WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1929

(By Mr. Del Robbins & Del Lowe)

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Passed

April 13, 1985

In Effect

Passage
AN ACT to amend and reenact section nine, article fifteen, and section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter twenty-nine of said code by adding thereto a new article, designated article twenty-two, relating to taxation; consumers sales tax, exemption of lottery sales therefrom; personal income tax, exemption of lottery prizes therefrom; relating to the state lottery act; short title; legislative findings and intent; definitions; state lottery commission created; composition; qualifications; appointment; terms of office; removal; vacancies; chairperson; meetings; quorum; compensation and expenses; oath and bond; powers and duties; cooperation of other agencies; designation of enforcement agents; lottery director; appointment; qualifications; oath and bond; salary; divisions of the state lottery office; lottery director; powers and duties; appointment of deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations; initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation
procedures; security procedures; additional games; electronic and computer systems; licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; bond; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond; prohibited acts; crimes; selling without license; unauthorized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal penalties for prohibited acts; crimes; forgery, counterfeiting of lottery tickets; criminal penalties; prohibited acts; conflicts of interest; prohibited gifts, gratuities; administrative violations of article; hearings; administrative penalties; payment of prizes to minors; disposition of unclaimed prize money; lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability; state lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes; net profit and expenses; surplus; appropriation of net profits; post audit of accounts and transactions of office; monthly and annual reports; official's name not to appear on lottery materials or advertising; official not to appear at any lottery drawing, exceptions; exemption of lottery prizes from state and local taxation; procurement; disclosures by vendors and related persons and entities; authorizing background investigations; unenforceability of contracts in contravention of section; disclosures by vendors and related persons and entities of political contributions; preemption of state laws or local regulation; termination of state lottery commission; penalties for criminal violations; and severability.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, and section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter twenty-nine of said code be amended by adding thereto a new article, designated article twenty-two, all to read as follows:

CHAPTER 11. TAXATION.
ARTICLE 15. CONSUMERS SALES TAX.


The following sales and services shall be exempt:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state;

(3) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

(5) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(6) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations and shall not apply to purchases of gasoline or special fuel;

(7) Sales of property or services to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases
of gasoline or special fuel;

(8) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;

(9) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article or which would be subject to tax under this article but for the exemption for food provided in section eleven of this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article but for the exemption for food provided in section eleven of this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel shall not be exempt;

(10) Sales of tangible personal property for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale;

(11) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel shall be taxable;

(12) Sales and services, fire fighting, or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel shall be taxable;

(13) Sales of newspapers when delivered to consumers by
route carriers;
(14) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;
(15) Sales of radio and television broadcasting time, newspaper and outdoor advertising space for the advertisement of goods or services;
(16) Sales and services performed by day care centers;
(17) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended;
(18) Bank safety deposit boxes;
(19) Sales of property or services to a school which has approval from the West Virginia board of regents to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Provided, That sales of gasoline and special fuel shall be taxable;
(20) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes shall be subject to tax at the three percent rate; and
(21) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.
(b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:

1. Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

2. Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax;

4. Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

5. Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

6. The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year; and

7. The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property—no modification; five-year property—ten...
percent; ten-year property—fifteen percent; fifteen-year public
utility property—twenty-five percent; and fifteen-year real
property—thirty-five percent. Provided, That this modification
shall not apply to any person whose federal deduction is
determined by the use of the straight line method.

(c) Modifications reducing federal adjusted gross income.—
There shall be subtracted from federal adjusted gross income:

1. Interest income on obligations of the United States and
   its possessions to the extent includible in gross income for
   federal income tax purposes;

2. Interest or dividend income on obligations or securities
   of any authority, commission or instrumentality of the United
   States to the extent includible in gross income for federal
   income tax purposes but exempt from state income taxes
   under the laws of the United States;

3. Any gain from the sale or other disposition of property
   having a higher fair market value on the first day of January,
   one thousand nine hundred sixty-one, than the adjusted basis
   at said date for federal income tax purposes. Provided, That
   the amount of this adjustment is limited to that portion of any
   such gain which does not exceed the difference between such
   fair market value and such adjusted basis. Provided, however,
   That if such gain is considered a long-term capital gain for
   federal income tax purposes, the modification shall be limited
   to forty percent of such portion of the gain;

