WEST VIRGINIA CODE CHAPTER 29 ARTICLE 25

WV Legislature

§29-25-1. Authorization of limited gaming facility; findings; intent.

(a) Operation of West Virginia Lottery table games. -- Notwithstanding any provision of law to the contrary, the operation of West Virginia Lottery games permitted by this article and the related operation of a gaming facility and ancillary activities is not unlawful when conducted under the terms specified in this article and article twenty-two-c of this chapter.

(b) Legislative findings. -- The Legislature finds and declares that the tourism industry plays a critical role in the economy of this state and that a substantial state interest exists in protecting that industry. It further finds and declares that the authorization of the operation of a gaming facility at no more than one well-established historic resort hotel in this state as provided in this article will serve to protect and enhance the tourism industry, and indirectly other segments of the economy of this state, by providing a resort hotel amenity which is becoming increasingly important to many actual and potential resort hotel patrons.

The Legislature finds and declares that video lottery operations pursuant to section twenty-eight of this article and the operation of the other West Virginia Lottery table games permitted by this article constitute the operation of lotteries within the purview of section thirty-six, article VI of the Constitution of West Virginia.

(c) Legislative intent. -- It is the intent of the Legislature in the enactment of this article to promote tourism and year-round employment in this state. It is expressly not the intent of the Legislature to promote gaming. As a consequence, it is the intent of the Legislature to allow limited gaming as authorized by this article and article twenty-two-c of this chapter with all moneys gained from the operation of the gaming facility, other than those necessary to reimburse reasonable costs of operation, to inure to the benefit of the state. Further, it is the intent of the Legislature that amendments made to this article during the 2009 regular session will establish appropriate conformity between the operations of video lottery and West Virginia Lottery table games at the licensed gaming facility under this article and the operations of video lottery and table games at the pari-mutuel racetracks licensed under articles twenty-two-a and twenty-two-c of this chapter.

WV Legislature

§29-25-2. Definitions.

As used in this article, unless the context otherwise requires, the following words and phrases have meanings indicated:

(a) "Applicant" means any person or entity applying for a license.

(b) "Adjusted gross receipts" means the gross receipts of a gaming facility from West Virginia Lottery table games less winnings paid to wagerers in such games.

(c) "Annual average gross receipts of the pari-mutuel racetracks with table games licenses" means the amount obtained by adding the adjusted gross receipts of all West Virginia pari-mutuel racetracks with table games licenses and then dividing that calculation by the number of West Virginia pari-mutuel racetracks with table games licenses.

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

(e) "Controlling interest" means:

(1) For a partnership, an interest as a general or limited partner holding more than five percent interest in the entity;

(2) For a corporation, an interest of more than five percent of the stock in the corporation; and

(3) For any other entity, an ownership interest of more than five percent in the entity.

(f) "Controlling person" means, with respect to another person, any person directly or indirectly owning or holding a controlling interest in that other person.

(g) "Commission" means the State Lottery Commission created in section four, article twenty-two of this chapter.

(h) "Designated gaming area" means one or more specific floor areas of a licensed gaming facility within which the commission has authorized operation of video lottery terminals or West Virginia Lottery table games, or the operation of both video lottery terminals and West Virginia Lottery table games.

(i) "Director" means the Director of the State Lottery Commission.

(j) "Erasable programmable read-only memory chips" or "EPROM" means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and can also be in the form of CD ROM, flash ROM or other new technology medium that the commission may from time to time approve for use in video lottery

WV Legislature

terminals. All electronic storage media are considered to be property of the State of West Virginia.

(k) "Fringe benefits" means sickness and accident benefits and benefits relating to medical and pension coverage.

(l) "Gaming devices and supplies" mean gaming tables for all West Virginia Lottery table games, roulette wheels, wheels of fortune, video lottery terminals, cards, dice, chips, tokens, markers or any other mechanical, electronic or other device, mechanism or equipment or related supplies utilized in the operation of a West Virginia Lottery table game.

(m) "Gaming facility" means a designated area on the premises of an existing historic resort hotel in which West Virginia Lottery table games are conducted by a gaming licensee.

(n) "Gaming licensee" means the licensed operator of a gaming facility.

(o) "Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens or electronic cards by patrons of a gaming facility reduced by gross terminal income to the extent gross terminal income is included in the amount of money exchanged.

(p) "Gross terminal income", as used in this article and as used in article twenty-two-a of this chapter, means the total amount of cash, vouchers or tokens inserted into the video lottery terminals operated by a licensee, minus promotional credits played, and minus the total value of coins and tokens won by a player and game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(q) "Historic resort hotel" means a resort hotel registered with the United States Department of the Interior as a national historic landmark in its National Registry of Historic Places having not fewer than five hundred guest rooms under common ownership and having substantial recreational guest amenities in addition to the gaming facility.

(r) "Historic Resort Hotel Fund" means the special fund in the State Treasury created in section twenty-two of this article.

(s) "Human Resource Benefit Fund" means the special fund in the State Treasury created in section twenty-two-a of this article.

(t) "Human Resource Benefit Advisory Board" or "board" means the advisory board created in section twenty-two-a of this article.

(u) "License" means a license issued by the commission, including:

(1) A license to operate a gaming facility;

(2) A license to supply gaming devices and supplies to a gaming facility;

WV Legislature

(3) A license to be employed in connection with the operation of a gaming facility; or

(4) A license to provide management services under a contract to a gaming facility under this article.

(v) "Licensed gaming facility employee" means any individual licensed to be employed by a gaming licensee in connection with the operation of a gaming facility.

(w) "Licensed gaming facility supplier" means a person who is licensed by the commission to engage in the business of supplying gaming devices and gaming supplies to a gaming facility.

(x) "Licensee" means a gaming licensee, a licensed gaming facility supplier or a licensed gaming facility employee.

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

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

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

(bb)"Premises of an existing historic resort hotel" means the historic resort hotel, attachments of the historic resort hotel, and the traditional, immediate grounds of the historic resort hotel.

(cc) "Promotional credits" means credits given by the licensed gaming facility or licensed racetrack to players allowing limited free play of video lottery terminals in total amounts and under conditions approved in advance by the commission.

