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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2007

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**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2718**

(By Delegates Swartzmiller, Beach, Caputo, Amores,  
Klempa, Schadler, Shook, Hutchins, Kominar and Wells)

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Passed March 8, 2007

In Effect Ninety Days from Passage

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HB 2718

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COMMITTEE SUBSTITUTE

FOR

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## **H. B. 2718**

(BY DELEGATES SWARTZMILLER, BEACH, CAPUTO, AMORES,  
KLEMPA, SCHADLER, SHOOK, HUTCHINS, KOMINAR AND  
WELLS)

[Passed March 8, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §29-22-18, of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-10c of said code; to amend said code by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and to amend and reenact §29-25-1 of said code, all relating to authorization of West Virginia lottery table games generally; providing for Lottery Commission operation and administration expenses; providing recoupment criteria and changing the recoupment period for the capital reinvestment fund; West Virginia Lottery Racetrack Table Games Act; authorizing West Virginia Lottery table games at licensed horse and dog racetracks; providing for legislative findings, including constitutional considerations; providing definitions; providing for Lottery Commission

regulation of gaming activities; duties and powers of Lottery Commission; authorizing the Lottery Commission to promulgate rules; authorizing the Lottery Commission and director to hire necessary staff; placing requirements and limitations on lottery employees; providing for duties, powers and administrative expenses of the Lottery Commission; requiring local option elections to approve licensure of West Virginia Lottery table games at racetrack facilities; procedure for elections; providing for reconsideration elections; providing for licensees to engage in activities related to operation of West Virginia Lottery table games at racetrack facilities; providing qualifications for applicant for license to operate West Virginia Lottery table games at a racetrack facility; providing floor plan requirements; authorizing management service contracts; coordination of licensed activities; providing license application requirements; establishing an annual license surcharge for failure to construct certain hotel facilities; extension of time for construction; racetrack table games licensee qualifications; establishing license fees; requirement for surety bond; issuance of licenses and prohibiting transfer, assignment, sale or pledge as collateral; requiring audits and reports of licensees; providing duties of racetrack table games licensees; preference in hiring for table games jobs; providing that the state owns exclusive right to conduct table games and may grant a license to operate West Virginia Lottery table games to qualified licensees; providing duties for racetrack table games licensees; licensees to hold state harmless from any and all claims; providing reporting requirements for table games licensees; establishing requirements for licensees to supply gaming equipment or services; establishing requirements of license for employees of operator of racetracks with West Virginia Lottery table games; establishing requirements for management services provider license; establishing license fees; prohibitions to granting of a license; providing grounds for denial, revocation, suspension or reprimand of license; establishing hearing procedures; providing for expiration and renewal of licenses; requiring renewal fees; requiring Lottery Commission to give notice regarding license expiration and renewal to licensees; specifying information to be included on license; requiring display and availability of license; requiring notice of change

of address; requiring commission approval of West Virginia Lottery table games rules of play; resolution of disputes over game rules by Lottery Commission; requiring licensees to provide written notice to players of games of chance of game rules and payouts; providing for method to determine betting limits and operations and services by racetrack licensees; requiring the posting of betting limits and other requirements relating to operations and services; establishing limitations for offering complimentary goods and services; providing conditions for sale of alcohol; providing for contract agreements and costs for services and training of the State Police; exclusive jurisdiction of State Police over felony offenses committed at a racetrack; authorizing inspections and seizure of certain property; authorizing certain warrantless searches of person and property; imposing privilege tax on adjusted gross receipts of racetrack with West Virginia Lottery table games; providing procedure for filing and payment of said tax; exempting racetrack licensees from certain taxes; prohibition on credits against privilege tax; creating West Virginia Lottery Racetrack Table Games Fund; providing for distribution of amounts from said fund; creating Community Based Service Fund; appropriation of moneys for senior services by the Legislature; creating State Debt Reduction Fund; authorizing expenditures from said fund; authorizing and limiting use of funds by counties and municipalities; clarifying and limiting expenses of the Lottery Commission for administration and enforcement of article; providing prohibited wagers and other activities; prohibiting certain wagering methods; establishing criminal offenses and penalties; providing for forfeiture of certain property; providing civil penalties; providing for the preemption of certain local laws, ordinance and rules; providing for exemption from certain federal laws relating to shipment of gambling devices; and revising legislative findings relating to authorization of West Virginia Lottery table games at a well established resort hotel.

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

That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22A-10c of said code be amended and reenacted; that said code be amended by adding

thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and that §29-25-1 of said code be amended and reenacted, all to read as follows:

## **ARTICLE 22. STATE LOTTERY ACT.**

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

1           (a) There is continued a special revenue fund in the State  
2 Treasury which shall be designated and known as the “State  
3 Lottery Fund.” The fund consists of all appropriations to the  
4 fund and all interest earned from investment of the fund and  
5 any gifts, grants or contributions received by the fund. All  
6 revenues received from the sale of lottery tickets, materials  
7 and games shall be deposited with the State Treasurer and  
8 placed into the “State Lottery Fund.” The revenue shall be  
9 disbursed in the manner provided in this section for the  
10 purposes stated in this section and shall not be treated by the  
11 Auditor and Treasurer as part of the general revenue of the  
12 state.

13           (b) No appropriation, loan or other transfer of state funds  
14 may be made to the commission or Lottery Fund after the  
15 initial appropriation.

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

19 (d) Not more than fifteen percent of the gross amount  
20 received from each lottery may be allocated to and may be  
21 disbursed as necessary for fund operation and administration  
22 expenses: *Provided*, That for the period beginning the first  
23 day of the month following the first passage of a referendum  
24 election held pursuant to section seven, article twenty-two-c  
25 of this chapter and for eighteen months thereafter, not more  
26 than seventeen percent of the gross amount received from  
27 each lottery shall be allocated to and may be disbursed as  
28 necessary for fund operation and administration expenses.

29 (e) The excess of the aggregate of the gross amount  
30 received from all lotteries over the sum of the amounts  
31 allocated by subsections (c) and (d) of this section shall be  
32 allocated as net profit. In the event that the percentage  
33 allotted for operations and administration generates a surplus,  
34 the surplus shall be allowed to accumulate to an amount not  
35 to exceed two hundred fifty thousand dollars. On a monthly  
36 basis, the director shall report to the Joint Committee on  
37 Government and Finance of the Legislature any surplus in  
38 excess of two hundred fifty thousand dollars and remit to the  
39 State Treasurer the entire amount of those surplus funds in  
40 excess of two hundred fifty thousand dollars which shall be  
41 allocated as net profit.