4. The amount of any refund or credit for overpayment of
   income taxes imposed by this state, or any other taxing
   jurisdiction, to the extent properly included in gross income
   for federal income tax purposes;

5. Annuities, retirement allowances, returns of contribu-
   tions and any other benefit received under the public
   employees retirement system, the department of public safety
   death, disability and retirement fund, the state teachers
   retirement system, and all forms of military retirement,
   including regular armed forces, reserves and national guard,
   including any survivorship annuities derived therefrom, to the
   extent includible in gross income for federal income tax
   purposes;

6. Retirement income received in the form of pensions and
annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any police or firemen's retirement system, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and
(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions;

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars;

(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes; and

(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes.

(d) Modification for West Virginia fiduciary adjustment.—There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.

(f) Husband and wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-1. Short title.

This article shall be known and may be cited as the “State Lottery Act.”
§29-22-2. Legislative findings and intent.

The Legislature finds and declares that the purpose of this article is to establish and implement a state-operated lottery under the supervision of the state lottery commission and the director of the state lottery office who shall be appointed by the governor and hold broad authority to administer the system in a manner which will provide the state with a highly efficient operation.


(a) "State lottery commission" or "commission" means the state lottery commission created by this article.

(b) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(c) "Lottery" means the public gaming systems or games established and operated by the state lottery office.

(d) "Lottery tickets" or "tickets" means tickets or other tangible evidence of participation used in lottery games or gaming systems.

§29-22-4. State lottery commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses; quorum; oath and bond.

(a) There is hereby created a state lottery commission which shall consist of seven members, all residents and citizens of the state, one who shall be a lawyer, one who shall be a certified public accountant, one who shall be a computer expert, one who shall have not less than five years experience in law enforcement and one who shall be qualified by experience and training in the field of marketing. The two remaining members shall be representative of the public at large. The commission shall carry on a continuous study and investigation of the lottery throughout the state and advise and assist the director of the state lottery. The commission members shall be appointed by the governor, by and with the advice and consent of the Senate, no later than the first day of July, one thousand nine hundred eighty-five. At least one member shall be appointed from each congressional district.
existing as of the twenty-eighth day of January, one thousand nine hundred eighty-two. The terms of members first appointed expire as designated by the governor at the time of appointment: One at the end of one year; two at the end of two years; one at the end of three years; two at the end of four years; and one at the end of five years. No more than four members of such commission shall belong to the same political party. Members serve overlapping terms of five years and are eligible for successive appointments to the commission. On the first day of July of each year, the commission shall select a chairman from its membership. The governor may remove any commission member for cause, notwithstanding the provisions of section four, article six, chapter six of this code. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of the term. No person convicted of a felony or crime involving moral turpitude shall be eligible for appointment nor appointed as a commissioner.

(b) The members of the lottery commission receive one hundred dollars for each day or portion thereof spent in the discharge of their official duties. Members are reimbursed for reasonable and necessary expenses incurred in the discharge of their official duties. All such payments shall be made from the state lottery fund.

(c) At least one meeting per month shall be held by the commission. Additional meetings may be held at the call of the chairman, director or majority of the commission members.

(d) A majority of the members constitutes a quorum for the transaction of business, and all actions require a majority vote of the members present.

(e) Before entering upon the discharge of the duties as commissioner, each commissioner shall take and subscribe to the oath of office prescribed in section 5, article IV of the Constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of the office. The executed oath and bond shall be filed in the office of the secretary of state.
§29-22-5. State lottery commission; powers and duties; cooperation of other agencies.

(a) The commission shall have the authority to:

1. Promulgate rules in accordance with chapter twenty-nine-a of this code: Provided, That those rules promulgated by the commission that are necessary to begin the lottery games selected shall be exempted from the provisions of chapter twenty-nine-a of this code in order that the selected games may commence as soon as possible;

2. Establish rules for conducting lottery games, a manner of selecting the winning tickets and manner of payment of prizes to the holders of winning tickets;

3. Select the type and number of public gaming systems or games, to be played in accordance with the provisions of this article.