(dd) "Video lottery game", as used in this article and as used in article twenty-two-a of this chapter, means a commission-approved, -owned and -controlled electronically simulated game of chance which is displayed on a video lottery terminal and which:

(1) Is connected to the commission's central control computer by an online or dial-up

WV Legislature

communication system;

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

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

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

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

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

(ff) "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.

WV Legislature

§29-25-3. Commission duties and powers.

(a) Duties. -- In addition to the duties set forth elsewhere in this article, the commission shall:

(1) Establish minimum standards for gaming devices and supplies, including electronic or mechanical gaming devices;

(2) Approve, modify or reject game rules of play for all West Virginia Lottery table games proposed to be operated by a gaming licensee;

(3) Approve, modify or reject minimum internal control standards proposed by the licensee gaming facility for a West Virginia Lottery table game, including the maintenance of financial books and records;

(4) Provide staff to supervise, inspect and monitor the operation of any gaming facility, including inspection of gaming devices and supplies used in the operation to assure continuous compliance with all rules of the commission and provisions of this article;

(5) Establish minimum levels of insurance to be maintained with respect to a gaming facility;

(6) Investigate applicants to determine eligibility for any license and, where appropriate, select among competing applicants;

(7) Designate appropriate classifications of personnel to be employed in the operation of a gaming facility and establish appropriate licensing standards within the classifications;

(8) Issue all licenses;

(9) Charge and collect the taxes and fees authorized, required or specified in this article:

(i) Receive, accept and pay the specified percentage of taxes collected under sections twenty and twenty-one of this article into the Historic Resort Hotel Fund; and

(ii) Receive, accept and pay the specified percentage of taxes collected under sections twenty and twenty-one of this article into the Human Resource Benefit Fund;

(10) Maintain a record of all licenses issued;

(11) Keep a public record of all commission actions and proceedings; and

(12) File a written annual report to the Governor, the President of the Senate and the Speaker of the House of Delegates on or before January 30 of each year and any additional reports as the Governor or Legislature may request.

(b) Powers. -- In addition to the powers set forth elsewhere in this article, the commission has the following powers:

WV Legislature

(1) To sue to enforce any provision of this article by injunction;

(2) To hold hearings, administer oaths and issue subpoenas for the attendance of a witness to testify and to produce evidence;

(3) To enter a gaming facility at any time and without notice to ensure strict compliance with the rules of the commission;

(4) To bar, for cause, any person from entering or participating in any capacity in the operation of a gaming facility; and

(5) To exercise such other powers as may be necessary to effectuate the provisions of this article.

WV Legislature

§29-25-4. Appointment of commission staff; conditions of employment.

The director, pursuant to the provisions of section six, article twenty-two of this chapter, 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 of this chapter, that may be necessary to carry out the provisions of this article. Prior to his or her appointment, each staff person shall undergo a thorough background investigation, including fingerprinting and a check of criminal records. No employee may directly or indirectly hold any financial interest in any entity licensed under this article.

WV Legislature

§29-25-5. Rules.

The commission shall propose for promulgation legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to provide for implementation and enforcement of the provisions of this article. Any legislative rules proposed by the commission before September 1, 2009, may be by emergency rule.

WV Legislature

§29-25-6. 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 the gaming facility that are necessary to enforce the provisions of this article.

(b) Costs. –– The actual 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 the gaming facility.

WV Legislature

§29-25-7. Local option.

(a) No gaming facility may be licensed to operate in a county until the county commission of the county holds an election on the question of whether a gaming facility may be operated within the county and the voters approve the operation of a gaming facility in the county. The election shall be determined by a vote of the resident voters of the county in which the facility is proposed to be located.

The county commission of the county in which the proposed facility is located shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

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

Shall West Virginia Lottery Commission video lottery games and authorized games of chance be permitted within an area at the [name of qualified historic resort hotel]?

[ ] Yes [ ] No

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

Any local option election to approve or disapprove of the proposed authorization of a gaming facility within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of gaming facility operations at the election.

If a majority votes against allowing a gaming facility, no election on the issue shall be held for a period of one hundred four weeks. If a majority votes "yes" no election reconsidering the action may 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 gaming facility is to be located. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met: Provided, however, That no subsequent disapproval may take effect until after the expiration of the five-year licensing period in effect at the time of the referendum.

(b) No local law or regulation providing any penalty, disability, restriction, regulation or prohibition for operating a gaming facility or supplying a gaming facility may be enacted,

WV Legislature

and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this article.

(c) Except as specifically provided in this article, no other fees or taxes may be imposed by a local governing body.

WV Legislature

§29-25-8. Licenses required.

(a) No person may engage in any activity in connection with a gaming facility in this state for which a license is required by subsection (b) of this section unless that person has been licensed by the commission in accordance with this article.

(b) Licenses are required for the following purposes:

(1) For any person engaging in the business of operating a gaming facility in the state;

(2) For any person engaging in the business of supplying a gaming facility with gaming devices, gaming supplies or gaming services;

(3) For any individual employed by a gaming licensee in connection with the operation of a gaming facility in the state; and

(4) For any person providing management services under a contract to a gaming facility.

(c) Any license required under this article is in addition to all other licenses or permits otherwise required by law.

WV Legislature

§29-25-9. License to operate a gaming facility.

(a) Single license. -- The commission may issue only one license to operate a gaming facility. If the one license limitation in the preceding sentence is found to be unconstitutional in a final, nonappealable order by a court of competent jurisdiction, the commission shall have no authority to issue any license under this article and, in such event, the provisions of this article shall not be severable and any license issued under the provisions of this article prior thereto shall be void. The Legislature intends that no more than one license to operate one gaming facility in this state shall be authorized in any event.