42 (f) After first satisfying the requirements for funds  
43 dedicated to the School Building Debt Service Fund in  
44 subsection (h) of this section to retire the bonds authorized to  
45 be issued pursuant to section eight, article nine-d, chapter  
46 eighteen of this code, and then satisfying the requirements for  
47 funds dedicated to the Education, Arts, Sciences and Tourism  
48 Debt Service Fund in subsection (I) of this section to retire  
49 the bonds authorized to be issued pursuant to section eleven-  
50 a, article six, chapter five of this code, any and all remaining  
51 funds in the State Lottery Fund shall be made available to  
52 pay debt service in connection with any revenue bonds issued  
53 pursuant to section eighteen-a of this article, if and to the  
54 extent needed for such purpose from time to time. The  
55 Legislature shall annually appropriate all of the remaining  
56 amounts allocated as net profits in subsection (e) of this  
57 section, in such proportions as it considers beneficial to the

58 citizens of this state, to: (1) The Lottery Education Fund  
59 created in subsection (g) of this section; (2) the School  
60 Construction Fund created in section six, article nine-d,  
61 chapter eighteen of this code; (3) the Lottery Senior Citizens  
62 Fund created in subsection (j) of this section; and (4) the  
63 Division of Natural Resources created in section three, article  
64 one, chapter twenty of this code and the West Virginia  
65 Development Office as created in section one, article two,  
66 chapter five-b of this code, in accordance with subsection (k)  
67 of this section. No transfer to any account other than the  
68 School Building Debt Service Account, the Education, Arts,  
69 Sciences and Tourism Debt Service Fund, the Economic  
70 Development Project Fund created under section eighteen-a,  
71 article twenty-two, chapter twenty-nine of this code, or any  
72 fund from which debt service is paid under subsection (c),  
73 section eighteen-a of this article, may be made in any period  
74 of time in which a default exists in respect to debt service on  
75 bonds issued by the School Building Authority, the State  
76 Building Commission, the Economic Development Authority  
77 or which are otherwise secured by lottery proceeds. No  
78 additional transfer may be made to any account other than the  
79 School Building Debt Service Account and the Education,  
80 Arts, Sciences and Tourism Debt Service Fund when net  
81 profits for the preceding twelve months are not at least equal  
82 to one hundred fifty percent of debt service on bonds issued  
83 by the School Building Authority and the State Building  
84 Commission which are secured by net profits.

85 (g) There is continued a special revenue fund in the State  
86 Treasury which shall be designated and known as the  
87 "Lottery Education Fund." The fund shall consist of the  
88 amounts allocated pursuant to subsection (f) of this section,  
89 which shall be deposited into the Lottery Education Fund by  
90 the State Treasurer. The Lottery Education Fund shall also  
91 consist of all interest earned from investment of the Lottery  
92 Education Fund and any other appropriations, gifts, grants,  
93 contributions or moneys received by the Lottery Education  
94 Fund from any source. The revenues received or earned by  
95 the Lottery Education Fund shall be disbursed in the manner  
96 provided below and may not be treated by the Auditor and  
97 Treasurer as part of the general revenue of the state.

98 Annually, the Legislature shall appropriate the revenues  
99 received or earned by the Lottery Education Fund to the state  
100 system of public and higher education for these educational  
101 programs it considers beneficial to the citizens of this state.

102 (h) On or before the twenty-eighth day of each month, as  
103 long as revenue bonds or refunding bonds are outstanding,  
104 the lottery director shall allocate to the School Building Debt  
105 Service Fund created pursuant to the provisions of section  
106 six, article nine-d, chapter eighteen of this code, as a first  
107 priority from the net profits of the lottery for the preceding  
108 month, an amount equal to one tenth of the projected annual  
109 principal, interest and coverage ratio requirements on any and  
110 all revenue bonds and refunding bonds issued, or to be  
111 issued, on or after the first day of April, one thousand nine  
112 hundred ninety-four, as certified to the lottery director in  
113 accordance with the provisions of section six, article nine-d,  
114 chapter eighteen of this code. In no event shall the monthly  
115 amount allocated exceed one million eight hundred thousand  
116 dollars, nor may the total allocation of the net profits to be  
117 paid into the School Building Debt Service Fund, as provided  
118 in this section, in any fiscal year exceed the lesser of the  
119 principal and interest requirements certified to the lottery  
120 director or eighteen million dollars. In the event there are  
121 insufficient funds available in any month to transfer the  
122 amount required to be transferred pursuant to this subsection  
123 to the School Debt Service Fund, the deficiency shall be  
124 added to the amount transferred in the next succeeding month  
125 in which revenues are available to transfer the deficiency. A  
126 lien on the proceeds of the State Lottery Fund up to a  
127 maximum amount equal to the projected annual principal,  
128 interest and coverage ratio requirements, not to exceed  
129 twenty-seven million dollars annually, may be granted by the  
130 School Building Authority in favor of the bonds it issues  
131 which are secured by the net lottery profits.

132 When the school improvement bonds, secured by profits  
133 from the lottery and deposited in the School Debt Service  
134 Fund, mature, the profits shall become available for debt  
135 service on additional school improvement bonds as a first  
136 priority from the net profits of the lottery or may at the



137 discretion of the authority be placed into the School  
138 Construction Fund created pursuant to the provisions of  
139 section six, article nine-d, chapter eighteen of this code.

140 (I) Beginning on or before the twenty-eighth day of July,  
141 one thousand nine hundred ninety-six, and continuing on or  
142 before the twenty-eighth day of each succeeding month  
143 thereafter, as long as revenue bonds or refunding bonds are  
144 outstanding, the lottery director shall allocate to the  
145 Education, Arts, Sciences and Tourism Debt Service Fund  
146 created pursuant to the provisions of section eleven-a, article  
147 six, chapter five of this code, as a second priority from the net  
148 profits of the lottery for the preceding month, an amount  
149 equal to one tenth of the projected annual principal, interest  
150 and coverage ratio requirements on any and all revenue  
151 bonds and refunding bonds issued, or to be issued, on or after  
152 the first day of April, one thousand nine hundred ninety-six,  
153 as certified to the lottery director in accordance with the  
154 provisions of that section. In no event may the monthly  
155 amount allocated exceed one million dollars nor may the total  
156 allocation paid into the Education, Arts, Sciences and  
157 Tourism Debt Service Fund, as provided in this section, in  
158 any fiscal year exceed the lesser of the principal and interest  
159 requirements certified to the lottery director or ten million  
160 dollars. In the event there are insufficient funds available in  
161 any month to transfer the amount required pursuant to this  
162 subsection to the Education, Arts, Sciences and Tourism Debt  
163 Service Fund, the deficiency shall be added to the amount  
164 transferred in the next succeeding month in which revenues  
165 are available to transfer the deficiency. A second-in-priority  
166 lien on the proceeds of the State Lottery Fund up to a  
167 maximum amount equal to the projected annual principal,  
168 interest and coverage ratio requirements, not to exceed fifteen  
169 million dollars annually, may be granted by the State  
170 Building Commission in favor of the bonds it issues which  
171 are secured by the net lottery profits.

172 When the bonds, secured by profits from the lottery and  
173 deposited in the Education, Arts, Sciences and Tourism Debt  
174 Service Fund, mature, the profits shall become available for  
175 debt service on additional bonds as a second priority from the  
176 net profits of the lottery.

177 (j) There is continued a special revenue fund in the State  
178 Treasury which shall be designated and known as the  
179 "Lottery Senior Citizens Fund." The fund shall consist of the  
180 amounts allocated pursuant to subsection (f) of this section,  
181 which amounts shall be deposited into the Lottery Senior  
182 Citizens Fund by the State Treasurer. The Lottery Senior  
183 Citizens Fund shall also consist of all interest earned from  
184 investment of the Lottery Senior Citizens Fund and any other  
185 appropriations, gifts, grants, contributions or moneys  
186 received by the Lottery Senior Citizens Fund from any  
187 source. The revenues received or earned by the Lottery  
188 Senior Citizens Fund shall be distributed in the manner  
189 provided below and may not be treated by the Auditor or  
190 Treasurer as part of the general revenue of the state.  
191 Annually, the Legislature shall appropriate the revenues  
192 received or earned by the Lottery Senior Citizens Fund to any  
193 senior citizens medical care and other programs it considers  
194 beneficial to the citizens of this state.