4. Contract, if deemed desirable, with the educational broadcasting authority to provide services through its microwave interconnection system to make available to public broadcasting stations servicing this state, and, at no charge, for rebroadcast to commercial broadcasting stations within this state, any public gaming system or games drawing;

5. Enter into interstate lottery agreements with other states;

6. Adopt an official seal.

7. Maintain a principal office and, if necessary, regional sub-offices at locations properly designated or provided;

8. Prescribe a schedule of fees and charges;

9. Sue and be sued;

10. Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights of any property, real or personal, consistent with the objectives of the commission as set forth in this article;

11. Designate one of the deputy directors to serve as acting director during the absence of the director;

12. Hold hearings on any matter of concern to the commission relating to the lottery, subpoena witnesses,
(13) To make and enter into all agreements and do all acts necessary or incidental to the performance of its duties and the exercise of its powers under this article.

(b) Departments, boards, commissions or other agencies of this state shall provide assistance to the state lottery office upon the request of the director.

(c) Upon the request of the deputy director for the security and licensing division in conjunction with the director, the attorney general, department of public safety and all other law-enforcement agencies shall furnish to the director and the deputy director such information as may tend to assure the security, honesty, fairness and integrity in the operation and administration of the lottery as they may have in their possession, including, but not limited to, manual or computerized information and data. The director is to designate such employees of the security and licensing division as may be necessary to act as enforcement agents. Such agents are authorized to investigate complaints made to the commission or the state lottery office concerning possible violation of the provisions of this article and determine whether to recommend criminal prosecution. If it is determined that action is necessary, an agent, after approval of the director, is to make such recommendation to the prosecuting attorney in the county wherein the violation occurred or to any appropriate law-enforcement agency.

§29-22-6. Lottery director; appointment; qualifications; oath and bond; salary.

(a) There is hereby created the position of the lottery director whose duties include the management and administration of the state lottery office. The director shall be qualified by training and experience to direct the operations of the lottery, and shall be appointed, within ninety days of the effective date of this article, by the governor and shall serve at the will and pleasure of the governor. No person shall be appointed as lottery director who has been convicted of a felony or crime involving moral turpitude.
(b) The director serves on a full-time basis and may not be engaged in any other profession or occupation.

(c) The director:

1. Shall have a good reputation, particularly as a person of honesty and integrity, and shall favorably pass a thorough background investigation prior to appointment;

2. The director shall not hold political office in the government of the state either by election or appointment while serving as director;

3. The director shall be a citizen of the United States and must become a resident of the state within ninety days of appointment;

4. The director shall receive an annual salary as provided for by the governor; and

5. The director and his or her executive secretary are ineligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code.

(d) Before entering upon the discharge of the duties as director, the director shall take and subscribe to the oath of office prescribed in section 5, article IV of the Constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of the office. The executed oath and bond shall be filed in the office of the secretary of state.

§29-22-7. Divisions of the state lottery office.

There shall be established within the state lottery office a security and licensing division; a personnel, data processing, accounting and administration division; and a marketing, education and information division. Each division shall be under the supervision of a deputy director who shall administer and coordinate the operation of authorized activities in the respective division. Each deputy director shall have had three years management experience in areas pertinent to his prospective responsibilities and an additional three years of experience in the same field.
§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.

(a) The director shall have the authority to:

1. Appoint, with the approval of the commission, a deputy director for each of the divisions established in this article. The deputy directors appointed shall serve at the will and pleasure of the director at an annual salary established by the commission. Deputy directors shall not be eligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code;

2. The director shall hire, pursuant to the approval of the commission, such professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this article. No person shall be employed by the lottery who has been convicted of a felony or other crime involving moral turpitude. Each person employed by the commission shall execute an authorization to allow an investigation of that person’s background;

3. Designate the number and types of locations at which tickets may be sold.

(b) Effective the first day of July, one thousand nine hundred eighty-six, all employees of the commission, except as otherwise provided herein, shall be in the classified service under the provisions of article six, chapter twenty-nine of this code.