(b) Applicant qualifications. -- The applicant shall be the actual operator of the gaming facility to be located on the premises of an existing historic resort hotel. The applicant may be the owner of the existing historic resort hotel or a person that leases well-defined spaces on the premises of the historic resort hotel in order to operate a gaming facility as defined by this article. The resort hotel shall be located within the jurisdiction of a county approving the operation of a gaming facility in accordance with section seven of this article. The applicant shall meet the qualifications and requirements set forth in this article and rules adopted by the commission. In determining whether to grant a license to operate a gaming facility to an applicant, the commission shall consider:

(1) The character, reputation, experience and financial integrity of the applicant and any controlling person of the applicant;

(2) Whether the applicant has adequate capital to construct and maintain the proposed gaming facility for the duration of a license;

(3) The extent to which the applicant meets standards contained in rules adopted by the commission relating to public safety or other standards; and

(4) The plan submitted by the applicant regarding employment levels and the extent to which the submitted plan demonstrates an ability on the part of the applicant to create at least one hundred full-time equivalent jobs with a salary and benefit package commensurate with existing employees at the historic resort hotel.

(c) Floor plan submission requirement. -- Prior to commencing the operation of any West Virginia Lottery table game in a designated gaming area, the gaming facility licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which West Virginia Lottery table game gaming equipment will be located and its proposed arrangement of the West Virginia Lottery table game gaming equipment. If the floor plans for the designated gaming area preserve the historic integrity of the historic resort hotel where the licensed gaming facility is located, then any floor plan submission that satisfies the requirements of the rules promulgated by the commission shall be considered approved by the commission unless a gaming facility is notified in writing to the contrary within one month of filing a detailed floor plan.

WV Legislature

(d) Management service contracts. --

(1) Approval. -- A gaming facility 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 game unless the management service contract: (A) Is 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. -- A licensed gaming facility 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.

(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 responsibility 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 shall be licensed under this article before providing service. 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.

(e) License application requirements. -- An applicant for a license to operate a gaming facility shall:

(1) Submit an application to the commission on a form prescribed by the commission, which form shall include:

(A) Information concerning the applicant and of any controlling person of the applicant sufficient to serve as a basis for a thorough background check;

(B) Subject to the provisions of subsection (g) of this section with respect to publicly-traded corporations, the identity of all stockholders or other persons having a financial interest in either the applicant or any controlling person of the applicant and the identity of each director or executive officer of the applicant and of any controlling person of the applicant;

(C) The identity of the historic resort hotel at which the gaming facility is to be located, including identification of the county in which the historic resort hotel is located; and

(D) Any other information designated by the commission as appropriate to assist it in determining whether a license should be issued;

(2) Pay to the commission a nonrefundable application fee for deposit into the Community-Based Service Fund created in section twenty-seven, article twenty-two-c of this chapter in the amount of $65,000.

WV Legislature

(f) Privately held corporations. -- In the event that an applicant or any controlling person of an applicant is a privately held corporation, then the commission may not grant a license 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.

(g) Publicly traded corporations. -- In the event that an applicant or any controlling person of an applicant is a publicly traded corporation, then information otherwise required to be furnished by an applicant with respect to stockholders, directors and executive officers of the publicly traded corporation shall be limited to information concerning only those executive officers of the publicly traded corporation whose ongoing and regular responsibilities relate or are expected to relate directly to the operation or oversight of the gaming facility. "Publicly traded corporation" as used herein means any corporation or other legal entity, except a natural person, which has one or more classes of securities registered pursuant to Section twelve of the Securities Exchange Act of 1934, as amended (15 U.S.C. §78), or is an issuer subject to Section fifteen-d of said act.

(h) Gaming facility qualifications. -- An applicant for a license to operate a gaming facility shall demonstrate that the gaming facility will: (1) Be accessible to disabled individuals; (2) not be located at the main entrance to the historic resort hotel; (3) be licensed in accordance with all other applicable federal, state and local laws; and (4) meet any other qualifications specified by rules adopted by the commission.

(i) Surety bond requirement. -- The licensed gaming facility 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 an 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;

WV Legislature

(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 canceled by a surety on less than thirty 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 of license. -- A license to operate a gaming facility authorizes the licensee to engage in the business of operating a gaming facility while the license is effective. A license to operate a gaming facility is not transferable or assignable and cannot be sold or pledged as collateral.

(k) Audits. -– A licensed gaming facility operator shall submit to the commission an annual audit, by a certified public accountant who is, or whose firm is, licensed in the State of West Virginia, or by a nationally recognized accounting firm, of the financial transactions and condition of the licensee's total operations. The audit shall be in accordance with generally accepted auditing principles.

(l) Annual license renewal fee. –- For the second year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee of $250,000. For the third year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee of $500,000. For every year after the third year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee that is calculated by determining the annual average gross receipts of the West Virginia pari-mutuel racetracks with table games licenses for the last full fiscal year of adjusted gross receipts available, and dividing that number into the licensed gaming facility operator's adjusted gross receipts for the same full fiscal year of adjusted gross receipts to obtain a percentage, and by multiplying the resulting percentage by $2,500,000: Provided, That the amount required to be paid by the licensed gaming facility shall be not less than $500,000, nor more than $2,500,000.

(m) The licensed gaming facility shall provide to the commission, at no cost to the commission, suitable office space at the gaming facility to perform the duties required of it by the provisions of this article.

WV Legislature

§29-25-10. Reports by licensee.

(a) A gaming licensee shall file with the commission an annual balance sheet and profit and loss statement pertaining to the licensee's operation of a gaming facility in this state. A gaming licensee also shall file with the commission an annual statement identifying each controlling person of the licensee and all stockholders, partners, officers or directors for the licensee and any controlling person: Provided, That if a gaming licensee or controlling person is a publicly-traded corporation, then as to the publicly-traded corporation the annual report is required to identify only executive officers whose ongoing regular duties relate directly to the operation of the gaming facility. A gaming licensee shall file further reports with the commission as the commission may require by rule.

(b) A gaming licensee shall maintain daily records showing the following:

(1) The total number of patrons of the gaming facility; and

(2) The gross receipts and the adjusted gross receipts.

(c) From information provided under this subsection, from the audit described in subsection (j), section nine of this article, and from any other source available to the commission, the commission shall identify the profits made from the operation of the gaming facility and compare the profits to profits made from the operation of facilities of a similar nature in other states. Annually, the commission shall submit a report to the Joint Committee on Government and Finance setting forth the profits made in the operation of the gaming facility in this state and the results of the comparison to profits made in other states. The commission shall include in the report its recommendations for any adjustments in the taxes imposed upon the operation of a gaming facility under the provisions of this article that would be commensurate with the legislative intent to maximize taxes received from the operation of a gaming facility and minimize profits derived by a licensee from the operation of a gaming facility.