195 (k) The Division of Natural Resources and the West  
196 Virginia Development Office, as appropriated by the  
197 Legislature, may use the amounts allocated to them pursuant  
198 to subsection (f) of this section for one or more of the  
199 following purposes: (1) The payment of any or all of the  
200 costs incurred in the development, construction,  
201 reconstruction, maintenance or repair of any project or  
202 recreational facility, as these terms are defined in section  
203 four, article five, chapter twenty of this code, pursuant to the  
204 authority granted to it under article five, chapter twenty of  
205 this code; (2) the payment, funding or refunding of the  
206 principal of, interest on or redemption premiums on any  
207 bonds, security interests or notes issued by the parks and  
208 recreation section of the Division of Natural Resources under  
209 article five, chapter twenty of this code; or (3) the payment of  
210 any advertising and marketing expenses for the promotion  
211 and development of tourism or any tourist facility or  
212 attraction in this state.

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

**§29-22A-10c. Surcharge; capital reinvestment fund.**

1 (a) For all fiscal years beginning on or after the first day  
2 of July, two thousand one, there shall be imposed a surcharge  
3 of ten percent against the excess of total net terminal income  
4 generated from a licensed racetrack for that fiscal year over  
5 total net terminal income from that licensed racetrack for the  
6 fiscal year ending the thirtieth day of June, two thousand one.

7 (b) A Capital Reinvestment Fund is hereby created within  
8 the lottery fund. Forty-two percent of the surcharge amount  
9 attributable to each racetrack shall be retained by the  
10 commission and deposited into a separate Capital  
11 Reinvestment Account for that licensed racetrack. For each  
12 dollar expended by a licensed racetrack for capital  
13 improvements at the racetrack, at the location of any amenity  
14 associated with the licensed racetrack's destination resort  
15 facility operations, or at adjacent facilities owned by the  
16 licensee, having a useful life of seven or more years and  
17 placed in service after the first day of April, two thousand  
18 one, the licensed racetrack shall receive one dollar in  
19 recoupment from its Capital Reinvestment Fund Account:  
20 *Provided*, That in the case of thoroughbred horse tracks, four  
21 cents of every dollar in recoupment shall be reserved into a  
22 separate account, which shall only be spent on capital  
23 improvements and upgrading to facilities used for the  
24 housing and care of horses, facilities located inside the  
25 perimeter of the racing surface, including the surface thereof,  
26 facilities used for housing persons responsible for the care of  
27 horses, and that any such capital improvements and  
28 upgrading shall be subject to recoupment under this section  
29 only if they have been approved by the Horsemen's  
30 Benevolent and Protective Association acting on behalf of the  
31 horsemen: *Provided, however*, That in the case of greyhound  
32 race tracks, four cents of every dollar in recoupment shall be  
33 spent on capital improvements and upgrading in the kennel  
34 area or other areas at the track. If a licensed racetrack's  
35 unrecouped capital improvements exceed its capital  
36 reinvestment fund account at the end of any fiscal year, the

37 excess improvements may be carried forward to seven  
38 subsequent fiscal years.

39 (c) Fifty-eight percent of the surcharge amount plus any  
40 moneys remaining in a racetrack's Capital Reinvestment  
41 Fund Account at the end of any fiscal year shall be deposited  
42 in the State Excess Lottery Revenue Fund created in section  
43 eighteen-a, article twenty-two of this chapter.

## **ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.**

### **§29-22C-1. Short title.**

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

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

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

8 (b) Legislative findings: -

9 (1) The Legislature finds that horse racing and dog racing  
10 and breeding play a critical role in the economy of this state,  
11 enhance the revenue collected at the racetracks, contribute  
12 vital revenues to the counties and municipalities in which the  
13 activities are conducted, provide for significant employment  
14 and protect and preserve greenspace and; that a substantial  
15 state interest exists in protecting these industries.  
16 Furthermore, it finds that the breeding and racing of  
17 thoroughbred horses is an integral part of West Virginia's  
18 agriculture, and that agriculture is a critical ingredient in

19 West Virginia's economy. It further finds that the operation  
20 of table games pursuant to this article, at racetracks in this  
21 state that hold racetrack video lottery licenses and licenses to  
22 conduct horse or dog racing, will protect and preserve the  
23 horse racing and dog racing industries and horse and dog  
24 breeding industries, will protect and enhance the tourism  
25 industry in this state and indirectly benefit other segments of  
26 the economy of this state.

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

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

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

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

..

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

47 (7) The Legislature finds that the most effective manner  
48 in which the state can operate and regulate the forms of  
49 lottery authorized by the provisions of this article is to do so  
50 through licensees and further that effective operation and  
51 regulation requires limiting the number of locations at which  
52 the lottery and lottery games so authorized are allowed.

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

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

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

### §29-22C-3. Definitions.

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

7 (b) *Terms defined.* --

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

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

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

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

24           (5) “Commission” or “State Lottery Commission” means  
25    the West Virginia Lottery Commission created by article  
26    twenty-two of this chapter.

27           (6) “Complimentary” means a service or item provided  
28    at no cost or at a reduced price.

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

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

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

48 (10) "Designated gaming area" means one or more  
49 specific floor areas of a licensed racetrack within which the  
50 commission has authorized operation of racetrack video  
51 lottery terminals or table games, or the operation of both  
52 racetrack video lottery terminals and West Virginia Lottery  
53 table games.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 (26) "Player's account" means a financial record  
145 established by a licensed racetrack for an individual racetrack

146 patron to which the racetrack may credit winnings and other  
147 amounts due to the racetrack patron and from which the  
148 patron may withdraw moneys due to the patron for purchase  
149 of tokens, chips or electronic media or other purposes.

150 (27) "Racetrack table games license" means authorization  
151 granted under this article by the commission to a racetrack  
152 that is already licensed under article twenty-two-a of this  
153 chapter to operate racetrack video lottery terminals and holds  
154 a valid racing license granted by the West Virginia Racing  
155 Commission pursuant to the provision of article twenty-three,  
156 chapter nineteen of this code, which permits the racetrack as  
157 an agent of the commission for the limited purpose of  
158 operation of West Virginia Lottery table games in one or  
159 more designated gaming areas in one or more buildings  
160 owned by the licensed racetrack on the grounds where live  
161 pari-mutuel racing is conducted by the licensee.

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

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

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

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

175 (32) "West Virginia Lottery table game" means any game  
176 played with cards, dice or any mechanical, electromechanical  
177 or electronic device or machine for money, credit or any  
178 representative of value, including, but not limited to,  
179 baccarat, blackjack, poker, craps, roulette, wheel of fortune  
180 or any variation of these games similar in design or operation

181 and expressly authorized by rule of the commission,  
182 including multiplayer electronic table games, machines and  
183 devices, but excluding video lottery, punchboards, faro,  
184 numbers tickets, push cards, jar tickets, pull tabs or similar  
185 games.

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

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

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

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

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

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

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

20 (5) Approve staff considered necessary by the director to  
21 oversee, inspect and monitor the operation of table games at  
22 any racetrack licensed under this article and article twenty-  
23 two-a of this chapter, including, but not limited to, inspection

24 of designated gaming areas, gaming equipment and security  
25 equipment used in the operation of table games to assure  
26 continuous compliance with the provisions of this article,  
27 required license conditions and terms, and applicable rules of  
28 the commission;

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

31 (7) Issue all licenses;

32 (8) Maintain a record of all licenses issued;

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

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

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

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

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

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

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

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

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

64 (5) Promulgate, or propose for promulgation, in  
65 accordance with the provision of article three, chapter  
66 twenty-nine-a of this code, any legislative, interpretive and  
67 procedural rules the commission considers necessary for the  
68 successful implementation, administration and enforcement  
69 of this article, and to amend or revoke any promulgated rule,  
70 in accordance with provisions of article three, chapter  
71 twenty-nine-a of this code, at the discretion of the  
72 commission. Any rule proposed by the commission before  
73 the first day of September, two thousand seven may be  
74 promulgated as an emergency rule;

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

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

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

1 (a) The director, with the approval of the commission,  
2 may appoint any professional, clerical, technical and  
3 administrative personnel, who shall be state employees hired  
4 in accordance with article six, chapter twenty-nine of this

5 code, which the director considers necessary to carry out the  
6 provisions of this article. Prior to his or her appointment,  
7 each applicant for a position shall provide his or her  
8 fingerprints and shall undergo a thorough background  
9 investigation.