(c) The director shall, pursuant to the approval of the commission, prepare and submit the annual proposed appropriations for the commission to the governor.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.
(a) The commission shall initiate operation of the state lottery on a continuous basis at the earliest feasible and practical time, first initiating operation of the pre-printed instant winner type lottery. The lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good. Other state government departments, boards, commissions, agencies, and their officers shall cooperate with the lottery commission so as to aid the lottery commission in fulfilling these objectives.

(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery: Provided, That:

1. No lottery may use the theme of bingo, roulette, dice or similar game, or similar games commonly associated with casino gaming.

2. No lottery may use the results of any amateur or professional sporting event, dog race or horse race to determine the winner.

3. Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry.

4. In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

5. No lottery utilizing a machine may use machines which dispense coins or currency.

6. Selection of the winner must be predicated totally on chance.

7. Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

8. All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

9. The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the
purchase of annuities for prizes payable in installments.

(10) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid more than once, and, in the event of a binding determination by the commission that more than one person is entitled to a particular prize, the sole remedy of the claimants shall be the award to each of them of an equal share in the single prize.

(11) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery, or the estimated odds of winning such prizes shall be printed on any lottery ticket, where feasible, or in descriptive materials, and shall be available at the offices of the commission.

(12) No prizes shall be paid which are invalid and not contemplated by the prize structure of the lottery involved.

(13) By purchasing a ticket or participation in a lottery, a participant agrees to abide by, and be bound by, the lottery rules which apply to the lottery or game play involved. An abbreviated form of such rules may appear on tickets and shall appear on descriptive materials and shall be available at the offices of the commission. A participant in a lottery agrees that the determination of whether the participant is a valid winner is subject to the lottery or game play rules and the winner validation tests established by the commission. The determination of the winner by the commission shall be final and binding upon all participants in a lottery and shall not be subject to review or appeal.

(14) The commission shall institute such security procedures as it deems necessary to ensure the honesty and integrity of the winner selection process for each lottery. All such security and validation procedures and techniques shall be, and remain, confidential, and shall not be subject to any discovery procedure in any civil judicial, administrative, or other proceeding, nor subject to the provisions of article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(c) The commission shall proceed with operation of such

additional lottery games, including the implementation of
games utilizing a variety of existing or future technological
advances at the earliest feasible date. The commission may
operate lottery games utilizing electronic computers and
electronic computer terminal devices and systems, which
systems must include a central site system of monitoring the
lottery terminals utilizing direct communication systems, or
other technological advances and procedures, ensuring honesty
and integrity in the operation of the lottery.

§29-22-10. Licensed lottery sales agents; restrictions; annual license
and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions;
display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

(a) The commission shall promulgate rules and regulations
for the licensing of lottery sales agents for the sale and
dispensing of lottery tickets, materials and lottery games, and
the operations of electronic computer terminals therefor,
subject to the following:

(1) The commission shall issue its annual license to such
lottery sales agents for each lottery outlet and for such fee as
is established by the commission to cover its costs thereof, but
not to exceed one thousand dollars. Application for licensing
as a lottery sales agent shall be on forms to be prescribed and
furnished by the director.

(2) No licensee may engage in business exclusively as a
lottery sales agent.

(3) The commission shall ensure geographic distribution of
lottery sales agents throughout the state.

(4) Before issuance of a license to an applicant, the
commission shall consider factors such as the financial
responsibility, security, background, accessibility of the place
of business or activity to the public, public convenience, and
the volume of expected sales.

(5) No person under the age of twenty-one may be licensed
as an agent. No licensed agent shall employ any person under
the age of eighteen for sales or dispensing of lottery tickets
or materials or operation of a lottery terminal.

(6) A license is valid only for the premises stated thereon.

(7) The director may issue a temporary license when deemed necessary.

(8) A license is not assignable or transferable.

(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner to be determined by the director.

