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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



## ENROLLED

*COM. SUB. FOR COM. SUB. FOR*

SENATE BILL NO. 380

(By Senator SCHOONOVER )



PASSED MARCH 13, 1999

In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE

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## Senate Bill No. 380

(SENATOR SCHOONOVER, *original sponsor*)

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[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-five, all relating generally to authorized games of chance; redistributing moneys from racetrack video lottery; authorizing a gaming facility and providing generally therefor; legislative findings and intent; defining certain terms; duties and powers of the state lottery commission; authorizing operation of video lottery games at

the gaming facility; appointment of lottery commission staff; adoption and proposal of rules; contract agreements and cost for law-enforcement services; local option elections to approve licensure of a gaming facility; providing generally for licenses to engage in activities related to operation of a gaming facility; authorization for no more than one license; severability of article; qualifications for applicant for license to operate a gaming facility; conditions of license; license application requirements; information required of certain corporations; gaming facility qualifications; application, license and investigative fees; requirement for surety bond; authorization of license and prohibiting transfer, assignment, sale or pledge as collateral; audits and reports of licensee; requirements for license for supplier of gaming facility; requirements for license for employee of operator of gaming facility; prohibition of false statements on application for license; grounds for denial, revocation or suspension of license; reprimand of licensee; information included on license; display and availability of license; notice of change of address; expiration and renewal of licenses; renewal fees; hearing procedures; licensee consent to warrantless searches of person and property; patron consent to presence of law-enforcement officers; permitting gaming operators to set wagers; transfers of gross terminal income to state gaming fund; imposing privilege tax on adjusted gross receipts of gaming facility; providing generally for filing and payment of taxes; creating state gaming fund; distribution of amounts in fund; prohibited wagers and other activities; prohibiting wagers by certain persons; establishing criminal offenses and penalties; forfeiture of certain property; and providing civil penalties.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

**§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of**

**net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.**

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

8 (b) The gross terminal income of a licensed racetrack  
9 shall be remitted to the commission through the electronic  
10 transfer of funds. Licensed racetracks shall furnish to the  
11 commission all information and bank authorizations  
12 required to facilitate the timely transfer of moneys to the  
13 commission. Licensed racetracks must provide the  
14 commission thirty days' advance notice of any proposed  
15 account changes in order to assure the uninterrupted  
16 electronic transfer of funds. From the gross terminal  
17 income remitted by the licensee to the commission, the  
18 commission shall deduct an amount sufficient to reimburse  
19 the commission for its actual costs and expenses incurred  
20 in administering racetrack video lottery at the licensed  
21 racetrack, and the resulting amount after that deduction  
22 is the net terminal income. The amount deducted for  
23 administrative costs and expenses of the commission may  
24 not exceed four percent of gross terminal income.

25 (c) Net terminal income shall be divided as set out in this  
26 subsection. The licensed racetrack's share shall be in lieu  
27 of all lottery agent commissions and is considered to cover  
28 all costs and expenses required to be expended by the  
29 licensed racetrack in connection with video lottery opera-  
30 tions. The division shall be made as follows:

31 (1) The commission shall receive thirty percent of net  
32 terminal income, which shall be paid into the general

33 revenue fund of the state to be appropriated by the Legislature;

34 (2) Fourteen percent of net terminal income at a licensed  
35 racetrack shall be deposited in the special fund established  
36 by the licensee and used for payment of regular purses in  
37 addition to other amounts provided for in article  
38 twenty-three, chapter nineteen of this code;

39 (3) The county where the video lottery terminals are  
40 located shall receive two percent of the net terminal  
41 income;

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

48 (5) The West Virginia thoroughbred development fund  
49 created under section thirteen-b, article twenty-three,  
50 chapter nineteen of this code and the West Virginia  
51 greyhound breeding development fund created under  
52 section ten, article twenty-three, chapter nineteen of this  
53 code shall receive an equal share of a total of not less than  
54 one and one-half percent of the net terminal income:  
55 *Provided*, That for any racetrack which does not have a  
56 breeder's program supported by the thoroughbred devel-  
57 opment fund or the greyhound breeding development fund,  
58 the one and one-half percent provided for in this subdivi-  
59 sion shall be deposited in the special fund established by  
60 the licensee and used for payment of regular purses, in  
61 addition to other amounts provided for in subdivision (2)  
62 of this subsection and article twenty-three, chapter  
63 nineteen of this code;

64 (6) The West Virginia thoroughbred breeders classic shall  
65 receive one percent of the net terminal income which shall  
66 be used for purses. The moneys shall be deposited in the  
67 separate account established for the classic under section  
68 thirteen, article twenty-three, chapter nineteen of this  
69 code;

70 (7) A licensee shall receive forty-seven percent of net  
71 terminal income;

72 (8) The tourism promotion fund established in section  
73 twelve, article two, chapter five-b of this code shall receive  
74 three percent of the net terminal income; and

75 (9) The remaining one percent of net terminal income  
76 shall be distributed in the manner set forth in this subdivi-  
77 sion. Not more than twenty thousand dollars of the one  
78 percent of net terminal income provided for in this subdivi-  
79 sion shall be deposited into a special revenue fund in the  
80 state treasury, to be known as the "John F. 'Jack' Bennett  
81 Fund". The moneys in this fund shall be expended by the  
82 division of veterans affairs to provide for the placement of  
83 markers for the graves of veterans in perpetual cemeteries  
84 in this state. The division of veterans affairs shall propose  
85 legislative rules for promulgation pursuant to the provi-  
86 sions of article three, chapter twenty-nine-a of this code  
87 specifying the manner in which the funds are spent,  
88 determining the ability of the surviving spouse to pay for  
89 the placement of the marker, and setting forth the stan-  
90 dards to be used to determine the priority in which the  
91 veterans grave markers will be placed in the event that  
92 there are not sufficient funds to complete the placement of  
93 veterans grave markers in any one year, or at all. One  
94 hundred thousand dollars of the one percent of net termi-  
95 nal income provided for in this subdivision shall be  
96 deposited in the special fund in the division of culture and  
97 history created under section three, article one-i, chapter  
98 twenty-nine of this code and be expended by the division  
99 of culture and history to establish a West Virginia veterans  
100 memorial archives within the cultural center to serve as a  
101 repository for the documents and records pertaining to the  
102 veterans memorial and to restore and maintain the monu-  
103 ments and memorial on the capitol grounds. Five hundred  
104 thousand dollars of the one percent of net terminal income  
105 shall be deposited in the state treasury in a special fund of  
106 the department of administration, created under section  
107 five, article four, chapter five-a of this code to be used for  
108 construction and maintenance of a parking garage on the  
109 state capitol complex. The remainder of the one percent of  
110 net terminal income shall be deposited in equal amounts

111 into the grants for competitive arts program and the  
112 capitol dome and capitol improvements fund.

