tokens, electronic cards or other electronic media or chips not issued by the racetrack where the table games will be played.

(3) At the request of the player, the licensee shall convert a player's tokens, electronic cards or other electronic media or chips back to money.

(4) The licensee may not charge a fee for converting a player's money to an acceptable media for play at a gaming table or charge a fee for converting the acceptable media for wagering at a gaming table back to money.

(c) No licensed racetrack employee may place a wager on any table game at the employer's racetrack.

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§29-22C-29. Offenses and penalties.

(a) A racetrack table games licensee is guilty of unlawful operation when:

(1) The licensee operates a West Virginia Lottery table game without authority of the commission to do so;

(2) The licensee operates a West Virginia Lottery table game in any location that is not a designated gaming area approved by the commission;

(3) The licensee knowingly conducts, carries on, operates or exposes for play or allows to be conducted, carried on, operated or exposed for play any table game or other device, equipment or material that has in any manner been tampered with or placed in a condition or operated in a manner, the result of which is designed to deceive the public;

(4) The licensee employs an individual in a position or to perform duties, for which a license is required by this article or rules of the commission and the employee does not have a license issued under the provisions of this article or the licensee continues to employ the individual in a position or to perform duties, for which a license is required by this article or rules of the commission, after the employee's license expired, was revoked by the commission or not renewed by the commission;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in a West Virginia Lottery table game at the licensed racetrack;

(6) The licensee knowingly permits an individual under the age of twenty-one years of age to enter or remain in a designated gaming area or to play racetrack video lottery terminals or West Virginia Lottery table games at a licensed racetrack authorized under this article to act as the commission's agent in operating the West Virginia Lottery table games; or

(7) The licensee exchanges tokens, chips, electronic media or other forms of credit to be used for wagering at a licensed racetrack authorized under this article to operate West Virginia Lottery table games, for anything of value except in exchange for money or credits to a player's account.

(b) A person is guilty of a misdemeanor when:

(1) The person knowingly makes a false statement on any application for a license under this article or on an application for renewal of a license issued under this article;

(2) The person operates, carries on or exposes for play a West Virginia Lottery table game prior to obtaining a license or after the person's license has expired and prior to actual renewal of the license or before the West Virginia Lottery table game and the licensee's rules for play of the game are approved or modified and approved by the commission; or

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(3) The person works or is employed in a position requiring a license under the provisions of this article without having the license required by this article.

(c) A person is guilty of a felony when:

(1) The person offers, promises or gives anything of value or benefit to a person who has an ownership or financial interest in, is employed by or has a service contract with, a racetrack with West Virginia Lottery table games or to that person's spouse or any dependent child or dependent parent, pursuant to an agreement or arrangement, in fact or implied from the circumstances, with intent that the promise or thing of value or benefit will influence the actions of the person in order to affect or attempt to affect the outcome of a West Virginia Lottery table game, or to influence official action of the commission. For the purposes of this subdivision and subdivision (2) of this subsection, the term "person who is connected with a table games facility" includes, but is not limited to, a person licensed under this article as well as an officer or employee of a licensee;

(2) The person solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a racetrack with West Virginia Lottery table games, pursuant to an understanding or arrangement in fact or implied from the circumstances, with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a West Virginia Lottery table game or to influence official action of the commission; or

(3) The person uses or possesses on property owned by the licensed racetrack or on property contiguous to the licensed racetrack, with the intent to use, an electronic, electrical or mechanical device that is designed, constructed or programmed to assist the user or another person:

(A) In projecting the outcome of a West Virginia Lottery table game;

(B) In keeping track of the cards dealt or in play;

(C) In analyzing the probability of the occurrence of an event relating to a West Virginia Lottery table game;

(D) In analyzing the strategy for playing or betting to be used in a West Virginia Lottery table game, except as permitted in writing by the commission; or

(E) In obtaining an advantage at playing any West Virginia Lottery table game at a licensed racetrack authorized under this article to operate West Virginia Lottery table games;

(4) The person manufactures, sells or distributes any card, chip, die, game or device, by whatever name called, that is intended by that person to be used to violate any provision of this article or the table gaming laws of any other state;

(5) The person places a bet after unlawfully acquiring knowledge of the outcome of the West