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations, parks and recreation commissions or similar authorities, senior citizen centers, state owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages, political subdivisions or their agencies or departments, state agencies, commission operated agencies, persons licensed under the provisions of article twenty-three, chapter nineteen of this code, religious, charitable or seasonal businesses.

(11) Licensed lottery sales agents shall receive five percent of gross sales as commission for the performance of their duties. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission.

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made.

(13) No person or entity or subsidiary, agent or subcontractor thereof shall receive or hold more than twenty-five percent of the licenses to act as licensed lottery sales agent in any one county or municipality nor more than five percent of the licenses issued throughout this state: Provided, That the limitations of twenty-five percent and five percent in this subdivision shall not apply if it is determined by the commission that there are not a sufficient number of qualified applicants for licenses to comply with these requirements.

(b) The commission shall promulgate rules and regulations specifying the terms and conditions for contracting with lottery

[185x682]62 retailers for sale of pre-printed instant type lottery tickets and
63 may provide for the dispensing of such tickets through
64 machines and devices. Tickets may be sold or dispensed in any
65 public or private store, operation or organization, without
66 limitation. The commission may establish an annual fee not
67 to exceed fifty dollars for such persons, per location or site,
68 and shall issue a certificate of authority to act as a lottery
69 retailer to such persons. The commission shall establish
70 procedures to ensure the security, honesty and integrity of the
71 lottery and distribution system. The commission shall establish
72 the method of payment, commission structure, methods of
73 payment of winners, including payment in merchandise and
74 tickets, and may require pre-payment by lottery retailers,
75 require bond or security for payment and require deposit of
76 receipts in accounts established therefor. Retailers shall
77 prominently display the certificate of authority issued by the
78 commission on the premises where lottery sales are made.

§29-22-11. Prohibited acts; crimes selling without license; unauth­
orized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal
penalties for prohibited acts.

(a) No person may sell lottery tickets or materials unless
authorized by the commission to so act. No person may
perform the functions of a licensed lottery sales agent unless
licensed by the commission. No person may perform the
functions of a lottery retailer unless authorized therefor by the
commission. No person may sell a lottery ticket or material
at a price greater than that established by the commission;
except, that nothing in this section may be construed to
prevent any person from giving a lottery ticket or material to
another as a gift or bonus. No person other than a licensed
lottery sales agent or an employee thereof, while acting within
the scope of such employment, shall sell lottery tickets, and
then only on the premises stated on the license.

(b) No ticket shall be sold to any person under the age of
eighteen years. This section does not prohibit the purchase of
a ticket by a person eighteen years of age or older for the
purpose of making the ticket a gift to a person less than that
age.

(c) No ticket may be purchased by and no prizes received
by or awarded to any officers or employees of the commission or any member of their immediate household.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.

Any person who, with intent to defraud, falsly makes, alters, forges, utters, passes or counterfeits a lottery ticket is guilty of a felony, and, upon conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year or both fined and imprisoned.

§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.

(1) The commissioner, the deputy directors and the employees of the lottery may not directly or indirectly, individually, or as a member of a partnership or as a shareholder of a corporation have an interest in dealing in a lottery.

(2) A member of the commission, an employee of the lottery or a member of their immediate families may not ask for, offer to accept, or receive any gift, gratuity, or other thing of value from any person, corporation, association or firm contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery or from an applicant for a license to sell tickets in the lottery or from a licensee.

(3) A person, corporation, association or firm contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery, an applicant for a license to sell tickets in the lottery or a licensee may not offer a member of the commission, an employee of the lottery, or a member of their immediate families any gift, gratuity or other thing of value.

§29-22-14. Administrative violations of article; hearing; administra-
(a) In addition to any criminal penalty imposed under the provisions of this article or any other chapter of this code:

(1) No person shall be appointed, employed or continue to serve in any position or employment with the commission who has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude. The commission shall remove or discharge any person so convicted.

(2) No person shall be licensed as a lottery sales agent nor authorized to act as a lottery retailer who has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude. The commission shall revoke the license or the authority of any person so convicted.