113 (d) Each licensed racetrack shall maintain in its account  
114 an amount equal to or greater than the gross terminal  
115 income from its operation of video lottery machines, to be  
116 electronically transferred by the commission on dates  
117 established by the commission. Upon a licensed race-  
118 track's failure to maintain this balance, the commission  
119 may disable all of a licensed racetrack's video lottery  
120 terminals until full payment of all amounts due is made.  
121 Interest shall accrue on any unpaid balance at a rate  
122 consistent with the amount charged for state income tax  
123 delinquency under chapter eleven of this code, which  
124 interest shall begin to accrue on the date payment is due to  
125 the commission.

126 (e) The commission's central control computer shall keep  
127 accurate records of all income generated by each video  
128 lottery terminal. The commission shall prepare and mail  
129 to the licensed racetrack a statement reflecting the gross  
130 terminal income generated by the licensee's video lottery  
131 terminals. Each licensed racetrack shall report to the  
132 commission any discrepancies between the commission's  
133 statement and each terminal's mechanical and electronic  
134 meter readings. The licensed racetrack is solely responsi-  
135 ble for resolving income discrepancies between actual  
136 money collected and the amount shown on the accounting  
137 meters or on the commission's billing statement.

138 (f) Until an accounting discrepancy is resolved in favor  
139 of the licensed racetrack, the commission may make no  
140 credit adjustments. For any video lottery terminal reflect-  
141 ing a discrepancy, the licensed racetrack shall submit to  
142 the commission the maintenance log which includes  
143 current mechanical meter readings and the audit ticket  
144 which contains electronic meter readings generated by the  
145 terminal's software. If the meter readings and the commis-  
146 sion's records cannot be reconciled, final disposition of the  
147 matter shall be determined by the commission. Any  
148 accounting discrepancies which cannot be otherwise  
149 resolved shall be resolved in favor of the commission.

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

164 (h) Licensed racetracks may, upon request, receive  
165 additional reports of play transactions for their respective  
166 video lottery terminals and other marketing information  
167 not considered confidential by the commission. The  
168 commission may charge a reasonable fee for the cost of  
169 producing and mailing any report other than the billing  
170 statements.

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

**ARTICLE 25. AUTHORIZED GAMING FACILITY.**

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

1 (a) *Operation of authorized games of chance.* – Notwith-  
2 standing any provision of law to the contrary, the opera-  
3 tion of those authorized games of chance permitted by this  
4 article and the related operation of a gaming facility and  
5 ancillary activities is not unlawful when conducted under  
6 the terms specified in this article.

7 (b) *Legislative findings.* – The Legislature finds and  
8 declares that the tourism industry plays a critical role in



9 the economy of this state and that a substantial state  
10 interest exists in protecting that industry. It further finds  
11 and declares that the authorization of the operation of a  
12 gaming facility at no more than one well-established  
13 historic resort hotel in this state as provided in this article  
14 will serve to protect and enhance the tourism industry, and  
15 indirectly other segments of the economy of this state, by  
16 providing a resort hotel amenity which is becoming  
17 increasingly important to many actual and potential resort  
18 hotel patrons.

19 The Legislature finds and declares that, except for video  
20 lottery operation pursuant to subsection (c), section three  
21 of this article, the operation of the authorized games of  
22 chance permitted by this article does not constitute the  
23 operation of lotteries or gift enterprises within the purview  
24 of section thirty-six, article VI of the constitution of this  
25 state.

26 With respect to video lottery games contemplated  
27 hereunder, the Legislature restates and reaffirms the  
28 findings and declarations set forth in section two, article  
29 twenty-two-a of this chapter.

30 (c) *Legislative intent.* – It is the intent of the Legislature  
31 in the enactment of this article to promote tourism and  
32 year-round employment in this state. It is expressly not  
33 the intent of the Legislature to promote gaming. As a  
34 consequence, it is the intent of the Legislature to allow  
35 limited gaming as authorized by this article with all  
36 moneys gained from the operation of the gaming facility,  
37 other than those necessary to reimburse reasonable costs  
38 of operation, to enure to the benefit of the state.

#### §29-25-2. Definitions.

1 (a) “Applicant” means any person or entity applying for  
2 a license.

3 (b) “Adjusted gross receipts” means the gross receipts of  
4 a gaming facility from authorized games of chance less  
5 winnings paid to wagerers in the games.

6 (c) “Authorized game of chance” includes baccarat,  
7 twenty-one or blackjack, poker, craps, roulette, wheel of

8 fortune, video lottery games and any other Monte Carlo  
9 style table game expressly authorized by rule of the  
10 commission, but expressly excludes punchboards, faro,  
11 keno, numbers tickets, push cards, jar tickets, pull tabs or  
12 similar games.

13 (d) "Controlling interest" means:

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

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

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

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

24 (f) "Commission" means the state lottery commission  
25 created in section four, article twenty-two of this chapter.

26 (g) "Director" means the director of the state lottery  
27 commission.

28 (h) "Gaming devices and supplies" means gaming tables  
29 for all authorized games of chance, roulette wheels, wheels  
30 of fortune, video lottery terminals, cards, dice, chips,  
31 tokens, markers or any other mechanical, electronic or  
32 other device, mechanism or equipment or related supplies  
33 utilized in the operation of an authorized game of chance.

34 (i) "Gaming facility" means a designated area on the  
35 premises of an historic resort hotel in which authorized  
36 games of chance are conducted by a gaming licensee.

37 (j) "Gaming licensee" means the licensed operator of a  
38 gaming facility.