WV Legislature

§29-25-11. License to supply gaming facility.

(a) Licenses. -- The commission may issue a license to each applicant for a license to supply a gaming facility with gaming devices, gaming supplies or services who meets the requirements of this section.

(b) License qualifications. -- To qualify for a license, an applicant shall meet the requirements of this section. Each applicant who is an individual who is a controlling person of an applicant that is not an individual shall be of good moral character and reputation and shall have the necessary experience and financial ability to successfully carry out the functions of a gaming facility supplier. The commission may adopt rules establishing additional requirements for a gaming facility supplier.

(c) Supplier specification. -- An applicant for a license to supply gaming devices, equipment and supplies to a gaming facility shall demonstrate that the gaming devices, equipment and supplies that the applicant plans to sell or lease to the licensed operator of the gaming facility, conform or will conform to standards established by rules of the commission and applicable state law.

(d) License application requirements. -- An applicant for a license shall:

(1) Submit an application to the commission on the form that 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 fee in the amount of $100 to be retained by the commission as reimbursement for the licensing process.

(e) Authorization of licensee. -- A license to supply a gaming facility authorizes the licensee to engage in the business of selling gaming devices and supplies to a gaming facility while the license is effective.

(f) Inventory. -- A licensed gaming facility supplier shall submit to the commission a list of all equipment, gaming devices and supplies sold or delivered to a gaming facility in this state when required by the commission.

(g) Annual license renewal fee. -- A licensed gaming facility supplier shall pay to the commission an annual license renewal fee of $100.

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§29-25-12. License to be employed by operator of gaming facility.

(a) Licenses. -- The commission shall issue a license to each applicant for a license to be employed in the operation of a gaming facility who meets the requirements of this section.

(b) License qualifications. -- To qualify for a license to be employed in a gaming facility, the applicant shall be an individual of good moral character and reputation and have been offered employment by the gaming facility contingent upon licensure pursuant to the provisions of this section. The commission, by rule, may specify additional requirements to be met by applicants based on the specific job classification in which the applicant is to be employed.

(c) License application requirements. -- An applicant for a license to be employed in the operation of a gaming facility shall:

(1) Submit an application to the commission on the form that 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 fee in the amount of $100 to be retained by the commission as reimbursement for the licensing process. This fee may be paid on behalf of the applicant by the employer.

(d) Authorization of licensee. -- A license to be employed by a gaming facility authorizes the licensee to be so employed in the capacity designated by the commission with respect to the license while the license is effective.

(e) Annual license renewal fee. -- Each licensed employee shall pay to the commission an annual license renewal fee set by the commission, which renewal fee may vary based on the capacity designated with respect to the licensee but in no event to exceed $100. The fee may be paid on behalf of the licensed employee by the employer.

WV Legislature

§29-25-13. False statements on applications; other license or registration requirements and prohibitions.

(a) Any person who knowingly makes a false statement on an application is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and confined in jail 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.

(b) The commission may not grant a license or registration pursuant to the provisions of this article if there is substantial evidence 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 gambling operation in another jurisdiction by a board or other governmental authority of that jurisdiction having responsibility for the regulation of gambling or gaming activities;

(3) Has been convicted of a felony, a gambling 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 §29-25-13(d) and §29-25-13(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought;

(4) Has failed to meet any monetary obligation in connection with a gaming facility or any other form of gaming; or

(5) In the case of an applicant for a license to operate a gaming facility or to supply a gaming facility:

(A) Has not demonstrated financial responsibility sufficient to meet adequately the requirements of the enterprise proposed;

(B) Is not the true owner of the enterprise or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in such enterprise; or

(C) Is a corporation and five percent or more of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is issued unless the contract or option was disclosed to and approved by the commission.

(c) In addition to any other grounds specified in this article, and subject to the hearing provisions of §29-25-17 of this code, in the case of a license to operate a gaming facility the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee or any controlling person of the applicant or licensee knowingly employs an individual in a senior management position who has been convicted of a felony, bearing a rational nexus to the license, under the laws of this state, another state, a territory of the United States, or the United States or employs any individual

WV Legislature

in a senior management position who has had a license relating to the operation of a gaming facility revoked by this state or any other state: *Provided*, That the Lottery Commission shall apply §29-25-13(d) and §29-25-13(e) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license being sought.

(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 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.

(g) Character references may be required of persons licensed, but the character reference may not be obtained from persons in the same or similar occupations or professions in other states.

WV Legislature

§29-25-14. Licenses; availability for inspection; change of address.

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

(1) The type of license;

(2) The identity and address of the licensee;

(3) The effective date of the license; and

(4) Any other information the commission considers appropriate.

(b) Each gaming licensee or licensed supplier of a gaming facility 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 the State Police. Each holder of a license to be employed by a gaming facility shall carry the license on his or her person at all times when present in a gaming facility 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.

(c) Each licensee shall give the commission written notice of any change of address and any other relevant information necessary for the maintenance of accurate records by the commission.

WV Legislature

§29-25-15. Expiration date and renewal of gaming license.

(a) A license expires on the fifth anniversary of its effective date, unless the license is renewed for additional five-year terms as provided in this section.

(b) At least two months before a license expires, the commission shall send to the licensee, by mail to the last known address, 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.

(c) Before the license expires the licensee may renew it for successive additional five-year terms if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the commission the following renewal fee:

(A) The sum of $25,000 for a license to operate a gaming facility;

(B) The sum of $5,000 for a license to supply a gaming facility; and

(C) As set by the commission by rule in the case of a license to be employed by an operator of a gaming facility, not to exceed $300, which renewal fee may be paid on behalf of the licensee by the employer; and

(3) Submits to the commission a renewal application in the form that the commission requires accompanied by satisfactory evidence of compliance with any additional requirements set by rules of the commission for license renewal; and

(4) Submits to the commission evidence satisfactory to the commission of the gaming facility operator's compliance with the plan described in subdivision (4), subsection (b), section nine of this article to create at least one hundred full-time equivalent positions with a salary and benefit package commensurate with existing employees at the historic resort hotel. Notwithstanding any provision of subsection (d) of this section, the failure to substantially comply with the plan, as determined by the commission, may constitute grounds for the denial of the renewal of the license.