(3) No person shall be permitted to act as vendor to the commission who has been convicted of any violation of this article, or of any felony or any crime related to theft, bribery or gambling or involving moral turpitude. The commission shall deny the privilege of acting as a vendor to the commission for any person so convicted.

(b) Any person aggrieved by any action of the commission under the provisions of this article may in writing to the commission request a hearing which shall be held before the commission or its duly authorized representative. Upon receipt of the request for a hearing, the commission shall set a hearing date within thirty days of the receipt of the request and shall notify the aggrieved party in writing at least seven days in advance of the hearing date of the time, date and place of the hearing. The commission shall issue an order within thirty days after the hearing date, either affirming or reversing the action of the director. The provisions of chapter twenty-nine-a of this code shall apply to such hearings.

(c) After hearing and determination that any provision of this article or rule or regulation of the commission has been violated, the commission may impose a penalty not to exceed one hundred dollars per violation.

§29-22-15. Payment of prizes to minors.
If the person entitled to a prize or any winning ticket is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a legal guardian of the minor of a check or draft payable to the order of the minor. If the person entitled to a prize or any winning ticket is under the age of eighteen years, and the prize is five thousand dollars or more, the director may direct payment to the minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a legal guardian of the minor as guardian for the minor. The person so named as guardian shall have qualified under and shall have the same duties and powers as a person designated as a guardian in the manner as provided in article ten, chapter forty-four of this code. The commission and director shall be discharged of all further liability upon payment of a prize pursuant to this section.


Unclaimed prize money for the prize on a winning ticket shall be retained by the director for the person entitled thereto for one hundred eighty days after the drawing in which the prize was won or for one hundred eighty days after the announced end of a game. If no claim is made for said money within one hundred eighty days, the prize money reverts to the state lottery fund for the purpose of awarding additional prizes. The commission shall promulgate rules, for the awarding of additional prizes.

§29-22-17. Lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability.

(a) The commission shall establish rules and regulations for accounting for sales of lottery tickets and materials and accounting for all funds from sales and dispensing of lottery tickets, materials and games. Such regulations shall require all licensed lottery sales agents and lottery retailers to deposit in the bank account of the state treasurer in banks regularly used by said agents or retailers and approved by the director all moneys received by such agents and retailers from the sale of lottery tickets, materials and games, within twenty-four hours
of the receipt thereof, and in accordance with the provisions
of section two, article two, chapter twelve of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
unless the director specifies a different time within which the
deposit must be made. The state treasurer shall credit all funds
so deposited to the credit of the state lottery fund. The director
shall require such reports of lottery receipts and transactions
in the sale of lottery tickets and materials in such form and
containing such information as the director deems necessary.

(b) All funds from the sale of lottery tickets, materials and
games are the funds of the state and until deposited in the
accounts and in the manner specified by the director are held
in trust by the person or entity receiving them for deposit. If
a person or entity fails to collect, account for or deposit such
funds to the accounts and in the manner specified by the
director, such person and entity shall be personally liable for
the full amount of such funds. If the person so failing is an
association, corporation or other entity, the officers thereof
shall be personally liable, jointly and severally, for any default
on the part of the association, corporation or entity, and
payment may be enforced against them as against the
association, corporation or entity.

§29-22-18. State lottery fund; appropriations and deposits; not part
of general revenue; no transfer of state funds after
initial appropriation; use and repayment of initial
appropriation; allocation of fund for prizes, net
profit and expenses; surplus; appropriation of net
profits.

(a) There is hereby created a special fund in the state
treasury which shall be designated and known as the "state
lottery fund." The fund shall consist of all appropriations to
the fund and all interest earned from investment of the fund,
and any gifts, grants or contributions received by the fund.
All revenues received from the sale of lottery tickets, materials
and games shall be deposited with the state treasurer and
deposited into the "state lottery fund." The revenue shall be
discharged in the manner herein provided for the purposes
stated herein and shall not be treated by the auditor and
treasurer as part of the general revenue of the state.