39 (k) "Gross receipts" means the total amount of money  
40 exchanged for the purchase of chips, tokens or electronic  
41 cards by patrons of a gaming facility reduced by gross

42 terminal income to the extent gross terminal income is  
43 included in the amount of money exchanged.

44 (l) "Gross terminal income" has the same meaning  
45 ascribed to the term as set forth in article twenty-two-a of  
46 this chapter.

47 (m) "Historic resort hotel" means a resort hotel regis-  
48 tered with the United States department of the interior as  
49 a national historic landmark in its national registry of  
50 historic places having not fewer than five hundred guest  
51 rooms under common ownership and having substantial  
52 recreational guest amenities in addition to the gaming  
53 facility.

54 (n) "License" means a license issued by the commission,  
55 including:

56 (1) A license to operate a gaming facility;

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

59 (3) A license to be employed in connection with the  
60 operation of a gaming facility.

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

64 (p) "Licensed gaming facility supplier" means a person  
65 who is licensed by the commission to engage in the busi-  
66 ness of supplying gaming devices and gaming supplies to  
67 a gaming facility.

68 (q) "Licensee" means a gaming licensee, a licensed  
69 gaming facility supplier or a licensed gaming facility  
70 employee.

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

75 (s) "State gaming fund" means the special fund in the  
76 state treasury created in section twenty-two of this article.

77 (t) "Video lottery games" and "video lottery terminals"  
78 have the same meaning ascribed the terms in article  
79 twenty-two-a of this chapter.

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

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

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

5 (2) Approve rules for all authorized games of chance  
6 proposed to be operated by a gaming licensee;

7 (3) Establish standards governing gaming facilities  
8 generally, including the maintenance of financial books  
9 and records;

10 (4) Provide staff to supervise, inspect and monitor the  
11 operation of any gaming facility, including inspection of  
12 gaming devices and supplies used in the operation to  
13 assure continuous compliance with all rules of the com-  
14 mission and provisions of this article;

15 (5) Establish minimum levels of insurance to be main-  
16 tained with respect to a gaming facility;

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

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

24 (8) Issue all licenses;

25 (9) Charge and collect the taxes and fees authorized,  
26 required or specified in this article and receive, accept and  
27 pay all taxes and fees collected under this article into the  
28 state gaming fund;

29 (10) Maintain a record of all licenses issued;

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

32 (12) File a written report to the governor, the president  
33 of the Senate and the speaker of the House of Delegates on  
34 or before the thirtieth day of January of each year and any  
35 additional reports as the governor or Legislature may  
36 request.

37 (b) *Powers.* – In addition to the powers set forth else-  
38 where in this article, the commission has the following  
39 powers:

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

42 (2) To hold hearings, administer oaths and issue subpoe-  
43 nas for the attendance of a witness to testify and to  
44 produce evidence;

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

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

51 (5) To exercise any other powers that may be necessary  
52 to effectuate the provisions of this article.

53 (c) *Video lottery games.* – The commission is authorized  
54 to implement and operate video lottery games at the  
55 gaming facility licensed pursuant to this article consistent  
56 with the gaming licensee's operation of the gaming  
57 facility. With respect to video lottery games, the provi-  
58 sions of article twenty-two-a of this chapter apply to this  
59 article, except in the event of a conflict or inconsistency  
60 between any of the provisions of this article and the  
61 provisions of article twenty-two-a of this chapter. In that  
62 event, the provisions of this article supersede any conflict-  
63 ing or inconsistent provisions contained in article twenty-  
64 two-a of this chapter. In carrying out its authority under  
65 this article, the commission may: (1) Specify by rule  
66 additional licensure and fee requirements consistent with

67 the provisions of article twenty-two-a of this chapter  
68 respecting video lottery manufacturers, service technicians  
69 and validation managers; and (2) adopt and specify any  
70 reasonable procedure, protocol or requirement to enable  
71 video lottery terminals to effectively and efficiently  
72 communicate with the commission's central computer  
73 system used in administering article twenty-two-a of this  
74 chapter.

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

1 The director, pursuant to the provisions of section six,  
2 article twenty-two of this chapter, with the approval of  
3 the commission, may appoint any professional, clerical,  
4 technical and administrative personnel, who shall be state  
5 employees hired in accordance with article six of this  
6 chapter, that may be necessary to carry out the provisions  
7 of this article. Prior to his or her appointment, each staff  
8 person shall undergo a thorough background investigation,  
9 including fingerprinting and a check of criminal records.  
10 No employee may directly or indirectly hold any financial  
11 interest in any entity licensed under this article.

**§29-25-5. Rules.**

1 The commission shall propose for promulgation legisla-  
2 tive rules in accordance with the provisions of article  
3 three, chapter twenty-nine-a of this code as are necessary  
4 to provide for implementation and enforcement of the  
5 provisions of this article. Any rules proposed by the  
6 commission before the first day of September, one thou-  
7 sand nine hundred ninety-nine, may be by emergency rule.

**§29-25-6. Law enforcement.**

1 (a) *Generally.* – Notwithstanding any provision of this  
2 code to the contrary, the director may by contract or  
3 cooperative agreements with state, county or municipal  
4 law-enforcement agencies operating in the county in  
5 which the gaming facility is located arrange for those law-  
6 enforcement services that are necessary to enforce the  
7 provisions of this article.

8 (b) *Costs.* – The actual cost of services provided by the  
9 state police or municipal law-enforcement agencies in  
10 connection with enforcement of the provisions of this  
11 article shall be paid from the state gaming fund, and shall  
12 include all costs of required training and equipment as  
13 well as salary, benefits and other direct costs of additional  
14 required personnel.

15 The costs of services related to a gaming facility pro-  
16 vided by law-enforcement officers of the county in which  
17 the gaming facility is located shall be paid from that  
18 portion of the state gaming fund allocated to that county.  
19 The costs shall include all costs of required training and  
20 equipment as well as salary, benefits and other direct costs  
21 of additional required personnel.

**§29-25-7. Local option.**

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

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

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

20 Shall West Virginia lottery commission video lottery  
21 games and authorized games of chance be permitted  
22 within an area at the [name of qualified historic resort  
23 hotel]?