(d) The commission shall renew the license of each licensee who meets the requirements of this section.

WV Legislature

§29-25-16. License denial, revocation and reprimand.

(a) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee, or any controlling person of the applicant or license:

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

(2) Fraudulently or deceptively uses a license;

(3) Is convicted of a felony under the laws of this state, another state, a territory of the United States or the United States;

(4) Is 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; or

(5) Is not complying with this act, the rules or the minimum internal control standards promulgated by the commission or the gaming facility.

(b) Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the commission may impose a civil penalty under section twenty-seven of this article.

WV Legislature

§29-25-17. Hearing procedures.

(a) Right to a hearing. -- Except as otherwise provided by law, before the commission takes any 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.

(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 given to the person by certified mail to the last known address of the person at least thirty days before the hearing. The person may be represented at the hearing by counsel.

(c) Failure to comply with subpoena. -- If a person fails to comply with a subpoena issued under 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, the commission may hear and determine the matter.

(d) Appeal. -- Any person aggrieved by a final 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.

WV Legislature

§29-25-18. Inspection and seizure.

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

(1) Inspect and examine all premises of the gaming facility 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 gaming facility 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 gaming facility licensee's operation;

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

(6) Inspect the person, and the person's personal effects present on the grounds of a licensed gaming facility 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 gaming facility having West Virginia Lottery table games.

WV Legislature

§29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.

(a) Consent to presence of law-enforcement officers. -- Any individual entering the gaming facility shall be advised by the posting of a notice or other suitable means of the possible presence of state, county or municipal law-enforcement officers and by entering the gaming facility impliedly consents to the presence of the law-enforcement officers.

(b) Commission discretion in gaming operations. –– Video lottery terminals operated at the gaming facility may allow minimum and maximum wagers on a single game the amounts determined by the license in the exercise of its business judgment subject to the approval of the commission.

(1) Subject to the approval of the commission, the gaming facility licensee shall, with respect to West Virginia Lottery table games, establish the following:

(A) Maximum and minimum wagers;

(B) Advertising and promotional activities;

(C) Hours of operation;

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

(2) The commission may consider multiple factors, including, but not limited to, industry standards, outside competition and any other factors as determined by the commission to be relevant in its decision to approve the gaming facility's determination of those items listed in subdivision (1) of this subsection.

(c) Setting of operations. -- Notwithstanding anything to the contrary contained elsewhere in this chapter, the commission may establish the following parameters for commission regulated lottery games of any kind which is played at a licensed gaming facility:

(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 gaming facility can enter into with its patrons.

(d) Posting of betting limits. -- A gaming facility shall conspicuously post a sign at each West Virginia Lottery table game indicating the permissible minimum and maximum wagers pertaining at that table. A gaming facility 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 gaming facility licensee prior to the commencement of play shall be treated as a valid wager.

WV Legislature

§29-25-20. Accounting and reporting of gross terminal income; distribution.

The licensed gaming facility shall submit thirty-six percent of the gross terminal income from video lottery games at the licensed gaming facility to the commission through electronic funds transfer to be deposited into the Historic Resort Hotel Fund created in section twenty-two of this article. The licensed gaming facility shall also submit seventeen percent of the gross terminal income from video lottery games at the licensed gaming facility to the commission through electronic funds transfer to be deposited into the Human Resource Benefit Fund created in section twenty-two-a of this article. Each of these submissions shall be made to the commission weekly. The gaming licensee shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. The gaming licensee shall provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

WV Legislature

§29-25-21. Taxes on games other than video lottery games.

(a) Imposition and rate of limited gaming profits tax. -- There is hereby levied and shall be collected a privilege tax against a gaming license in an amount to be determined by the application of the rate against adjusted gross receipts of the licensed gaming facility. The rate of tax is thirty-five percent. Of that thirty-five percent, thirty percent shall be directly deposited by the commission into the Historic Resort Hotel Fund created in section twenty-two of this article and the remaining five percent shall be directly deposited by the commission into the Human Resource Benefit Fund created in section twenty-two-a of this article. For purposes of calculating the amount of tax due under this section, the licensee shall use the accrual method of accounting. This tax is in addition to all other taxes and fees imposed: Provided, That the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code may not apply to the proceeds from any wagering with respect to a West Virginia Lottery table game pursuant to this article.

(b) Computation and payment of tax. -- The taxes levied under the provisions of this section are due and payable to the commission in weekly installments on or before the Wednesday of each week. The taxpayer shall, on or before the 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: (1) The total gross receipts from the gaming facility for that month and the adjusted gross receipts; (2) the amount of tax for which the taxpayer is liable; and (3) any further information necessary in the computation and collection of the tax which the Tax Commissioner or the commission may require. Payment of the amount of tax due shall accompany the return. All payments made pursuant to this section shall be deposited in accordance with sections twenty-two and twenty-two-a of this article. Payments due to the commission under this section and payments due to the commission under section twenty of this article shall be sent simultaneously.

(c) Negative adjusted gross receipts. -- When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the gaming facility's West Virginia Lottery table games exceeds the gaming facility'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 game 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.

(d) Prohibition on credits. -- Notwithstanding any other provision of this code to the contrary, no credits may be allowed against any tax imposed on any taxpayer by this code for an investment in gaming devices and supplies, for an investment in real property which would

WV Legislature

be directly utilized for the operation of a gaming facility or for any jobs created at a gaming facility. Notwithstanding any other provision of this code to the contrary, the tax imposed by this section may not be added to federal taxable income in determining West Virginia taxable income of a taxpayer for purposes of article twenty-four, chapter eleven of this code.

(e) 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 service tax imposed pursuant to article fifteen, chapter eleven of this code shall not apply to the licensee's gross receipts from any wagering on a West Virginia Lottery table game pursuant to this article or to the licensee's purchasing of gaming equipment, supplies or services directly used in operation of a West Virginia Lottery 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 a West Virginia Lottery table game 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 tax authorized by article thirteen-c of said chapter.

WV Legislature

§29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license fees.

