WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1999

ENROLLED
SENATE BILL NO. 380
(By Senator SCHOOOVER)

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.

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

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

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

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general
revenue fund of the state to be appropriated by the Legislature;

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

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

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

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder's program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;
(7) A licensee shall receive forty-seven percent of net terminal income;

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

(9) The remaining one percent of net terminal income shall be distributed in the manner set forth in this subdivision. Not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determining the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. One hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial and to restore and maintain the monuments and memorial on the capitol grounds. Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex. The remainder of the one percent of net terminal income shall be deposited in equal amounts
into the grants for competitive arts program and the
capitol dome and capitol improvements fund.

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

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

(f) Until an accounting discrepancy is resolved in favor
of the licensed racetrack, the commission may make no
credit adjustments. For any video lottery terminal reflect-
ing a discrepancy, the licensed racetrack shall submit to
the commission the maintenance log which includes
current mechanical meter readings and the audit ticket
which contains electronic meter readings generated by the
terminal's software. If the meter readings and the commis-
sion's records cannot be reconciled, final disposition of the
matter shall be determined by the commission. Any
accounting discrepancies which cannot be otherwise
resolved shall be resolved in favor of the commission.
(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

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

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

ARTICLE 25. AUTHORIZED GAMING FACILITY.

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

(a) Operation of authorized games of chance. – Notwithstanding any provision of law to the contrary, the operation of those authorized games of chance permitted by this article and the related operation of a gaming facility and ancillary activities is not unlawful when conducted under the terms specified in this article.

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

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

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

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


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

(b) "Adjusted gross receipts" means the gross receipts of a gaming facility from authorized games of chance less winnings paid to wagerers in the games.

(c) "Authorized game of chance" includes baccarat, twenty-one or blackjack, poker, craps, roulette, wheel of
fortune, video lottery games and any other Monte Carlo style table game expressly authorized by rule of the commission, but expressly excludes punchboards, faro, keno, numbers tickets, push cards, jar tickets, pull tabs or similar games.

(d) "Controlling interest" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A license to operate a gaming facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Issue all licenses;

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

(10) Maintain a record of all licenses issued;
(11) Keep a public record of all commission actions and proceedings; and

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

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

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

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

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

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

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

(c) Video lottery games. – The commission is authorized to implement and operate video lottery games at the gaming facility licensed pursuant to this article consistent with the gaming licensee's operation of the gaming facility. With respect to video lottery games, the provisions of article twenty-two-a of this chapter apply to this article, except in the event of a conflict or inconsistency between any of the provisions of this article and the provisions of article twenty-two-a of this chapter. In that event, the provisions of this article supersede any conflicting or inconsistent provisions contained in article twenty-two-a of this chapter. In carrying out its authority under this article, the commission may: (1) Specify by rule additional licensure and fee requirements consistent with
the provisions of article twenty-two-a of this chapter
respecting video lottery manufacturers, service technicians
and validation managers; and (2) adopt and specify any
reasonable procedure, protocol or requirement to enable
video lottery terminals to effectively and efficiently
communicate with the commission's central computer
system used in administering article twenty-two-a of this
chapter.

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

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

§29-25-5. Rules.

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


1 (a) Generally. – Notwithstanding any provision of this
code to the contrary, the director may by contract or
cooperative agreements with state, county or municipal
law-enforcement agencies operating in the county in
which the gaming facility is located arrange for those law-
enforcement services that are necessary to enforce the
provisions of this article.
(b) Costs. – The actual cost of services provided by the state police or municipal law-enforcement agencies in connection with enforcement of the provisions of this article shall be paid from the state gaming fund, and shall include all costs of required training and equipment as well as salary, benefits and other direct costs of additional required personnel.

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

§29-25-7. Local option.

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

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

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

Shall West Virginia lottery commission video lottery games and authorized games of chance be permitted within an area at the [name of qualified historic resort hotel]?
(Place a cross mark in the square opposite your choice.)

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

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

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

(c) Except as specifically provided in this article, no other fees or taxes may be imposed by a local governing body.
§29-25-8. Licenses required.

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

(b) Licenses are required for the following purposes:

1. For any person engaging in the business of operating a gaming facility in the state;
2. For any person engaging in the business of supplying a gaming facility with gaming devices, supplies or services if the gaming facility expends more than fifty thousand dollars annually with that person; and
3. For any individual employed by a gaming licensee in connection with the operation of a gaming facility in the state.

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

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

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

(b) Applicant qualifications. — An applicant for a license to operate a gaming facility shall be the owner or be wholly owned by the owner of an existing historic resort hotel in which the gaming facility is to be located, and the resort hotel shall be located within the jurisdiction of a county approving the operation of a gaming facility in
accordance with section seven of this article. An applicant shall meet the qualifications and requirements set forth in this article and rules adopted by the commission. In determining whether to grant a license to operate a gaming facility to an applicant, the commission shall consider:

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

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

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

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

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

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

(2) The licensee may not in any manner permit a person other than the licensee to have a share, percentage or proportion of any profits generated from the operation of a gaming facility;
(3) The licensee shall not conduct any advertising and promotional activities related to the gaming facility without the prior written approval of the director of the lottery commission; and

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

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

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

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

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

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

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

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

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

(e) Publicly-traded corporations. – In the event that an applicant or any controlling person of an applicant is a publicly-traded corporation, then information otherwise
required to be furnished by an applicant with respect to
stockholders, directors and executive officers of the
publicly-traded corporation shall be limited to informa-
tion concerning only those executive officers of the
publicly-traded corporation whose ongoing and regular
responsibilities relate or are expected to relate directly to
the operation or oversight of the gaming facility.