24 [ ] Yes [ ] No

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

26 Any local option election to approve or disapprove of the  
27 proposed authorization of a gaming facility within a  
28 county shall be in accordance with procedures adopted by  
29 the commission. The local option election may be held in  
30 conjunction with a primary or general election, or at a  
31 special election. Approval shall be by a majority of the  
32 voters casting votes on the question of approval or disap-  
33 proval of gaming facility operations at the election.

34 If a majority votes against allowing a gaming facility, no  
35 election on the issue shall be held for a period of one  
36 hundred four weeks. If a majority votes "yes" no election  
37 reconsidering the action may be held for a period of five  
38 years. A local option election may thereafter be held if a  
39 written petition of qualified voters residing within the  
40 county equal to at least five percent of the number of  
41 persons who were registered to vote in the next preceding  
42 general election is received by the county commission of  
43 the county in which the gaming facility is to be located.  
44 The petition may be in any number of counterparts. The  
45 election shall take place at the next primary or general  
46 election scheduled more than ninety days following receipt  
47 by the county commission of the petition required by this  
48 subsection: *Provided*, That the issue may not be placed on  
49 the ballot until all statutory notice requirements have been  
50 met: *Provided, however*, That no subsequent disapproval  
51 may take effect until after the expiration of the five year  
52 licensing period in effect at the time of the referendum.

53 (b) No local law or regulation providing any penalty,  
54 disability, restriction, regulation or prohibition for operat-  
55 ing a gaming facility or supplying a gaming facility may be  
56 enacted, and the provisions of this article preempt all  
57 regulations, rules, ordinances and laws of any county or  
58 municipality in conflict with this article.

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



**§29-25-8. Licenses required.**

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

6 (b) Licenses are required for the following purposes:

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

9 (2) For any person engaging in the business of supplying  
10 a gaming facility with gaming devices, supplies or services  
11 if the gaming facility expends more than fifty thousand  
12 dollars annually with that person; and

13 (3) For any individual employed by a gaming licensee in  
14 connection with the operation of a gaming facility in the  
15 state.

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

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

1 (a) *Single license.* – The commission may issue only one  
2 license to operate a gaming facility. If the one license  
3 limitation in the preceding sentence is found to be uncon-  
4 stitutional in a final, nonappealable order by a court of  
5 competent jurisdiction, the commission shall have no  
6 authority to issue any license under this article and, in  
7 such event, the provisions of this article shall not be  
8 severable, and any license issued under the provisions of  
9 this article prior thereto shall be void. The Legislature  
10 intends that no more than one license to operate one  
11 gaming facility in this state shall be authorized in any  
12 event.

13 (b) *Applicant qualifications.* – An applicant for a license  
14 to operate a gaming facility shall be the owner or be  
15 wholly owned by the owner of an existing historic resort  
16 hotel in which the gaming facility is to be located, and the  
17 resort hotel shall be located within the jurisdiction of a  
18 county approving the operation of a gaming facility in

19 accordance with section seven of this article. An applicant  
20 shall meet the qualifications and requirements set forth in  
21 this article and rules adopted by the commission. In  
22 determining whether to grant a license to operate a  
23 gaming facility to an applicant, the commission shall  
24 consider:

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

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

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

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

40 (c) *Conditions attached to license.* – A license to operate  
41 a gaming facility may only be granted to an applicant  
42 upon the express condition that:

43 (1) The licensee may not enter into any management  
44 service contract, understanding or arrangement of any  
45 kind which would act to permit any person other than the  
46 licensee to operate a licensed gaming facility unless the  
47 management service contract, understanding or arrange-  
48 ment is in writing and has been approved by the commis-  
49 sion. The commission shall condition its approval upon  
50 the successful completion of a thorough background  
51 investigation at the expense of the licensee;

52 (2) The licensee may not in any manner permit a person  
53 other than the licensee to have a share, percentage or  
54 proportion of any profits generated from the operation of  
55 a gaming facility;

56 (3) The licensee shall not conduct any advertising and  
57 promotional activities related to the gaming facility  
58 without the prior written approval of the director of the  
59 lottery commission; and

60 (4) The licensee shall permit authorized games of chance  
61 to be played only during those hours established and  
62 approved by the commission.

63 (d) *License application requirements.* – An applicant for  
64 a license to operate a gaming facility shall:

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

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

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

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

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

83 (2) Pay to the commission a nonrefundable application  
84 fee for deposit into the state gaming fund in the amount of  
85 twenty-five thousand dollars; and

86 (3) Pay to the commission an investigative fee for deposit  
87 in the state gaming fund in the amount of twenty thousand  
88 dollars.

89 (e) *Publicly-traded corporations.* – In the event that an  
90 applicant or any controlling person of an applicant is a  
91 publicly-traded corporation, then information otherwise

92 required to be furnished by an applicant with respect to  
93 stockholders, directors and executive officers of the  
94 publicly-traded corporation shall be limited to informa-  
95 tion concerning only those executive officers of the  
96 publicly-traded corporation whose ongoing and regular  
97 responsibilities relate or are expected to relate directly to  
98 the operation or oversight of the gaming facility.  
99 "Publicly-traded corporation" as used in this subsection  
100 means any corporation or other legal entity except a  
101 natural person which has one or more classes of securities  
102 registered pursuant to section twelve of the Securities  
103 Exchange Act of 1934, as amended (15 U.S.C. §78), or is an  
104 issuer subject to section fifteen-d of that act.

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

113 (g) *Investigative fee.* – The investigative fee paid by an  
114 applicant at the time of submitting an application shall be  
115 applied to the cost of any investigation relating to the  
116 applicant required under this article.

117 (1) If the cost of the investigation is greater than twenty  
118 thousand dollars, the investigative agency shall show  
119 cause for the additional cost. The applicant shall pay the  
120 additional costs to the extent approved by the commission,  
121 but not to exceed a total investigative fee of forty thou-  
122 sand dollars.

123 (2) If the cost of the investigation is less than the aggre-  
124 gate investigative fee paid by an applicant, the commission  
125 shall refund the difference.