(a) There is hereby created a special fund in the State Treasury which shall be designated and known as the Historic Resort Hotel Fund. Thirty-six percent of the gross terminal income received by the commission under section twenty of this article and thirty percent of the adjusted gross receipts received by the commission under section twenty-one of this article shall be deposited with the State Treasurer and placed in the Historic Resort Hotel Fund. The fund shall be an interest-bearing account with interest to be credited to and deposited in the Historic Resort Hotel Fund.

(b) All expenses of the commission shall be paid from the Historic Resort Hotel Fund, including reimbursement of the State Police for activities performed at the request of the commission in connection with background investigations or enforcement activities pursuant to this article. At no time may the commission's expenses under this article exceed fifteen percent of the total of the annual revenue received from the licensee under this article, including all license fees, taxes or other amounts required to be deposited in the Historic Resort Hotel Fund.

(c) An Historic Resort Hotel Modernization Fund is hereby created within the Historic Resort Hotel Fund. For all fiscal years beginning on or after July 1, 2011, the commission shall deduct two and one-half percent from gross terminal income received by the commission under section twenty of this article for the fiscal year and deposit these amounts into a separate facility modernization account maintained within the Historic Resort Hotel Modernization Fund for each historic resort hotel. For each dollar expended by a historic resort hotel for video lottery or table gaming facility modernization improvements at the historic resort hotel, having a useful life of three or more years and placed in service after April 1, 2011, the historic resort hotel shall receive $1 in recoupment from its facility modernization account. For purposes of this section, the term "video lottery or table gaming facility modernization improvements" include acquisition of computer hardware and software, communications and Internet access equipment, security and surveillance equipment, video lottery terminals and other electronic equipment or other equipment designed to modernize the facility.

(d) The balance of the Historic Resort Hotel Fund shall become net income and shall be divided as follows:

(1) Sixty-four percent of the Historic Resort Hotel Fund net income shall be paid into the General Revenue Fund to be appropriated by the Legislature;

(2) Nineteen percent of the Historic Resort Hotel Fund net income shall be paid into the State Debt Reduction Fund established in section twenty-seven, article twenty-two-c of this chapter to be appropriated by the Legislature;

(3) The Tourism Promotion Fund established in section twelve, article two, chapter five-b of

WV Legislature

this code shall receive three percent of the Historic Resort Hotel Fund net income;

(4) The county where the gaming facility is located shall receive four percent of the Historic Resort Hotel Fund net income;

(5) The municipality where the gaming facility is located or the municipality closest to the gaming facility by paved road access as of the effective date of the reenactment of this section by the 2009 regular session of the Legislature shall receive two and one-half percent of the Historic Resort Hotel Fund net income;

(6) The municipalities within the county where the gaming facility is located, except for the municipality receiving funds under subdivision (5) of this subsection, shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income;

(7) Each county commission in the state that is not eligible to receive a distribution under subdivision (4) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to the county commission under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements; and

(8) The governing body of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: 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.

(e) Notwithstanding any provision of this article to the contrary, all limited gaming facility license fees and license renewal fees received by the commission pursuant to section nine of this article shall be deposited into the Community-Based Service Fund created in section twenty-seven, article twenty-two-c of this chapter.

(f) With the exception of the license fees and license renewal fees received by the commission pursuant to section nine of this article, all revenues received from licensees and license applicants under this article shall be retained by the commission as reimbursement for the licensing process.

WVLegislature

§29-25-22a. Human Resource Benefit Fund.

(a) There is hereby created a special fund in the State Treasury which shall be designated and known as the Human Resource Benefit Fund. Seventeen percent of the gross terminal income received by the commission under section twenty of this article and five percent of the adjusted gross receipts received by the commission under section twenty-one of this article shall be deposited with the State Treasurer and placed in the Human Resource Benefit Fund. The fund shall be an interest-bearing account with interest to be credited to and deposited in the Human Resource Benefit Fund.

(b) For each dollar expended by the historic resort hotel for fringe benefits for the employees of the historic resort hotel, the commission shall transfer to the historic resort hotel $1 of recoupment from the Human Resource Benefit Fund: Provided, That the historic resort hotel is not entitled to recoupment for money spent on fringe benefits beyond the amount of money available to be expended from the Human Resource Benefit Fund at the time the request for recoupment is made by the historic resort hotel.

(c) The commission shall have full rights and powers to audit the spending of money from the Human Resource Benefit Fund to ensure that the money is being used in the manner prescribed under this section. The commission shall have the power and authority to audit as frequently as it sees fit, so long as it conducts at least two audits each fiscal year.

(d) There is hereby created the Human Resource Benefit Advisory Board, which shall meet every six months to verify the commission's audit.

(1) The board shall consist of five members, all residents and citizens of the State of West Virginia:

(A) One member shall be a representative of the collective bargaining unit that represents a majority of the employees of the historic resort hotel;

(B) One member shall be a representative of the historic resort hotel; and

(C) Three members shall be employees of the commission.

(2) The members shall be appointed or elected by the entity or persons that they represent. Establishment of terms for members shall be determined by the entity or persons that they represent, if the entity or persons choose to set terms.

(3) A majority of members constitutes a quorum for the transaction of business.

(4) The board shall meet every six months at the headquarters of the commission. Upon its own motion or upon the request of the commission, it may hold meetings in addition to the required meetings. The commission shall pay the travel expenses of members of the board who are not employed by the commission.

WV Legislature

(5) All meetings of the board shall be open to the public.

(6) The board shall operate in an advisory capacity. Its functions shall include, but are not limited to, reviewing and verifying financial audits of the Human Resource Benefit Fund conducted by the commission and its employees and reviewing source documents associated with disbursements from the Human Resource Benefit Fund.

(7) Within thirty days of any board meeting, the board shall report to the commission its findings and any recommendations it may have. The report to the commission shall be made at a commission meeting that is open to the public.

(e) In the event that an audit conducted by the commission, or suggested changes to the audit submitted by the board and adopted by the commission, reveals that the historic resort hotel has acted improperly or negligently in its claim for money from the Human Resource Benefit Fund, the commission may impose a civil penalty against the historic resort hotel of up to one hundred percent of the improperly claimed amount. Any civil penalty imposed on the historic resort hotel by the commission under this subsection shall be deposited by the commission into the Historic Resort Hotel Fund.