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

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

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

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

**§29-22C-6. Licenses required.**

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

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

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

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

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

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

18 (c) The commission may not grant a license to an  
19 applicant until the commission determines that each person  
20 who has control of the applicant also meets all of the  
21 qualifications the applicant must meet to hold the license for  
22 which application is made. The following persons are  
23 considered to have control of an applicant:

24 (1) Each person associated with a corporate applicant,  
25 including any corporate holding company, parent company  
26 or subsidiary company of the applicant, but not including a  
27 bank or other licensed lending institution which holds a  
28 mortgage or other lien acquired in the ordinary course of  
29 business, who has the ability to control the activities of the  
30 corporate applicant or elect a majority of the board of  
31 directors of that corporation;

32 (2) Each person associated with a non-corporate applicant  
33 who directly or indirectly holds any beneficial or proprietary  
34 interest in the applicant or who the commission determines to  
35 have the ability to control the applicant; and

36 (3) Key personnel of an applicant, including any  
37 executive, employee or agent, having the power to exercise  
38 significant influence over decisions concerning any part of  
39 the applicant's business operation.

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



**§29-22C-7. Local option election.**

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

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

12 (c) The county commission of the county in which table  
13 games would be located shall give notice to the public of the  
14 election by publication of the notice as a Class II-0 legal  
15 advertisement in compliance with the provisions of article  
16 three, chapter fifty-nine of this code and the publication area  
17 for the publication shall be the county in which the election  
18 is to be held. The date of the last publication of the notice  
19 shall fall on a date at least thirty days preceding the day of  
20 the election. A local option election shall be effective even  
21 though the date of the order of the county commission setting  
22 the election or the date of publication of notice of the election  
23 is prior to the effective date of this article if the election is  
24 otherwise held in accordance with the provisions of this  
25 section.

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

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

30  Yes  No

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

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

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

54 (g) If the majority votes for allowing West Virginia  
 55 Lottery table games at a licensed racetrack facility in a  
 56 county, another local option election on the issue shall not be  
 57 held for a period of five years. A local option election may  
 58 thereafter be held if a written petition of qualified voters  
 59 residing within the county equal to at least five percent of the  
 60 number of persons who were registered to vote in the next  
 61 preceding general election is received by the county  
 62 commission of the county in which the horse or dog racetrack  
 63 is located. The petition may be in any number of  
 64 counterparts. The petition shall be in the following form:

65 **Petition For Local Option Election**

66 We, the undersigned legally qualified voters, resident  
 67 within the County of \_\_\_\_\_, do hereby  
 68 petition that a special election be held within the County of

69 \_\_\_\_\_ upon the following question: Shall  
70 West Virginia Lottery table games be permitted at the [name  
71 of racetrack]?

72	Name	Address	Date
73		(Post office or street address)	

**§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.**

1 (a) *Racetrack table games licenses.* -- The commission  
2 may issue up to four racetrack table games licenses to operate  
3 West Virginia Lottery table games in accordance with the  
4 provisions of this article. The Legislature intends that no  
5 more than four licenses to operate a racetrack with West  
6 Virginia Lottery table games in this state shall be permitted  
7 in any event.

8 (b) *Grant of license.* -- Upon the passage of a local  
9 option election in a county in accordance with the provisions  
10 of section seven of this article, the commission shall  
11 immediately grant a West Virginia Lottery table games  
12 license, and a license for the right to conduct West Virginia  
13 Lottery table games as assignee to the intellectual property  
14 rights of the state, to allow the licensee to conduct West  
15 Virginia table games at the licensed pari-mutuel racetrack  
16 identified on the local option election ballot, provided that  
17 racetrack holds a valid racetrack video lottery license issued  
18 by the commission pursuant to article twenty-two-a of this  
19 chapter and a valid racing license granted by the West  
20 Virginia Racing Commission pursuant to the provision of  
21 article twenty-three, chapter nineteen of this code and has  
22 otherwise met the requirements for licensure under the  
23 provisions of this article and the rules of the commission.

24 (c) *Location.* -- A racetrack table games license  
25 authorizes the operation of West Virginia Lottery table games  
26 on the grounds of the particular licensed facility identified in  
27 the racetrack video lottery license issued pursuant to article  
28 twenty-two-a and the license to conduct horse or dog racing  
29 issued pursuant to article twenty-three, chapter nineteen of  
30 this code.

31 (d) *Floor plan submission requirement.* -- Prior to  
32 commencing the operation of any table games in a designated  
33 gaming area, a racetrack table games licensee shall submit to  
34 the commission for its approval a detailed floor plan  
35 depicting the location of the designated gaming area in which  
36 table games gaming equipment will be located and its  
37 proposed arrangement of the table games gaming equipment.  
38 Any floor plan submission that satisfies the requirements of  
39 the rules promulgated by the commission shall be considered  
40 approved by the commission unless the racetrack table games  
41 licensee is notified in writing to the contrary within one  
42 month of filing a detailed floor plan.

43 (e) *Management service contracts.* --

44 (1) *Approval.* -- A racetrack table games licensee may not  
45 enter into any management service contract that would permit  
46 any person other than the licensee to act as the commission's  
47 agent in operating West Virginia Lottery table games unless  
48 the management service contract is: (A) With a person  
49 licensed under this article to provide management services;  
50 (B) is in writing; and (C) the contract has been approved by  
51 the commission.

52 (2) *Material change.* -- The licensed racetrack table  
53 games licensee shall submit any material change in a  
54 management service contract previously approved by the  
55 commission to the commission for its approval or rejection  
56 before the material change may take effect.

57 (3) *Prohibition on assignment or transfer.* -- A  
58 management services contract may not be assigned or  
59 transferred to a third party.

60 (4) *Other commission approvals and licenses.* -- The  
61 duties and responsibilities of a management services provider  
62 under a management services contract may not be assigned,  
63 delegated, subcontracted or transferred to a third party to  
64 perform without the prior approval of the commission. Third  
65 parties must be licensed under this article before providing

66 service. The commission may by rule clarify application of  
67 this subdivision and provide exceptions to its application.  
68 The commission shall license and require the display of West  
69 Virginia Lottery game logos on appropriate game surfaces  
70 and other gaming items and locations as the commission  
71 considers appropriate.

72 (f) *Coordination of licensed activities.* -- In order to  
73 coordinate various licensed activities within racetrack  
74 facilities, the following provisions apply to licensed racetrack  
75 facilities:

76 (1) The provisions of this article and of article twenty-  
77 two-a of this chapter shall be interpreted to allow West  
78 Virginia Lottery table games and racetrack video lottery  
79 operations under those articles to be harmoniously conducted  
80 in the same designated gaming area.

81 (2) On the effective date of this article, the provisions of  
82 section twenty-three of this article apply to all video lottery  
83 games conducted within a racetrack facility, notwithstanding  
84 any inconsistent provisions contained in article twenty-two-a  
85 of this chapter to the contrary.

86 (3) On and after the effective date of this article, vacation  
87 of the premises after service of beverages ceases is not  
88 required, notwithstanding to the contrary any inconsistent  
89 provisions of this code or inconsistent rules promulgated by  
90 the Alcohol Beverage Control Commissioner with respect to  
91 hours of sale of those beverages, or required vacation of the  
92 premises.