126 (h) *Surety bond requirement.* – The licensed operator of  
127 a gaming facility shall execute a surety bond to be given to  
128 the state to guarantee the licensee faithfully makes the  
129 payments, keeps books and records, makes reports and  
130 conducts gaming in the licensee's gaming facility in

131 accordance with the provisions of this article and rules  
132 promulgated by the commission. The surety bond shall be:

133 (1) In the amount of five million dollars;

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

135 (3) With a surety approved by the commission.

136 The bond shall remain in effect during the term of the  
137 license and may not be canceled by a surety on less than  
138 thirty days notice in writing to the commission. The total  
139 and aggregate liability of the surety on the bond is limited  
140 to the amount specified in the bond.

141 (i) *Authorization of license.* – A license to operate a  
142 gaming facility authorizes the licensee to engage in the  
143 business of operating a gaming facility while the license is  
144 effective. A license to operate a gaming facility is not  
145 transferable or assignable and cannot be sold or pledged  
146 as collateral.

147 (j) *Audits.* – A licensed gaming facility operator shall  
148 submit to the commission an annual audit, by a certified  
149 public accountant licensed in the state of West Virginia, of  
150 the financial transactions and condition of the licensee's  
151 total operations. The audit shall be in accordance with  
152 generally accepted auditing principles.

153 (k) *Annual license maintenance fee.* – The licensed  
154 gaming facility operator shall pay to the commission an  
155 annual license maintenance fee of five thousand dollars.

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

#### §29-25-10. Reports by licensee.

1 (a) A gaming licensee shall file with the commission an  
2 annual balance sheet and profit and loss statement per-  
3 taining to the licensee's operation of a gaming facility in  
4 this state. A gaming licensee also shall file with the  
5 commission an annual statement identifying each control-  
6 ling person of the licensee and all stockholders, partners,

7 officers or directors for the licensee and any controlling  
8 person: *Provided*, That if a gaming licensee or controlling  
9 person is a publicly-traded corporation, then as to the  
10 publicly-traded corporation the annual report is required  
11 to identify only executive officers whose ongoing regular  
12 duties relate directly to the operation of the gaming  
13 facility. A gaming licensee shall file further reports with  
14 the commission as the commission may require by rule.

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

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

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

20 (c) From information provided under this subsection,  
21 from the audit described in subsection (j), section nine of  
22 this article, and from any other source available to the  
23 commission, the commission shall identify the profits  
24 made from the operation of the gaming facility and  
25 compare the profits to profits made from the operation of  
26 facilities of a similar nature in other states. Annually, the  
27 commission shall submit a report to the joint committee on  
28 government and finance setting forth the profits made in  
29 the operation of the gaming facility in this state and the  
30 results of the comparison to profits made in other states.  
31 The commission shall include in the report its recommen-  
32 dations for any adjustments in the taxes imposed upon the  
33 operation of a gaming facility under the provisions of this  
34 article that would be commensurate with the legislative  
35 intent to maximize taxes received from the operation of a  
36 gaming facility and minimize profits derived by a licensee  
37 from the operation of a gaming facility.

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

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

5 (b) *License qualifications.* – To qualify for a license, an  
6 applicant shall meet the requirements of this section.

7 Each applicant who is an individual and each individual  
8 who is a controlling person of an applicant that is not an  
9 individual shall be of good moral character and reputa-  
10 tion, and shall have the necessary experience and financial  
11 ability to successfully carry out the functions of a gaming  
12 facility supplier. The commission may adopt rules estab-  
13 lishing additional requirements for a gaming facility  
14 supplier.

15 (c) *Supplier specifications.* – An applicant for a license to  
16 supply gaming devices, equipment and supplies to a  
17 gaming facility shall demonstrate that the gaming devices,  
18 equipment and supplies that the applicant plans to sell or  
19 lease to the licensed operator of the gaming facility,  
20 conform or will conform to standards established by rules  
21 of the commission and applicable state law.

22 (d) *License application requirements.* – An applicant for  
23 a license shall:

24 (1) Submit an application to the commission on the form  
25 that the commission requires;

26 (2) Pay to the commission a nonrefundable application  
27 fee for deposit into the state gaming fund in the amount of  
28 five thousand dollars; and

29 (3) Pay to the commission an investigative fee for deposit  
30 into the state gaming fund in the amount of ten thousand  
31 dollars, or a lesser amount as the commission upon appli-  
32 cation may conditionally approve in a particular case.

33 (e) *Investigative fee.* – The investigative fee paid by an  
34 applicant for a license to supply a gaming facility shall be  
35 applied to the cost of any investigation of the applicant  
36 required under this article:

37 (1) If the costs of the investigation of an applicant are  
38 greater than ten thousand dollars, or the lesser investiga-  
39 tive fee as may have been conditionally approved by the  
40 commission, the investigative agency must show cause for  
41 the additional cost. If the commission approves, the  
42 applicant shall pay the additional costs as required by the  
43 commission, but not to exceed a total investigative fee of  
44 fifty thousand dollars.

45 (2) If the costs of the investigation of an applicant are  
46 less than the aggregate investigative fee paid to the  
47 commission, the commission shall refund the difference.

48 (f) *Authorization of licensee.* – A license to supply a  
49 gaming facility authorizes the licensee to engage in the  
50 business of selling gaming devices and supplies to a  
51 gaming facility while the license is effective.

52 (g) *Inventory.* – A licensed gaming facility supplier shall  
53 submit to the commission a list of all equipment, gaming  
54 devices and supplies sold or delivered to a gaming facility  
55 in this state when required by the commission.

56 (h) *Annual license maintenance fee.* – A licensed gaming  
57 facility supplier shall pay to the commission an annual  
58 license maintenance fee of five thousand dollars.

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

1 (a) *Licenses.* – The commission shall issue a license to  
2 each applicant for a license to be employed in the opera-  
3 tion of a gaming facility who meets the requirements of  
4 this section.

5 (b) *License qualifications.* – To qualify for a license to be  
6 employed in a gaming facility, the applicant shall be an  
7 individual of good moral character and reputation and  
8 have been offered employment by the gaming facility  
9 contingent upon licensure pursuant to the provisions of  
10 this section. The commission by rule may specify addi-  
11 tional requirements to be met by applicants based on the  
12 specific job classifications in which the applicant is to be  
13 employed.