(b) No appropriation, loan, or other transfer of state funds
shall be made to the commission or lottery fund after the initial appropriation. The initial appropriation shall be used solely for the establishment and operation of the commission and lottery operations during the period until the lottery becomes a revenue-producing agency but no longer than eighteen months. After such period, but in no event longer than eighteen months from the effective date of this article, the commission shall commence repayment to the state general revenue fund of the amount of the initial appropriation from the general revenue fund to be repaid in equal installments over the ensuing twelve months from the funds provided in subsection (e) below.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) A minimum annual average of forty percent of the gross amount received from each lottery shall be allocated as net profit. The director is authorized to expend the necessary percentage of the amount allocated as net profit, not to exceed fifteen percent thereof, for the purposes of entering into contractual arrangements for the acquisition, financing, lease and lease-purchase, and other financing transactions, of lottery goods and services, including tickets, equipment, machinery, electronic computer systems and terminals, and supplies and maintenance therefor, for the first thirty-six months of operation, and may apportion the costs, expenses and expenditures related thereto among the commission, vendor or vendors and licensed lottery sales agents.

(e) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That in the initial year of operation not more than twenty percent may be so allocated and disbursed. In the event that the percentage allotted for operations and administration generates a surplus, the surplus will be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty
54 thousand dollars which shall be allocated as net profit.

55 (f) Annually, the Legislature shall appropriate the amounts
56 allocated as net profit above for such purposes as it deems
57 beneficial to the citizens of this state.


1 The legislative auditor shall conduct a yearly post audit of
2 all accounts and transactions of the state lottery office. The
3 cost of the audit shall be paid out of the state lottery fund
4 moneys designated for payment of operating expenses. The
5 commission shall have an annual audit performed by an
6 independent certified public accountant.


1 (a) The director shall, upon the tenth day of each month
2 provide the joint committee on government and finance of the
3 Legislature with a report reviewing the lottery operations,
4 including, but not limited to, the amount of gross sales, the
5 amount of net profit, the types of games being played, the
6 number of licensed sales agents, the names and amounts of
7 winners and any other information requested by the Legisla-
8 ture or by the joint committee on government and finance.

9 (b) The director shall, no later than the tenth day of each
10 regular session of the Legislature, provide to the Legislature,
11 legislative auditor, governor and state treasurer an annual
12 report focused upon subjects of interest concerning lottery
13 operations, including, but not limited to, an annual financial
14 analysis of the lottery operations, a discussion of the types of
15 games played and revenues generated, a statement of
16 expenditures for the last fiscal year, a summary of the benefit
17 programs and recommendations to the Legislature.

§29-22-21. Officials' name not to appear on lottery materials or at
drawing.

1 No elected or appointed official's name shall appear on any
2 lottery ticket or material or in connection with any advertise-
3 ment, nor shall any elected or appointed official, other than
4 the members of the lottery commission, the director or deputy
5 directors, preside or appear at any lottery drawing.

§29-22-22. Exemption of lottery prizes from state and local
taxation.
No state or local taxes of any type whatsoever shall be
imposed upon any prize awarded by the state lottery.

§29-22-23. Procurement; disclosures by vendors and related persons
and entities; authorizing background investigation;
unenforceability of contracts in contravention of
section.

(a) The commission shall utilize the provisions of article
three, chapter five-a of this code in the procurement of all
commodities, printing, services and goods, materials, lottery
tickets and other items necessary for the commission and
lottery, subject to the provisions of subsection (b) of this
section.

(b) For the printing of tickets used in any lottery game, any
goods or services involving the receiving or recording of
number selection of any lottery game, or any goods or services
involving the determination of winners on any lottery game,
which are hereby referred to as major procurements, the
commission shall evaluate the competence, integrity, character,
reputation and background of the vendor. To allow for this
evaluation, potential vendors shall supply the following
information prior to the submission of an initial bid or
proposal and on or before the first day of July of each year
thereafter;

(1) If the vendor is a corporation, the officers, directors, and
each stockholder in such corporation; except that, in the case
of stockholders of publicly held equity securities of a publicly
traded corporation, only the names and address of those
known to the corporation to own beneficially five percent or
more of such securities need be disclosed; and