93 (g) *Fees, expiration date and renewal.* --

94 (1) An initial racetrack table games license fee of one  
95 million five hundred thousand dollars shall be paid to the  
96 commission at the time of issuance of the racetrack table  
97 games license, regardless of the number of months remaining  
98 in the license year for which it is issued. All licenses expire  
99 at the end of the day on the thirtieth day of June each year.

100       (2) The commission shall annually renew a racetrack  
101 table games license as of the first day of July of each year  
102 provided the licensee:

103       (A) Successfully renews its racetrack video lottery  
104 license under article twenty-two-a of this chapter before the  
105 first day of July;

106       (B) Pays to the commission the annual license renewal  
107 fee of two million five hundred thousand dollars required by  
108 this section at the time it files its application for renewal of its  
109 license under article twenty-two-a of this chapter; and

110       (C) During the current license year, the licensee complied  
111 with all provisions of this article, all rules adopted by the  
112 commission and all final orders of the commission applicable  
113 to the licensee.

114       (3) *Annual license surcharge for failure to construct*  
115 *hotel on premises* -- It is the intent of the Legislature that  
116 each racetrack for which a racetrack table games license has  
117 been issued be or become a destination tourism resort facility.  
118 To that end, it is important that each racetrack for which a  
119 racetrack table games license has been issued operate a hotel  
120 with significant amenities. Therefore, in addition to all other  
121 taxes and fees required by the provisions of this article, there  
122 is hereby imposed, upon each racetrack for which a racetrack  
123 table games license has been issued an annual license  
124 surcharge, payable to the commission in the amount of two  
125 million five hundred thousand dollars if that racetrack does  
126 not operate a hotel on its racing property that contains at least  
127 one hundred fifty guest rooms with significant amenities  
128 within three years of the passage of the local option election  
129 in its county authorizing table games at the racetrack,  
130 provided the time for completion of the hotel shall be  
131 extended by the same number of days as the completion of  
132 the hotel is delayed by a force majeure events or conditions  
133 beyond the reasonable control of the racetrack licensee. The  
134 surcharge shall be paid upon each renewal of its racetrack  
135 table games license made after the expiration of the three

136 year period, and may be extended by the above force majeure  
137 events or conditions, until the racetrack opens a qualifying  
138 hotel.

139 (4) If the licensee fails to apply to renew its license under  
140 article twenty-three, chapter nineteen and article twenty-two-  
141 a, chapter twenty-nine of this code until after the license  
142 expires, the commission shall renew its license under this  
143 article at the time it renews its license under article twenty-  
144 two-a of this chapter provided the licensee has paid the  
145 annual license fee required by this section and during the  
146 preceding license year the licensee complied with all  
147 provisions of this article, all rules adopted by the commission  
148 and all final orders of the commission applicable to the  
149 licensee.

150 (h) *Facility qualifications.* -- A racetrack table games  
151 licensee shall demonstrate that the racetrack with West  
152 Virginia Lottery table games will: (1) Be accessible to  
153 disabled individuals in accordance with applicable federal  
154 and state laws; (2) be licensed in accordance with this article,  
155 and all other applicable federal, state and local laws; and (3)  
156 meet any other qualifications specified in rules adopted by  
157 the commission.

158 (1) *Surety bond.* -- A racetrack table games licensee shall  
159 execute a surety bond to be given to the state to guarantee the  
160 licensee faithfully makes all payments in accordance with the  
161 provisions of this article and rules promulgated by the  
162 commission. The surety bond shall be:

163 (1) In the amount determined by the commission to be  
164 adequate to protect the state against nonpayment by the  
165 licensee of amounts due the state under this article;

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

167 (3) With a surety approved by the commission who is  
168 licensed to write surety insurance in this state. The bond  
169 shall remain in effect during the term of the license and may  
170 not be canceled by a surety on less than thirty days' notice in

171 writing to the commission. The total and aggregate liability  
172 of the surety on the bond is limited to the amount specified in  
173 the bond.

174 (j) *Authorization.* -- A racetrack table games license  
175 authorizes the licensee act as an agent of the commission in  
176 operating an unlimited amount of West Virginia Lottery table  
177 games while the license is active, subject to subsection (d) of  
178 this section. A racetrack table games license is not  
179 transferable or assignable and cannot be sold or pledged as  
180 collateral.

181 (k) *Audits.* -- When applying for a license and annually  
182 thereafter prior to license renewal, a racetrack table games  
183 licensee shall submit to the commission an annual audit, by  
184 a certified public accountant, of the financial transactions and  
185 condition of the licensee's total operations. The audit shall  
186 be made in accordance with generally accepted accounting  
187 principles and applicable federal and state laws.

188 (l) *Commission office space.* -- A racetrack table games  
189 licensee shall provide to the commission, at no cost to the  
190 commission, suitable office space at the racetrack facility for  
191 the commission to perform the duties required of it by this  
192 article and the rules of the commission.

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

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

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



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

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

6 (2) Conduct all table games activities and functions in a  
7 manner which does not pose a threat to the public health,  
8 safety or welfare of the citizens of this state and which does  
9 not adversely affect the security or integrity of the operation  
10 of West Virginia Lottery table games;

11 (3) Hold the commission and this state harmless from and  
12 defend and pay for the defense of any and all claims which  
13 may be asserted against a racetrack licensee, the commission,  
14 the state or employees thereof, arising from the licensee's  
15 actions or omission while acting as an agent of the  
16 commission by operation of West Virginia Lottery table  
17 games pursuant to this article;

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

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

38 (6) Maintain all records required by the commission;

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

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

47 (9) Conduct no less than two hundred twenty live racing  
48 dates for each horse or dog race meeting or such other  
49 number of live racing dates as may be approved by the racing  
50 commission in accordance with the provisions of section  
51 twelve-b, article twenty-three, chapter nineteen of this code,  
52 and otherwise keep in good standing, all licenses and permits  
53 granted by the racing commission pursuant to section six,  
54 article twenty-three, chapter nineteen of this code, and any  
55 rules promulgated thereunder.

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

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

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

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

69 (4) Ensure that West Virginia Lottery table games are  
70 placed and remain placed in the specific locations within  
71 designated gaming areas at the licensed racetrack which have

72 been approved by the commission. West Virginia Lottery  
73 table games at a licensed racetrack shall only be relocated in  
74 accordance with the rules of the commission;

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

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

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

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

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

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

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

6 (b) *License qualifications.* -- Each applicant who is an  
7 individual and each individual who controls an applicant, as  
8 provided in subsection (c) section six of this article, shall be  
9 of good moral character, honesty and integrity and shall have  
10 the necessary experience and financial ability to successfully  
11 carry out the functions of a West Virginia Lottery table  
12 games supplier. The commission may adopt rules  
13 establishing additional requirements for a West Virginia

14 Lottery table games supplier. The commission may accept  
15 licensing by another jurisdiction, specifically determined by  
16 the commission to have similar licensing requirements, as  
17 evidence the applicant meets West Virginia Lottery table  
18 games supplier licensing requirements.

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

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

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

35 (2) Submit fingerprints for a national criminal records  
36 check by the Criminal Identification Bureau of the West  
37 Virginia State Police and the Federal Bureau of Investigation.  
38 The fingerprints shall be furnished by all persons required to  
39 be named in the application and shall be accompanied by a  
40 signed authorization for the release of information by the  
41 Criminal Investigation Bureau and the Federal Bureau of  
42 Investigation. The commission may require any applicant  
43 seeking the renewal of a license or permit to furnish  
44 fingerprints for a national criminal records check by the  
45 Criminal Identification Bureau of the West Virginia State  
46 Police and the Federal Bureau of Investigation; and

47 (3) Pay to the commission a nonrefundable application  
48 and license fee for deposit into the Racetrack Table Games  
49 Fund in the amount of one hundred dollars, which shall be in

50 lieu of the first year's license fee provided in subsection (g)  
51 of this section.