14 (c) *License application requirements.* – An applicant for  
15 a license to be employed in the operation of a gaming  
16 facility shall:

17 (1) Submit an application to the commission on the form  
18 that the commission requires, including adequate informa-  
19 tion to serve as a basis for a thorough background check;

20 (2) Pay to the commission a nonrefundable application  
21 fee for deposit into the state gaming fund in the amount of



22 three hundred dollars, which fee may be paid on behalf of  
23 the applicant by the employer; and

24 (3) Pay to the commission a nonrefundable investigative  
25 fee for deposit into the state gaming fund in an amount to  
26 be fixed by the commission by rule, which fee may be paid  
27 on behalf of the applicant by the employer.

28 (d) *Authorization of licensee.* – A license to be employed  
29 by a gaming facility authorizes the licensee to be employed  
30 in the capacity designated by the commission with respect  
31 to the license while the license is effective.

32 (e) *Annual license maintenance fee.* – Each licensed  
33 employee shall pay to the commission an annual license  
34 maintenance fee set by the commission. The maintenance  
35 fee may vary based on the capacity designated with  
36 respect to the licensee but in no event to exceed three  
37 hundred dollars. The fee may be paid on behalf of the  
38 licensed employee by the employer.

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

1 (a) Any person who knowingly makes a false statement  
2 on an application is guilty of a misdemeanor and, upon  
3 conviction thereof, shall be fined not less than one hun-  
4 dred nor more than five hundred dollars, or confined in the  
5 county or regional jail not less than six months, or both  
6 fined and confined.

7 (b) The commission may not grant a license pursuant to  
8 the provisions of this article if there is substantial evidence  
9 that the applicant:

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

12 (2) Has been suspended from operating a gambling game,  
13 gaming device or gambling operation in another jurisdic-  
14 tion by a board or other governmental authority of that  
15 jurisdiction having responsibility for the regulation of  
16 gambling or gaming activities;

17 (3) Has been convicted of a felony, an offense of moral  
18 turpitude, a gambling offense, a theft or fraud offense, or

19 has otherwise demonstrated, either by a police record or  
20 other satisfactory evidence, a lack of respect for law and  
21 order;

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

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

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

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

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

39 (c) In addition to any other grounds specified in this  
40 article, and subject to the hearing provisions of section  
41 seventeen of this article, in the case of a license to operate  
42 a gaming facility the commission may deny a license to  
43 any applicant, reprimand any licensee, or suspend or  
44 revoke a license if the applicant or licensee or any control-  
45 ling person of the applicant or licensee knowingly employs  
46 an individual in a senior management position who has  
47 been convicted of a felony under the laws of this state,  
48 another state, a territory of the United States or the  
49 United States or employs any individual in a senior  
50 management position who has had a license relating to the  
51 operation of a gaming facility revoked by this state or any  
52 other state.

53 (d) Character references may be required of persons  
54 licensed, but the character references may not be obtained  
55 from persons in the same or similar occupations or profes-  
56 sions in other states.

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

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

3 (1) The type of license;

4 (2) The identity and address of the licensee;

5 (3) The effective date of the license; and

6 (4) Any other information the commission considers  
7 appropriate.

8 (b) Each gaming licensee or licensed supplier of a gaming  
9 facility shall display the license conspicuously in its place  
10 of business or have the license readily available for  
11 inspection at the request of any agent of the commission or  
12 of the state police. Each holder of a license to be employed  
13 by a gaming facility shall carry the license on his or her  
14 person at all times when present in a gaming facility and,  
15 if required by rules adopted by the commission with  
16 respect to the particular capacity in which the licensee is  
17 employed, have some indicia of licensure prominently  
18 displayed on his or her person.

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

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

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

4 (b) At least two months before a license expires, the  
5 commission shall send to the licensee, by mail to the last  
6 known address, a renewal application form and notice that  
7 states:

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

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

12 (3) The amount of the renewal fee.

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

15 (1) Otherwise is entitled to be licensed;

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

17 (A) The sum of twenty-five thousand dollars for a license  
18 to operate a gaming facility;

19 (B) The sum of five thousand dollars for a license to  
20 supply a gaming facility; and

21 (C) As set by the commission by rule in the case of a  
22 license to be employed by an operator of a gaming facility,  
23 not to exceed three hundred dollars, which renewal fee  
24 may be paid on behalf of the licensee by the employer; and

25 (3) Submits to the commission a renewal application in  
26 the form that the commission requires accompanied by  
27 satisfactory evidence of compliance with any additional  
28 requirements set by rules of the commission for license  
29 renewal.

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

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

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

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

5 (1) Fraudulently or deceptively obtains or attempts to  
6 obtain a license for the applicant or licensee or for an-  
7 other;

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

9 (3) Is convicted of a felony under the laws of this state,  
10 another state, a territory of the United States or the  
11 United States.

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

**§29-25-17. Hearing procedures.**

1 Except as otherwise provided by law, before the commis-  
2 sion takes any action involving a licensee under the  
3 provisions of this article, it shall give the persons against  
4 whom the action is contemplated an opportunity for a  
5 hearing before the commission.

6 The commission shall give notice and hold the hearing in  
7 accordance with state law. The notice shall be given to the  
8 person by certified mail to the last known address of the  
9 person at least thirty days before the hearing. The person  
10 may be represented at the hearing by counsel.

11 If a person fails to comply with a subpoena issued under  
12 this section, on petition of the commission, the circuit  
13 court may compel obedience to the subpoena. If after due  
14 notice the person against whom the action is contemplated  
15 fails or refuses to appear, the commission may hear and  
16 determine the matter.

17 Any person aggrieved by a final decision of the commis-  
18 sion in a contested case, as defined in chapter twenty-  
19 nine-a of this code, may appeal as provided for in that  
20 chapter.