WV Legislature

§29-25-22b. Changes in distribution of adjusted gross receipts and additional income; distributions from excess lottery fund.

(a) Notwithstanding any provision of section twenty-two of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, after payment of the commission's expenses pursuant to subsection (b), section twenty-two of this article, each distribution made in subsection (c), section twenty-two of this article from gross terminal income, and each distribution of the balance of the Historic Resort Hotel Fund made in subsection (d), section twenty-two of this article, except subdivisions (4), (5) (6), (7) and (8) of that subsection, shall be reduced by one hundred percent. Payments shall not be made pursuant to section twenty-two of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

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

(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 section eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(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 section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

WV Legislature

§29-25-23. Prohibition on unauthorized wagering; complimentary service, gift, cash or other item.

(a) A gaming licensee may not permit any form of wagering except as authorized under this article or article twenty-two, twenty-two-a or twenty-two-c of this chapter.

(b) A gaming licensee may receive wagers only from an individual present in a licensed gaming facility.

(c) All gaming facility operations shall utilize a cashless wagering system whereby all players' money is converted to tokens, paper vouchers, electronic cards or chips at the request of the wagerer which can only be used for wagering in a licensed gaming facility and wagering may not be conducted with money or other negotiable currency:

(1) 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 gaming facility where the West Virginia Lottery table game will be played.

(2) 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.

(3) The licensee may not charge a fee for converting a player's money to an acceptable media for playing a West Virginia Lottery table game or charge a fee for converting the acceptable media for wagering a West Virginia Lottery table game back to money.

(d) The gaming licensee is prohibited from offering 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 gaming facility 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 gaming facility 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.

(e) Notwithstanding any provision of subsection (d) of this section to the contrary, a gaming facility licensee may offer and provide complimentary cash or noncash gifts that are not

WV Legislature

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 gaming facility 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 gaming facility 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.

WV Legislature

§29-25-24. Individual gaming restrictions.

(a) An individual may enter a designated gaming area or remain in a designated gaming area only if the individual:

(1) Is either;

(A) A registered overnight guest at the historic resort hotel on whose premises the gaming facility is located;

(B) A person who is a not a registered overnight guest, but is a registered participant at a convention or event being held at the historic resort hotel: Provided, That this paragraph does not apply on any calendar day when less than four hundred guest rooms are occupied at the historic resort hotel; or

(C) A member of a homeowner or facility association that entitles members to substantial privileges at the historic resort hotel on whose premises the gaming facility is located or an overnight guest of such a member: Provided, That the association was in existence as of April 1, 2009;

(2) Is at least twenty-one years of age;

(3) Is not visibly intoxicated;

(4) Has not been determined by the gaming facility operator or the commission to be unruly, disruptive or otherwise interfering with operation of the gaming facility; or to be likely to commit, or to attempt to commit, a violation of this article; and

(5) Has not been barred by the commission from entering a gaming facility.

(b) Notwithstanding any provisions of this code to the contrary, no employee of the commission or any member of his or her immediate household may wager at the gaming facility, and no licensed limited gaming facility employee may wager on any table game at the limited gaming facility.

WV Legislature

§29-25-25. Offenses and penalties.

(a) A gaming licensee is guilty of unlawful operation of a West Virginia Lottery table game when:

(1) The licensee operates a West Virginia Lottery table game or places a video lottery game or video lottery terminal in any location that is not a designated gaming area approved by the commission;

(2) 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 in a gaming facility;

(3) 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 video lottery terminals or West Virginia Lottery table game at a licensed gaming facility;

(4) The licensee exchanges tokens, chips or other forms of credit to be used for wagering in a gaming facility for anything of value except in exchange for money or credits to a player's account;

(5) The licensee operates a West Virginia Lottery table game or places a video lottery game or video lottery terminal into play without authority of the commission to do so;

(6) The licensee knowingly conducts, carries on, operates or exposes for play or allows to be conducted, carried on, operated or exposed for play any West Virginia Lottery table game, video lottery game, video lottery terminal 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; or

(7) 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.

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

(1) 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 for the game are approved or modified and approved by the commission;

(2) 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;

WV Legislature

(3) A licensee who possesses any video lottery terminal or other device, equipment or material which the person knows has been manufactured, distributed, sold, tampered with or serviced in violation of the provisions of this article; or

(4) A licensee who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play any video lottery game, video lottery terminal, or other device, equipment or material which has in any manner been tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal random selection of characteristics or the normal chance of the video lottery game.

(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 gaming facility 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 gaming 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 gaming facility, pursuant to an understanding or arrangement or 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;

(3) The person uses or possesses on property owned by the licensed gaming facility or on property contiguous to the gaming facility, 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 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

WV Legislature

gaming facility authorized under this article to operate a West Virginia Lottery table game;

(4) The person cheats at a West Virginia Lottery table game in a gaming facility;

(5) The person manufacturers, sells, or distributed any cards, chips, dice, game or device which is intended to be used to violate any provision of this article or the table gaming laws of any other state;

(6) The person instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the article;

(7) The person places a bet after acquiring knowledge, not available to all players, of the outcome of the West Virginia Lottery table game which is the subject of the bet or aids a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome;

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

(9) The person knowingly uses chips, electronic media or tokens that are counterfeit to place a wager in a gaming facility;

(10) The person knowingly uses any medium other than chips, tokens or other methods of credit approved by the commission to place a wager in a gaming facility;

(11) The person, not a gaming licensee or employee or agent of a gaming facility licensed under this article acting in furtherance of the gaming licensee's interests, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the gaming facility, 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

(12) The person, not a gaming licensee or agent of a gaming licensee acting in furtherance of the gaming 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 gaming facility or for removing coins, tokens, chips or other contents therefrom.

(d) Any person who violates the provisions 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 confined in jail 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.

WV Legislature

(e) Any person who violates the provisions 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 of not less than one year nor more than five years.

(f) With regard to subdivision (3), subsection (c) of this section, the gaming facility licensee shall post notice of this prohibition and the penalties of this section in a manner determined by the commission.