52 (e) *Authorization.* -- A license to supply a racetrack table  
53 games licensee authorizes the licensee to sell or lease gaming  
54 equipment or offer services to a racetrack with West Virginia  
55 Lottery table games while the license is active. The  
56 commission may by rule establish the conditions which  
57 constitute an emergency under which the commission may  
58 issue provisional licenses pending completion of final action  
59 on an application.

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

65 (g) *Fees, expiration date and renewal.* -- A licensed table  
66 games supplier shall pay to the commission an annual license  
67 fee of one hundred dollars for an initial term beginning prior  
68 to the date of the supplier's first sale to a racetrack table  
69 games licensee and continuing through the end of the twelfth  
70 month thereafter whenever the licensee has paid the renewal  
71 fee and has continued to comply with all applicable statutory  
72 and rule requirements. The commission shall renew a license  
73 to supply a racetrack with West Virginia Lottery table games  
74 annually thereafter. A racetrack table games licensee may  
75 continue to use supplies acquired from a licensed table games  
76 supplier while that supplier was licensed, notwithstanding the  
77 expiration of the supplier's license, unless the commission  
78 finds a defect in those gaming supplies.

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

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

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

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

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

24       (2) Submit fingerprints for a national criminal records  
25 check by the Criminal Identification Bureau of the West  
26 Virginia State Police and the Federal Bureau of Investigation.  
27 The fingerprints shall be furnished by all persons required to  
28 be named in the application and shall be accompanied by a  
29 signed authorization for the release of information by the  
30 Criminal Investigation Bureau and the Federal Bureau of  
31 Investigation. The commission may require any applicant  
32 seeking the renewal of a license or permit to furnish  
33 fingerprints for a national criminal records check by the  
34 Criminal Identification Bureau of the West Virginia State  
35 Police and the Federal Bureau of Investigation; and

36       (3) Pay to the commission a nonrefundable application  
37 fee for deposit into the Racetrack Table Games Fund in the  
38 amount of one hundred dollars. The fee may be paid on  
39 behalf of an applicant by the employer.

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

45 (e) *Renewal fee and form.* -- Each licensed employee  
46 shall pay to the commission an annual license fee set by the  
47 commission by rule by the thirtieth day of June of each year.  
48 The fee may vary based on the job classification of the  
49 applicant, but in no event shall it exceed one hundred dollars.  
50 The fee may be paid on behalf of the licensed employee by  
51 the employer. In addition to a renewal fee, each licensed  
52 employee shall submit a renewal application on the form  
53 required by the commission.

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

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

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

20 (c) *Management service provider specifications.* -- An  
21 applicant for a license to provide management services to a

22 racetrack table games licensee shall demonstrate that the  
23 management services that the applicant plans to offer to the  
24 racetrack table games licensee conform or will conform to  
25 standards established by rules of the commission and  
26 applicable state law. The commission may accept  
27 management services provider approval by another  
28 jurisdiction, specifically determined by the commission to  
29 have management services, as evidence the applicant meets  
30 the standards established by the commission and applicable  
31 state law.

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

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

38 (2) Submit fingerprints for a national criminal records  
39 check by the Criminal Identification Bureau of the West  
40 Virginia State Police and the Federal Bureau of Investigation.  
41 The fingerprints shall be furnished by all persons required to  
42 be named in the application and shall be accompanied by a  
43 signed authorization for the release of information by the  
44 Criminal Investigation Bureau and the Federal Bureau of  
45 Investigation. The commission may require any applicant  
46 seeking the renewal of a license or permit to furnish  
47 fingerprints for a national criminal records check by the  
48 Criminal Identification Bureau of the West Virginia State  
49 Police and the Federal Bureau of Investigation; and

50 (3) Pay to the commission a nonrefundable application  
51 and license fee for deposit into the Racetrack Table Games  
52 Fund in the amount of one hundred dollars, which shall be in  
53 lieu of the first year's license fee provided in subsection (f)  
54 of this section.

55 (e) *Authorization.* -- A license to provide management  
56 services to a racetrack table games licensee authorizes the  
57 licensee to provide management services to a racetrack with



58 West Virginia Lottery table games while the license is active.  
59 The commission may by rule establish the conditions which  
60 constitute an emergency under which the commission may  
61 issue provisional licenses pending completion of final action  
62 on an application.

63 (f) *Fees, expiration date and renewal.* -- A licensed  
64 provider of management services shall pay to the commission  
65 an annual license fee of one hundred dollars for an initial  
66 term beginning prior to the date of the provider's first  
67 contract with a racetrack table games licensee and continuing  
68 through the end of the twelfth month thereafter whenever the  
69 licensee has paid the renewal fee and has continued to  
70 comply with all applicable statutory and rule requirements.  
71 The commission shall renew a license to provide  
72 management services to a racetrack with West Virginia  
73 Lottery table games annually thereafter. A racetrack table  
74 games licensee may continue to use the management services  
75 provided by the management services provider while that  
76 provider was licensed, notwithstanding the expiration of the  
77 provider's license, unless the commission finds the services  
78 provided are not conforming to standards established by rule  
79 of the commission and applicable state law.

**§29-22C-15. License prohibitions.**

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

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

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

11 (3) Has been convicted of a crime of moral turpitude, a  
12 gambling-related offense, a theft or fraud offense, or has

13 otherwise demonstrated, either by a police record or other  
14 satisfactory evidence, a lack of respect for law and order.

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

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

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

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

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

38 (1) If the applicant or licensee knowingly employs an  
39 individual in a job classification which includes West  
40 Virginia Lottery table games management duties who has  
41 been convicted of a crime of moral turpitude, a gambling-  
42 related offense, or a theft or fraud offense under the laws of  
43 this state, another state, the United States or a territory of the  
44 United States or knowingly employs any individual in a job  
45 classification which includes West Virginia Lottery table  
46 games management duties who has had a license relating to  
47 the operation of a gaming activity revoked by this state or  
48 any other state;

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

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

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

1 (a) Notwithstanding any provision of subsection (b),  
2 section thirteen of this article to the contrary, the commission  
3 may deny a license to any applicant, reprimand any licensee,  
4 or suspend or revoke a license if the applicant or licensee, or  
5 any person having control of the applicant or licensee:

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

9 (2) Fraudulently or deceptively uses a license;

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

13 (4) Is convicted of a misdemeanor under the laws of this  
14 state, another state, the United States or a territory of the  
15 United States for gambling or a gambling related activity.

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

**§29-22C-17. Hearing procedures.**

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

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

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

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

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

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

- 5 (1) The date on which the current license expires;
- 6 (2) The date by which the commission must receive the  
7 renewal application for the renewal to be issued and mailed  
8 before the existing license expires; and
- 9 (3) The amount of the renewal fee.

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

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

- 3 (1) The type of license;
- 4 (2) The identity and address of the licensee;
- 5 (3) The effective date of the license;
- 6 (4) For employee licenses, the picture of the licensee; and
- 7 (5) Any other information the commission considers  
8 appropriate.

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

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

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

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

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

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

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

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

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

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

7 (1) Minimum and maximum wagers;

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

12 (3) Hours of operation;

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

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

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

20 (1) Minimum and maximum payout percentages;

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

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

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

1 A racetrack table game licensee shall conspicuously post  
2 a sign at each West Virginia Lottery table game indicating  
3 the permissible minimum and maximum wagers pertaining at  
4 that table. A racetrack table games licensee may not require

5 any wager to be greater than the stated minimum or less than  
6 the stated maximum. However, any wager actually made by  
7 a patron and not rejected by a racetrack table games licensee  
8 prior to the commencement of play shall be treated as a valid  
9 wager.