"Publicly-traded corporation" as used in this subsection
means any corporation or other legal entity except a
natural person which has one or more classes of securities
registered pursuant to section twelve of the Securities
Exchange Act of 1934, as amended (15 U.S.C. §78), or is an
issuer subject to section fifteen-d of that act.

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

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

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

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

(h) *Surety bond requirement.* — The licensed operator of
a gaming facility shall execute a surety bond to be given to
the state to guarantee the licensee faithfully makes the
payments, keeps books and records, makes reports and
conducts gaming in the licensee's gaming facility in
accordance with the provisions of this article and rules promulgated by the commission. The surety bond shall be:

(1) In the amount of five million dollars;

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

(3) With a surety approved by the commission.

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

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

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

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

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

§29-25-10. Reports by licensee.

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

(1) If the costs of the investigation of an applicant are greater than ten thousand dollars, or the lesser investigative fee as may have been conditionally approved by the commission, the investigative agency must show cause for the additional cost. If the commission approves, the applicant shall pay the additional costs as required by the commission, but not to exceed a total investigative fee of fifty thousand dollars.
(2) If the costs of the investigation of an applicant are less than the aggregate investigative fee paid to the commission, the commission shall refund the difference.

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

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

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

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

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

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

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

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

(2) Pay to the commission a nonrefundable application fee for deposit into the state gaming fund in the amount of
three hundred dollars, which fee may be paid on behalf of the applicant by the employer; and

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

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

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

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

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

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

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

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

(3) Has been convicted of a felony, an offense of moral turpitude, a gambling offense, a theft or fraud offense, or
(5) In the case of an applicant for a license to operate a gaming facility or to supply a gaming facility:

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

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

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

(c) In addition to any other grounds specified in this article, and subject to the hearing provisions of section seventeen of this article, in the case of a license to operate a gaming facility the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee or any controlling person of the applicant or licensee knowingly employs an individual in a senior management position who has been convicted of a felony under the laws of this state, another state, a territory of the United States or the United States or employs any individual in a senior management position who has had a license relating to the operation of a gaming facility revoked by this state or any other state.

(d) Character references may be required of persons licensed, but the character references may not be obtained from persons in the same or similar occupations or professions in other states.
§29-25-14. Licenses; availability for inspection; change of address.

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

(1) The type of license;

(2) The identity and address of the licensee;

(3) The effective date of the license; and

(4) Any other information the commission considers appropriate.

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

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

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

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

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

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

(3) The amount of the renewal fee.

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

(1) Otherwise is entitled to be licensed;

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

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

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

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

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

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

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

§29-25-16. License denial, revocation and reprimand.
(a) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee, or any controlling person of the applicant or license:

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

(2) Fraudulently or deceptively uses a license; or

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

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

§29-25-17. Hearing procedures.

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

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

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

Any person aggrieved by a final decision of the commission in a contested case, as defined in chapter twenty-nine-a of this code, may appeal as provided for in that chapter.

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.


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.

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

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

(c) Prohibition on credits. – Notwithstanding any other provision of this code to the contrary, no credits may be allowed against any tax imposed on any taxpayer by this code for an investment in gaming devices and supplies, for an investment in real property which would be directly utilized for the operation of a gaming facility or for any jobs created at a gaming facility. Notwithstanding any other provision of this code to the contrary, the tax imposed by this section may not be added to federal taxable income in determining West Virginia taxable income of a taxpayer for purposes of article twenty-four, chapter eleven of this code.
§29-25-22. State gaming fund created; allocation of net income.

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

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

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

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

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

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

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

(5) The municipalities within the county where the gaming facility is located, except for the municipality
receiving funds under subdivision (4) of this subsection, shall receive equal shares of two percent of the state gaming fund net income.

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

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

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

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

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


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

1. Is not a registered overnight guest in the historic resort hotel on whose premises the gaming facility is located;

2. Is under the age of twenty-one years;

3. Is intoxicated;
(4) Is determined by the gaming facility operator or the
commission to be unruly, disruptive or otherwise interfer-
ing with operation of the gaming facility; or to be likely to
commit, or to attempt to commit, a violation of this article;
or
(5) Has been barred by the commission from entering a
gaming facility.

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

§29-25-25. Offenses and penalties.

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

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

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

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

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

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

(1) The person offers, promises or gives anything of
value or benefit to a person who is connected with a
gaming facility pursuant to an agreement or arrangement
or with intent that the promise or thing of value or benefit
will influence the actions of the person to whom the offer,
promise, or gift was made in order to affect or attempt to
affect the outcome of an authorized game of chance, or to
influence official action of the commission. For the
purposes of this subdivision and subdivision (2) of this
subsection, the term "person who is connected with a
gaming facility" includes, but is not limited to, an officer
or employee of a licensee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) The person, not a gaming licensee or agent of a gaming licensee acting in furtherance of the gaming licensee's interests, has in his or her possession any key or device designed for the purpose of opening, entering or affecting the operation of an authorized game of chance, drop box or an electronic or mechanical device connected with or used in connection with an authorized game of chance in a gaming facility or for removing coins, tokens, chips or other contents therefrom.
(c) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in a county or regional jail for not more than six months.

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


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

(1) As a bribe intended to affect the outcome of an authorized game of chance in a gaming facility; or
(2) In exchange for or to facilitate a violation of this article.

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

§29-25-27. Civil penalties.

The commission may impose on a person who violates the provisions of this article a civil penalty not to exceed ten thousand dollars for each violation, whether or not the person is licensed under this article.
The provisions of article five, chapter twenty-nine-a of this code shall apply to any civil penalty imposed pursuant to the provisions of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the ___th Day of ____________________, 19____

Governor