WV Legislature

§29-25-26. 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 was used for any of the following:

(1) As a bribe intended to affect the outcome of a West Virginia Lottery table game in a gaming facility; 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 five, article XII of the Constitution of West Virginia and, to the extent that a seizure and sale may be found to be 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) Subsection (a) of this section does not apply if the act or omission which would give rise to the forfeiture was committed or omitted without knowledge or consent of the owner of the property to be forfeited.

WV Legislature

§29-25-27. Civil penalties.

The commission may impose on a person who violates the provisions of this article a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed under this article.

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

WV Legislature

§29-25-28. Specific provision for video lottery games.

The commission is authorized to implement and operate video lottery games at one gaming facility in this state in accordance with the provisions of this article and the applicable provisions of article twenty-two-a of this chapter. The provisions of said article apply to this article, except in the event of conflict or inconsistency between any of the provisions of this article and the provisions of article twenty-two-a of this chapter. In that event, the provisions of this article shall supersede any conflicting or inconsistent provisions contained in article twenty-two-a of this chapter.

WV Legislature

§29-25-29. Video lottery terminal requirements; application for approval of video lottery terminals; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

(a) Video lottery terminals registered with and approved by the commission for use at the gaming facility may offer video lottery games regulated, controlled, owned and operated by the commission in accordance with the provisions of this section and utilizing specific game rules.

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

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

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

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

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

(e) The video lottery terminal manufacturer and licensed gaming facility are jointly

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

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

WV Legislature

§29-25-30. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) The commission may approve video lottery terminals and in doing so shall take into account advancements in computer technology, competition from nearby states and the preservation of jobs at the historic resort hotel. In approving video lottery terminals licensed for placement in this state the commission shall insure that the terminals meet the following hardware specifications:

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

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

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

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

(5) A bill or voucher acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. All acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

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

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

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

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal's graphic routines,

WV Legislature

speed of play, sound and other purely cosmetic features may be approved by the commission.

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

(i) The number of credits accrued;

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

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

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

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game, there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices may be placed on the video lottery terminal screen or face without the prior approval of the commission.

(13) Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission's central computer system by use of a communications protocol provided by the commission to each permitted manufacturer, which protocol shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the

WV Legislature

gaming function of the terminal while opened.

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

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

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

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

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

(c) Each video lottery terminal shall pay out no less than eighty percent and no more than ninety-nine percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

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

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

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

(2) Number of credits wagered;

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

WV Legislature

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

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

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

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

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

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

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

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

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

(h) The commission shall directly or through a contract with a third party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals, utilizing an online or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

WV Legislature

§29-25-31. The specific video lottery duties required of the gaming facility.

The gaming facility licensee shall:

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

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

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

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

(e) Ensure that video lottery terminals are within the sight and control of designated employees of the license gaming facility;

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

(g) Monitor video lottery terminals to prevent access to or play by persons who are under the age of twenty-one years or who are visibly intoxicated;

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

(i) Provide no access by a player to an automated teller machine (ATM) in the area of the gaming facility where video lottery games are played;

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

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

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

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

WV Legislature

§29-25-32. Surcharge; Capital Reinvestment Fund.

(a) For all fiscal years beginning on or after July 1, 2009, there shall be imposed a surcharge of ten percent against the share of gross terminal income retained by the gaming facility as provided by section twenty of this article.

(b) The Capital Reinvestment Fund is hereby created within the Lottery Fund. The surcharge amount attributable to the historic resort hotel shall be retained by the commission and deposited into a separate capital reinvestment account for the historic resort hotel. For each dollar expended by the historic resort hotel for capital improvements at the historic resort hotel, of any amenity associated with the historic resort hotel's destination resort facility operations, or at adjacent facilities owned by the historic resort hotel having a useful life of seven or more years and placed in service after April 1, 2009, the licensed gaming facility shall receive $1 in recoupment from its Capital Reinvestment Fund account: If a historic resort hotel's unrecouped capital improvements exceed its Capital Reinvestment Fund account at the end of any fiscal year, the excess improvements may be carried forward to seven subsequent fiscal years.

(c) Any moneys remaining in the historic resort hotel's Capital Reinvestment Fund account at the end of any fiscal year shall be deposited in the Historic Resort Hotel Fund.

WV Legislature

§29-25-33. 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 gaming facility 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 (f), section two 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 gaming facility licensee shall demonstrate that the management services that the applicant plans to offer to the gaming facility licensee conform or will conform to standards established by rules of the commission and applicable state law.

(d) License application requirements. -- An applicant for a license to provide management services to a gaming facility 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 fee for deposit into the Historic Resort Hotel Fund in the amount of $100.

(e) Authorization. -- A license to provide management services to a gaming facility licensee authorizes the licensee to provide management service to a gaming facility 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.

WV Legislature

(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 gaming facility 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 gaming facility annually thereafter. A gaming facility 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.

WV Legislature

§29-25-34. State ownership of West Virginia Lottery table games.

All West Virginia Lottery table games authorized by this article shall be West Virginia lottery games owned by the State of West Virginia. A gaming facility license granted to a historic resort hotel by the commission pursuant to this article shall include the transfer by the commission to the historic resort hotel 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.

WV Legislature

§29-25-35. Preemption.

No local law or rule providing any penalty, disability, restriction, regulation or prohibition for operating a historic resort hotel with West Virginia Lottery table games or supplying a licensed gaming facility 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.

WV Legislature

§29-25-36. Exemption from federal law.

Pursuant to Section 2, 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.

WV Legislature

§29-25-37. Game rules of play; disputes.

(a) As an agent of the commission authorized to operate West Virginia Lottery table games, the gaming facility licensee shall have written rules of play for each West Virginia Lottery table game it operates that are approved by the commission before the West Virginia Lottery table game is offered to the public. Rules of play proposed by the gaming facility 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 West Virginia Lottery table game operations.

(c) The gaming facility licensee shall make available in printed form to any patron, upon request of the patron, the complete texts of the rules of play of any West Virginia Lottery table games in operation at the gaming 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 of 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.

WV Legislature

§29-25-38. Shipment of gambling devices.

All shipments of gambling devices, including video lottery machines, to the licensed gaming facility 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.

WV Legislature