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

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

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

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

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

24 (b) Notwithstanding any provision of subsection (a) of  
25 this section to the contrary, a racetrack table games licensee  
26 may offer and provide complimentary cash or non-cash gifts  
27 that are not otherwise included in that subsection to any  
28 person: *Provided*, That any complimentary cash or non-cash  
29 gifts in excess of an amount per trip to be set by interpretive



30 rule of the commission, are supported by documentation  
31 regarding the reason the gift was provided to the patron and  
32 his or her guests, including where applicable a patron's  
33 player rating. The documentation shall be maintained by a  
34 racetrack table games licensee in accordance with  
35 commission rules. For purposes of this subsection, all gifts  
36 presented to a patron and a patron's guests directly by the  
37 racetrack table games licensee or indirectly on behalf of the  
38 licensee by a third party within any five-day period shall be  
39 considered to have been made during a single trip.

40 **§29-22C-24. Law enforcement.**

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

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

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

**§29-22C-25. Inspection and seizure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34           (4) When adjusted gross receipts for a week is a negative  
35 number because the winnings paid to patrons wagering on the  
36 racetrack's West Virginia Lottery table games exceeds the  
37 racetrack's gross receipts from the purchase of table game  
38 tokens, chips or electronic media by patrons, the commission  
39 shall allow the licensee to, pursuant to rules of the  
40 commission, carry over the negative amount of adjusted  
41 gross receipts to returns filed for subsequent weeks. The  
42 negative amount of adjusted gross receipts may not be carried  
43 back to an earlier week and the commission is not required to

44 refund any tax received by the commission, except when the  
45 licensee surrenders its license to act as agent of the  
46 commission in operating West Virginia lottery table games  
47 under this article and the licensee's last return filed under this  
48 section shows negative adjusted gross receipts. In that case,  
49 the commission shall multiply the amount of negative  
50 adjusted gross receipts by the applicable rate of tax and pay  
51 the amount to the licensee, in accordance with rules of the  
52 commission.

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

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

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

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

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

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

1 (a)(1) There is hereby created and established a special  
2 fund in the State Treasury to be known as the West Virginia  
3 Lottery Racetrack Table Games Fund and all tax collected  
4 under this article shall be deposited with the State Treasurer  
5 and placed in the West Virginia Lottery Racetrack Table  
6 Games Fund. The Fund shall be an interest bearing account  
7 with all interest or other return earned on the money of the  
8 fund credited to and deposited in the fund.

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

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

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

26           (2) Transfer two and one-half percent of adjusted gross  
27 receipts from all thoroughbred racetracks with West Virginia  
28 Lottery table games to the special funds established by each  
29 thoroughbred racetrack table games licensees for the payment  
30 of regular racetrack purses, such amount being divided  
31 equally between such special funds of each thoroughbred  
32 racetrack table games licensee and transfer two and one-half  
33 percent of adjusted gross receipts from all greyhound  
34 racetracks with West Virginia Lottery table games to the  
35 special funds established by each greyhound racetrack table  
36 games licensees for the payment of regular racetrack purses,  
37 such amount being divided equally between such special  
38 funds of each greyhound racetrack table games licensee;

39           (3) Transfer two percent of the adjusted gross receipts  
40 from all licensed racetracks to the Thoroughbred  
41 Development Fund created under section thirteen-b, article  
42 twenty-three, chapter nineteen of this code and the  
43 Greyhound Breeding Development Fund created under  
44 section ten, article twenty-three, chapter nineteen of this  
45 code. The total amount transferred under this subdivision  
46 shall be divided pro rata among the development funds for  
47 each racetrack table games licensee based on relative  
48 adjusted receipts from each racetrack. No portion of the  
49 amounts transferred to these funds may be used for the  
50 benefit of any person or activity other than at or associated  
51 with a racetrack table games licensee;

52           (4) Transfer one percent of the adjusted gross receipts  
53 from each licensed racetrack to the county commissions of  
54 the counties where racetracks with West Virginia Lottery  
55 table games are located. The one percent transferred under  
56 this subdivision shall be divided pro rata among the counties  
57 with a racetrack with West Virginia Lottery table games  
58 based on relative adjusted gross receipts from each county's  
59 racetrack: *Provided*, That the county board of education of  
60 a growth county, as that term is defined in section three,  
61 article twenty, chapter seven of this code, which has enacted  
62 the Local Powers Act, and in which county a racetrack is  
63 located that has participated in the West Virginia  
64 Thoroughbred Development Fund since on or before the first

65 day of January, one thousand nine hundred ninety-one, shall  
66 receive one percent of adjusted gross receipts as provided in  
67 this subdivision for the purpose of capital improvements;

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

73 (A) One half of the amounts transferred under this  
74 subdivision shall be allocated to the municipalities within  
75 each county having a racetrack table games licensee, based  
76 on relative adjusted gross receipts from West Virginia  
77 Lottery table games from those racetracks and the total  
78 amount allocated to the municipalities within a county shall  
79 be divided pro-rata among the municipalities based on each  
80 municipality's population determined at the most recent  
81 United States decennial census of population: *Provided,*  
82 That: (i) For each allocation, when a municipality is  
83 physically located in two or more counties, only that portion  
84 of its population residing in the county where the authorized  
85 table games are located shall be considered; (ii) no single  
86 municipality in a county where West Virginia Lottery  
87 racetrack table games are played may receive a total share  
88 under this part A that is in excess of seventy-five percent of  
89 the total distribution under this part A for the county in which  
90 the municipality is located; and (iii) no municipality  
91 receiving monies under this part A shall receive an amount  
92 which is less than that received by a municipality under  
93 provisions of subdivision four, subsection (c) of this section;  
94 and

95 (B) One half of the amounts transferred under this  
96 subdivision shall be allocated pro-rata to the municipalities  
97 within all the counties having a racetrack table games  
98 licensee based on each municipality's population determined  
99 at the most recent United States decennial census of  
100 population: *Provided,* That: (i) No municipality which  
101 received funds above its pro-rata share pursuant to subpart  
102 (iii) of part A above shall receive an allocation under this part

103 B; (ii) for each allocation, when a municipality is physically  
104 located in two or more counties, only that portion of its  
105 population residing in the county where the authorized table  
106 games are located shall be considered; and (iii) no single  
107 municipality in a county where West Virginia Lottery  
108 racetrack games are played may receive a total share under  
109 this part B that is in excess of twenty-five percent of the total  
110 transfers under this part B: *Provided, however,* That the  
111 county board of education of a growth county, as that term is  
112 defined in section three, article twenty, chapter seven of this  
113 code, which has enacted the Local Powers Act, and in which  
114 county a racetrack is located that has participated in the West  
115 Virginia Thoroughbred Development Fund since on or before  
116 the first day of January, one thousand nine hundred ninety-  
117 one, shall receive the two percent of adjusted gross receipts  
118 as provided in this subdivision for the purpose of capital  
119 improvements;

120 (6) Transfer one-half of one percent of the adjusted gross  
121 receipts to the governing bodies of municipalities in which a  
122 racetrack table games licensee is located, which  
123 municipalities shall each receive an equal share of the total  
124 amount allocated under this subdivision: *Provided,* That no  
125 distribution under this subdivision shall be made to any  
126 municipality which did not have a licensed racetrack within  
127 its municipal boundaries as they existed on the first day of  
128 January, two thousand seven: *Provided, however,* That if no  
129 racetrack table games licensee is located within a  
130 municipality, no transfer shall be made under this  
131 subdivision; and

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

136 (c) From the net amounts in the Racetrack Table Games  
137 Fund, the commission shall:

138 (1) Transfer seventy-six percent to the State Debt  
139 Reduction Fund, which is hereby created in the State



140 Treasury. Moneys of the fund shall be expended solely for  
141 the purpose of accelerating the reduction of existing  
142 unfunded liabilities and existing bond indebtedness of the  
143 state and shall be expended or transferred only upon  
144 appropriation of the Legislature;

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

151 (3) Transfer ten percent, to be divided and paid in equal  
152 shares, to each county commission in the state that is not  
153 eligible to receive a distribution under subdivision four,  
154 subsection (b) of this section: *Provided*, That funds  
155 transferred to county commissions under this subdivision  
156 shall be used only to pay regional jail expenses and the costs  
157 of infrastructure improvements and other capital  
158 improvements.