(2) If the vendor is a partnership or joint venture, all of the
general and limited partners or joint venturers; if such general
and limited partners or joint ventures are themselves a
partnership, joint venture, trust, association, corporation,
subsidiary or intermediary corporation, the same information
required by this section shall be supplied for such entities also;

(3) If the vendor is a trust, the name of the trustee;

(4) If the vendor is an association, the members, officers and
directors; and
If the vendor intends to or does subcontract to another person or entity any integral or substantial portion of the work to be performed in supplying such materials or equipment, then the vendor shall supply the above-mentioned information for all such persons or entities.

(6) The following information shall also be submitted:

(A) Other jurisdictions in which the vendor has contracts to supply gaming materials or equipment and the types of gaming materials or equipment involved therewith;

(B) The details of any felony conviction of a criminal offense, state or federal, of the vendor or any person whose name and address are required by this section;

(C) The details of any disciplinary action of a judicial nature relating to gaming taken by any state or person against the vendor or any person whose name and address are required by this section;

(D) The number of years the vendor has been in the business of supplying gaming materials or equipment;

(E) A disclosure of each state and jurisdiction in which the vendor has been denied, or has had revoked a gaming license of any kind, and the disposition of such in each such state or jurisdiction. If any gaming license has been revoked or has not been renewed or any gaming license application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying such failure to receive such license must be disclosed;

(F) A disclosure of the details of any bankruptcy, insolvency, reorganization, or any pending litigation relating to gaming of each vendor;

(G) A signed authorization by each vendor and officer thereof allowing the deputy director for security to conduct a background investigation of such person; and

(H) Such other information, accompanied by such documents, as the commission, by rule or contract procurement documents, may require as being necessary or appropriate in the public interest to accomplish the purposes of this section.

(c) No contract for the supply of gaming materials or
equipment for use in the operation of the state lottery is
enforceable against the state if the provisions of this section
are not complied with.

§29-22-24. Disclosures by vendors and related persons and entities
of political contributions.

(a) For purposes of this section:

“Vendor” means any person required to make any disclosure
under the provisions of section twenty-three of this article.

“Major procurement” has the same meaning as set out in
section twenty-three of this article.

(b) Prior to the submission of the initial bid or proposal,
and on or before the first day of July of each year thereafter,
a vendor who is submitting an initial bid or proposal to, or
who has submitted such within the preceding twelve months
to, or who has a current contract with, the state lottery
commission or any state agency, board or commission or
political subdivision, for any major procurement, shall file with
the secretary of state a detailed itemized disclosure statement,
subscribed and sworn to before an officer authorized to
administer oaths, setting forth each contribution to any local,
state or federal political candidate or political committee in
this state, made in the preceding three years, or a statement
that no such contributions have been made.

§29-22-25. Preemption of state laws or local regulation.

(a) No state or local law or regulation providing any
penalty, disability, restriction, regulation or prohibition for the
manufacture, transportation, storage, distribution, advertising,
possession or sale of any lottery tickets or materials or for the
operation of any lottery shall apply to authorized operations
by or for the state lottery or commission.

(b) The provisions of this article preempt all regulations,
rules, ordinances and laws of any county or municipality in
conflict herewith: Provided, That nothing herein shall
invalidate any zoning law, or Sunday closing law under article
ten, chapter sixty-one of this code.

(c) Nothing in this article shall be deemed to permit the
operation of any lottery otherwise prohibited by the laws of
this state, not owned and operated by this state and permitted

1 The state lottery commission shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-one, unless sooner terminated or unless continued or reestablished pursuant to such article and chapter.


(a) Any person violating any of the provisions of this article, except sections eleven and twelve of this article, is guilty of a misdemeanor, and, upon conviction thereof, for the first offense, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Any person violating any of the provisions of this article, except sections eleven and twelve of this article, shall, for the second offense, be guilty of a felony, and, upon conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year or both fined and imprisoned.


If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.
Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within .................. this the 2nd day of May, 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/30/85
Time 6:44 p.m.