**§29-25-18. Consent to warrantless search.**

1 As a condition of licensure and notwithstanding the  
2 separate licensure of the facility as a private club pursuant  
3 to article seven, chapter sixty of this code, any licensee  
4 shall consent to any search without a warrant by agents of  
5 the commission or of the state police designated by the  
6 commission of the licensee's person, personal property and  
7 effects, and premises which are located in the gaming  
8 facility or adjacent facilities under the control of the  
9 licensee, to inspect or investigate for criminal violations of  
10 this article or violations of rules adopted by the commis-  
11 sion.

**§29-25-19. Consent to presence of law-enforcement officers;  
wagering limits.**

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

8 (b) *Setting of wagering limits.* – The operator of a  
9 gaming facility may set minimum and maximum wagers  
10 for any authorized game of chance, except for video  
11 lottery. Video lottery terminals operated at the gaming  
12 facility may not allow more than two dollars to be wag-  
13 ered on a single game.

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

1 The licensed gaming facility shall remit fifty-three  
2 percent of the gross terminal income from video lottery  
3 games at the licensed gaming facility to the commission  
4 through electronic funds transfer. The gaming licensee  
5 shall furnish to the commission all information and bank  
6 authorizations required to facilitate the timely transfer of  
7 moneys to the commission. The gaming licensee shall  
8 provide the commission thirty days' advance notice of any  
9 proposed account changes in order to assure the uninter-  
10 rupted electronic transfer of funds.

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

1 (a) *Imposition and rate of limited gaming profits tax.* –  
2 There is hereby levied and shall be collected a privilege tax  
3 against a gaming licensee in an amount to be determined  
4 by application of the rate against adjusted gross receipts  
5 of the licensed gaming facility. The rate of tax is thirty  
6 seven percent. This tax is in addition to all other taxes  
7 and fees imposed: *Provided*, That the consumers sales and  
8 services tax imposed pursuant to article fifteen, chapter  
9 eleven of this code may not apply to the proceeds from any  
10 wagering with respect to an authorized game of chance  
11 pursuant to this article.

12 (b) *Computation and payment of tax.* – The taxes levied  
13 under the provisions of this section are due and payable in  
14 monthly installments on or before the twenty-first day of  
15 the month following the month in which the tax is ac-  
16 crued. The taxpayer shall, on or before the twenty-first  
17 day of each month make out and mail to the commission  
18 a return for the preceding month, in the form prescribed  
19 by the commission, showing: (1) The total gross receipts  
20 from the gaming facility for that month and the adjusted  
21 gross receipts; (2) the amount of tax for which the tax-  
22 payer is liable; and (3) any further information necessary  
23 in the computation and collection of the tax which the tax  
24 commissioner or the commission may require. Payment of  
25 the amount of tax due shall accompany the return. All  
26 payments made pursuant to this section shall be deposited  
27 in the state gaming fund.

28 (c) *Prohibition on credits.* – Notwithstanding any other  
29 provision of this code to the contrary, no credits may be  
30 allowed against any tax imposed on any taxpayer by this  
31 code for an investment in gaming devices and supplies, for  
32 an investment in real property which would be directly  
33 utilized for the operation of a gaming facility or for any  
34 jobs created at a gaming facility. Notwithstanding any  
35 other provision of this code to the contrary, the tax  
36 imposed by this section may not be added to federal  
37 taxable income in determining West Virginia taxable  
38 income of a taxpayer for purposes of article twenty-four,  
39 chapter eleven of this code.

**§29-25-22. State gaming fund created; allocation of net income.**

1 (a) There is hereby created a special fund in the state  
2 treasury which shall be designated and known as the  
3 "state gaming fund". All revenues received from licenses  
4 and applicants under this article, all gross terminal income  
5 received by the commission under section twenty of this  
6 article and all tax revenues from the tax imposed under  
7 section twenty-one of this article shall be deposited with  
8 the state treasurer and placed in the state gaming fund.  
9 The fund shall be an interest bearing account with interest  
10 to be credited to and deposited in the state gaming fund.

11 (b) All expenses of the commission shall be paid from the  
12 state gaming fund, including reimbursement of the state  
13 police for activities performed at the request of the  
14 commission in connection with background investigations  
15 or enforcement activities pursuant to this article. At no  
16 time may the commission's expenses under this article  
17 exceed fifteen percent of the total of the annual revenue  
18 received from the licensee under this article, including all  
19 license fees, taxes or other amounts required to be depos-  
20 ited in the state gaming fund.

21 (c) The balance of the state gaming fund shall be divided  
22 as follows:

23 (1) Eighty-nine percent of the state gaming fund net  
24 income shall be paid into the general revenue fund to be  
25 appropriated by the Legislature;

26 (2) The tourism promotion fund established in section  
27 nine, article one, chapter five-b of this code shall receive  
28 three percent of the state gaming fund net income;

29 (3) The county where the gaming facility is located shall  
30 receive four percent of the state gaming fund net income;

31 (4) The municipality where the gaming facility is located  
32 or the municipality closest to the gaming facility by paved  
33 road access shall receive two percent of the state gaming  
34 fund net income; and

35 (5) The municipalities within the county where the  
36 gaming facility is located, except for the municipality



37 receiving funds under subdivision (4) of this subsection,  
38 shall receive equal shares of two percent of the state  
39 gaming fund net income.

**§29-25-23. Prohibition on unauthorized wagering.**

1 (a) A gaming licensee may not permit any form of  
2 wagering except as authorized under this article.

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

5 (c) All gaming facility operations shall use a cashless  
6 wagering system whereby all players' money is converted  
7 to tokens, electronic cards or chips at the request of the  
8 wagerer which can only be used for wagering in a licensed  
9 gaming facility, and wagering may not be conducted with  
10 money or other negotiable currency.

11 (d) The gaming licensee is prohibited from offering any  
12 property or service, other than incidental food and bever-  
13 ages, to any person as an inducement to participate in a  
14 game of chance. This prohibition includes the offering of  
15 complimentary or discounted rooms in exchange for a  
16 guest participating in any game of chance at the gaming  
17 facility.