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Virginia Lottery table game that is the subject of the bet or aids a person in acquiring that knowledge for the purpose of placing a bet contingent on the outcome of a West Virginia Lottery table game authorized under this article;

(6) The person claims, collects, takes or attempts to claim, collect or take anything of value into or from a racetrack with West Virginia Lottery table games, with intent to defraud, without having made a wager contingent on winning a West Virginia Lottery table game or knowingly claims, collects or takes an amount of money or thing of value of greater value than the amount won;

(7) The person knowingly uses chips, electronic media or tokens that are counterfeit to place a wager at a racetrack with West Virginia Lottery table games;

(8) The person knowingly uses any medium to place a wager at a racetrack licensed under this article other than tokens, chips, electronic cards or other electronic media, or other method of credit approved by the commission and issued by the racetrack licensed under this article at which the wager is placed on a West Virginia Lottery table game;

(9) The person, not a licensed racetrack under this article or an employee or agent of a racetrack licensed under this article acting in furtherance of the licensee's interest, has in his or her possession on grounds owned by the racetrack licensed under this article or on grounds contiguous to the licensed racetrack, any device, by whatever name called, intended to be used to violate a provision of this article or a rule of the commission implementing or explaining a provision of this article; or

(10) The person, not a licensee or employee or agent of a licensee acting in furtherance of the racetrack table games licensee's interests, has in his or her possession any key or device designed for the purpose of opening, entering or affecting the operation of a West Virginia Lottery table game, drop box or an electronic or mechanical device connected with or used in connection with a West Virginia Lottery table game in a licensed racetrack or for removing bills, tokens, chips or other contents therefrom.

(d) Any person who violates any provision of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and committed to a state correctional facility for not more than six months, except that in the case of a person other than a natural person, the amount of the fine imposed may not be more than $25,000.

(e) Any person who violates any provision of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000 and committed to a state correctional facility for a term of imprisonment not less than one year nor more than five years.

(f) With regard to subdivision (3), subsection (c) of this section, each racetrack table games licensee shall post notice of this prohibition and the penalties of this section in a manner

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determined by the commission.

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§29-22C-30. Forfeiture of property.

(a) Anything of value, including all traceable proceeds, including, but not limited to, real and personal property, moneys, negotiable instruments, securities and conveyances, is subject to forfeiture to the State of West Virginia if the item is used for any of the following:

(1) As a bribe intended to affect the outcome of a West Virginia Lottery table game in a licensed racetrack; or

(2) In exchange for, or to facilitate, a violation of this article.

(b) The Legislature finds and declares that the seizure and sale of items under the provisions of this section is not contemplated to be a forfeiture as that term is used in section 5, article XII of the Constitution of West Virginia and, to the extent that a seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article are not part of net proceeds as it is contemplated by section five, article XII of the Constitution of West Virginia.

(c) If the forfeited property includes the racetrack real property and all of its improvements and related personal property, the commission may take control of and operate the racetrack and all related functions until the forfeited property is sold or is returned to the licensee as a result of due process proceedings.

(d) Subsection (a) of this section does not apply if the act or omission that gives rise to the forfeiture is committed or omitted without the actual or reasonably implied knowledge or consent of the owner of the property to be forfeited.

WV Legislature

§29-22C-31. Civil penalties.

(a) The commission may impose on any person who violates the provisions of this article a civil penalty not to exceed $50,000 for each violation, whether or not the person is licensed under this article.

(b) The provisions of article five, chapter twenty-nine-a of this code apply to any civil penalty imposed pursuant to the provisions of this section.

WV Legislature

§29-22C-32. Preemption.

No local law or rule providing any penalty, disability, restriction, regulation or prohibition for operating a racetrack with West Virginia Lottery table games or supplying a licensed racetrack may be enacted, and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this article.

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§29-22C-33. Exemption from federal law.

Pursuant to section 2 of chapter 1194, 64 Stat. 1134, 15 U.S.C. 1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from chapter 1194, 64 Stat. 1134, 15 U.S.C. 1171 to 1178.

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§29-22C-34. Shipment of gambling devices.

All shipments of gambling devices, including video lottery machines, to licensed racetracks in this state, the registering, recording, and labeling of which have been completed by the manufacturer or dealer thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178, are legal shipments of gambling devices into the State of West Virginia.

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