159 (4) Transfer ten percent, to be divided and paid in equal  
160 shares, to the governing bodies of each municipality in the  
161 state that is not eligible to receive a distribution under  
162 subdivisions five and six, subsection (b) of this section:  
163 *Provided*, That funds transferred to municipalities under this  
164 subdivision shall be used only to pay for debt reduction in  
165 municipal police and fire pension funds and the costs of  
166 infrastructure improvements and other capital improvements.

167 (d) All expenses of the commission incurred in the  
168 administration and enforcement of this article shall be paid  
169 from the Racetrack Table Games Fund, including  
170 reimbursement of state law-enforcement agencies for services  
171 performed at the request of the commission pursuant to this  
172 article. At no time may the commission's expenses  
173 associated with a particular racetrack with authorized table  
174 games under this article exceed three percent of the total  
175 annual adjusted gross receipts received from that licensee's  
176 operation of table games under this article, including, but not

177 limited to, all license fees or other amounts attributable to the  
178 licensee's operation of table games under this article. These  
179 expenses shall either be allocated to the racetrack with West  
180 Virginia Lottery table games for which the expense is  
181 incurred, if practicable, or be treated as general expenses  
182 related to all racetrack table games facilities and be allocated  
183 pro-rata among the racetrack table games facilities based on  
184 the ratio that annual adjusted gross receipts from operation of  
185 table games at each racetrack with West Virginia Lottery  
186 table games bears to total annual adjusted gross receipts from  
187 operation of table games at all racetracks with West Virginia  
188 Lottery table games during the fiscal year of the state. From  
189 this allowance, the commission shall transfer at least one  
190 hundred thousand but not more than five hundred thousand  
191 dollars into the Compulsive Gambling Treatment Fund  
192 created in section nineteen, article twenty-two-a of this  
193 chapter.

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

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

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

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

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

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

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

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

**§29-22C-29. Offenses and penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (1) The person offers, promises or gives anything of  
55 value or benefit to a person who has an ownership or

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

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

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

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

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

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

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

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

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

99 (5) The person places a bet after unlawfully acquiring  
100 knowledge of the outcome of the West Virginia Lottery table  
101 game that is the subject of the bet or aids a person in  
102 acquiring that knowledge for the purpose of placing a bet  
103 contingent on the outcome of a West Virginia Lottery table  
104 game authorized under this article;

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

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

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

121 (9) The person, not a licensed racetrack under this article  
122 or an employee or agent of a racetrack licensed under this  
123 article acting in furtherance of the licensee's interest, has in  
124 his or her possession on grounds owned by the racetrack  
125 licensed under this article or on grounds contiguous to the

126 licensed racetrack, any device, by whatever name called,  
127 intended to be used to violate a provision of this article or a  
128 rule of the commission implementing or explaining a  
129 provision of this article; or

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

139 (d) Any person who violates any provision of subsection  
140 (a) or (b) of this section is guilty of a misdemeanor and, upon  
141 conviction thereof, shall be fined not more than one thousand  
142 dollars and committed to a state correctional facility for not  
143 more than six months, except that in the case of a person  
144 other than a natural person, the amount of the fine imposed  
145 may not be more than twenty-five thousand dollars.

146 (e) Any person who violates any provision of subsection  
147 (c) of this section is guilty of a felony and, upon conviction  
148 thereof, shall be fined not less than five thousand dollars nor  
149 more than ten thousand dollars and committed to a state  
150 correctional facility for a term of imprisonment not less than  
151 one year nor more than five years.

152 (f) With regard to subdivision (3), subsection (c) of this  
153 section, each racetrack table games licensee shall post notice  
154 of this prohibition and the penalties of this section in a  
155 manner determined by the commission.

**§29-22C-30. 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 conveyances,  
4 is subject to forfeiture to the State of West Virginia if the  
5 item is used for any of the following:

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

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

10 (b) The Legislature finds and declares that the seizure and  
11 sale of items under the provisions of this section is not  
12 contemplated to be a forfeiture as that term is used in section  
13 5, article XII of the Constitution of West Virginia and, to the  
14 extent that a seizure and sale may be found to be such a  
15 forfeiture, the Legislature hereby finds and declares that the  
16 proceeds from a seizure and sale under this article are not  
17 part of net proceeds as it is contemplated by section five,  
18 article XII of the Constitution of West Virginia.

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

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

**§29-22C-31. Civil penalties.**

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

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

**§29-22C-32. Preemption.**



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

8

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

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

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

1 All shipments of gambling devices, including video  
2 lottery machines, to licensed racetracks in this state, the  
3 registering, recording, and labeling of which have been  
4 completed by the manufacturer or dealer thereof in  
5 accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C.  
6 §1171 to §1178, are legal shipments of gambling devices into  
7 the State of West Virginia.

**ARTICLE 25. AUTHORIZED GAMING FACILITY.**

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

1 (a) *Operation of authorized games of chance.* --  
2 Notwithstanding any provision of law to the contrary, the  
3 operation of West Virginia lottery games permitted by this  
4 article and the related operation of a gaming facility and  
5 ancillary activities is not unlawful when conducted under the  
6 terms specified in this article and article twenty-two-c of this  
7 chapter.

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

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

19 The Legislature finds and declares that video lottery  
20 operations pursuant to subsection (c), section three of this  
21 article and the operation of the other authorized games of  
22 chance permitted by this article constitute the operation of  
23 lotteries within the purview of section thirty-six, article VI of  
24 the Constitution of West Virginia.

25 (c) *Legislative intent.* -- It is the intent of the Legislature  
26 in the enactment of this article to promote tourism and year-  
27 round employment in this state. It is expressly not the intent  
28 of the Legislature to promote gaming. As a consequence, it  
29 is the intent of the Legislature to allow limited gaming as  
30 authorized by this article and article twenty-two-c of this  
31 chapter with all moneys gained from the operation of the  
32 gaming facility, other than those necessary to reimburse  
33 reasonable costs of operation, to inure to the benefit of the  
34 state.

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

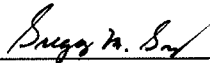
  
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Chairman Senate Committee

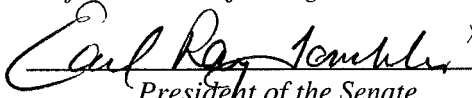
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

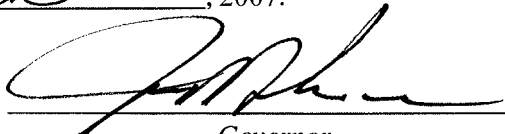
  
\_\_\_\_\_  
Clerk of the Senate

  
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Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 21<sup>st</sup>  
day of March, 2007.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 15 2007

Time 4:15 pm