**§29-25-24. Individual gaming restrictions.**

1 (a) An individual may not enter a gaming facility or  
2 remain in a gaming facility to participate in authorized  
3 games of chance if the individual:

4 (1) Is not a registered overnight guest in the historic  
5 resort hotel on whose premises the gaming facility is  
6 located;

7 (2) Is under the age of twenty-one years;

8 (3) Is intoxicated;

9 (4) Is determined by the gaming facility operator or the  
10 commission to be unruly, disruptive or otherwise interfer-  
11 ing with operation of the gaming facility; or to be likely to  
12 commit, or to attempt to commit, a violation of this article;  
13 or

14 (5) Has been barred by the commission from entering a  
15 gaming facility.

16 (b) Notwithstanding any provisions of this code to the  
17 contrary, no employee of the commission or employee of  
18 the historic resort hotel or any member of his or her  
19 immediate household may wager at the gaming facility.

**§29-25-25. Offenses and penalties.**

1 (a) A gaming licensee is guilty of unlawful operation of  
2 a game of chance when:

3 (1) The licensee operates a game of chance in any  
4 location other than a gaming facility;

5 (2) The licensee acts, or employs another person to act,  
6 as a skill or decoy to encourage participation in a game of  
7 chance in a gaming facility;

8 (3) The licensee knowingly permits an individual under  
9 the age of twenty-one years of age to enter or remain in a  
10 gaming facility for the purpose of making a wager; or

11 (4) The licensee exchanges tokens, chips or other forms  
12 of credit to be used for wagering in a gaming facility for  
13 anything of value except in exchange for money.

14 (b) A person is guilty of felonious wager when:

15 (1) The person offers, promises or gives anything of  
16 value or benefit to a person who is connected with a  
17 gaming facility pursuant to an agreement or arrangement  
18 or with intent that the promise or thing of value or benefit  
19 will influence the actions of the person to whom the offer,

20 promise, or gift was made in order to affect or attempt to  
21 affect the outcome of an authorized game of chance, or to  
22 influence official action of the commission. For the  
23 purposes of this subdivision and subdivision (2) of this  
24 subsection, the term "person who is connected with a  
25 gaming facility" includes, but is not limited to, an officer  
26 or employee of a licensee;

27 (2) The person solicits or knowingly accepts or receives  
28 a promise of anything of value or benefit while the person  
29 is connected with a gaming facility, pursuant to an  
30 understanding or arrangement or with the intent that the  
31 promise or thing of value or benefit will influence the  
32 actions of the person to affect or attempt to affect the  
33 outcome of an authorized game of chance, or to influence  
34 official action of the commission;

35 (3) The person uses or possesses with the intent to use a  
36 device to assist:

37 (A) In projecting the outcome of an authorized game of  
38 chance;

39 (B) In keeping track of cards played or in play;

40 (C) In analyzing the probability of the occurrence of an  
41 event relating to an authorized game of chance; or

42 (D) In analyzing the strategy for playing or betting to be  
43 used in an authorized game of chance, except as permitted  
44 by the commission;

45 (4) The person cheats at an authorized game of chance  
46 in a gaming facility;

47 (5) The person manufactures, sells, or distributes any  
48 cards, chips, dice, game or device which is intended to be  
49 used to violate any provision of this article;

50 (6) The person instructs a person in cheating or in the  
51 use of a device for that purpose with the knowledge or

52 intent that the information or use conveyed may be  
53 employed to violate any provision of the article;

54 (7) The person places a bet after acquiring knowledge,  
55 not available to all players, of the outcome of the game of  
56 chance which is the subject of the bet, or aids a person in  
57 acquiring the knowledge for the purpose of placing a bet  
58 contingent on that outcome;

59 (8) The person claims, collects, takes, or attempts to  
60 claim, collect or take, money or anything of value into or  
61 from a gaming facility, with intent to defraud, without  
62 having made a wager contingent on winning a game of  
63 chance, or claims, collects or takes an amount of money or  
64 thing of value of greater value than the amount won;

65 (9) The person uses counterfeit chips or tokens to place  
66 a wager in a gaming facility;

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

70 (11) The person, not a gaming licensee or employee or  
71 agent of a gaming licensee acting in furtherance of the  
72 gaming licensee's interests, has in his or her possession any  
73 device intended to be used to violate a provision of this  
74 article; or

75 (12) The person, not a gaming licensee or agent of a  
76 gaming licensee acting in furtherance of the gaming  
77 licensee's interests, has in his or her possession any key or  
78 device designed for the purpose of opening, entering or  
79 affecting the operation of an authorized game of chance,  
80 drop box or an electronic or mechanical device connected  
81 with or used in connection with an authorized game of  
82 chance in a gaming facility or for removing coins, tokens,  
83 chips or other contents therefrom.

84 (c) Any person who violates the provisions of subsection  
85 (a) of this section is guilty of a misdemeanor and, upon  
86 conviction thereof, shall be fined not more than one  
87 thousand dollars or confined in a county or regional jail  
88 for not more than six months.

89 (d) Any person who violates the provisions of subsection  
90 (b) of this section is guilty of a felony and, upon conviction  
91 thereof, shall be fined not less than five thousand dollars  
92 nor more than ten thousand dollars and committed to the  
93 division of corrections of a definite term of imprisonment  
94 of not less than one year nor more than five years.

**§29-25-26. Forfeiture of property.**

1 (a) Anything of value, including all traceable proceeds  
2 including, but not limited to, real and personal property,  
3 moneys, negotiable instruments, securities and convey-  
4 ances, is subject to forfeiture to the state of West Virginia  
5 if the item was used for any of the following:

6 (1) As a bribe intended to affect the outcome of an  
7 authorized game of chance in a gaming facility; or

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

10 (b) Subsection (a) of this section does not apply if the act  
11 or omission which would give rise to the forfeiture was  
12 committed or omitted without knowledge or consent of the  
13 owner of the property to be forfeited.

**§29-25-27. Civil penalties.**

1 The commission may impose on a person who violates  
2 the provisions of this article a civil penalty not to exceed  
3 ten thousand dollars for each violation, whether or not the  
4 person is licensed under this article.

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Andy Johnson*  
.....  
Chairman Senate Committee

*Jeff Smith*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*Parrell Robins*  
.....  
Clerk of the Senate

*Boyd & Son*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *approved* this the *27th*  
Day of *March*, 1999

*[Signature]*  
.....  
Governor

PRESENTED TO

GOVERNOR

Date 3/23/94

Time 10:39am