

SB 575

FILED

2009 MAY -7 PM 6: 35

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 575**

(SENATORS GUILLS, CARUTH, KESSLER, BOWMAN AND  
FOSTER, *original sponsors*)

[Passed April 10, 2009; in effect from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-29; to amend and reenact §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-8, §29-25-9, §29-25-11, §29-25-12, §29-25-13, §29-25-16, §29-25-17, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-22, §29-25-23, §29-25-24, §29-25-25 and §29-25-26 of said code; and to amend said code by adding thereto twelve new sections, designated §29-25-22a, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-33, §29-25-34, §29-25-35, §29-25-36, §29-25-37 and §29-25-38, all relating to gaming at a historic resort hotel and pari-mutuel racetracks generally; designating certain moneys as state moneys and establishing audit provisions;

updating and conforming provisions for consistency purposes between hotel and racetracks; legislative findings and intent; authorizing certain West Virginia Lottery games; modifying licensure requirements and fees therefor; renaming State Gaming Fund the Historic Resort Hotel Fund; providing for distribution of the Historic Resort Hotel Fund; creating formula for renewal fee assessments; expanding licensees' authority to set wagers with commission approval; altering maximum bets for video lottery machines; redefining "gross terminal income" to allow and account for promotional play at hotel and racetracks; authorizing hotel to contract for management services with commission approval; authorizing the hotel to lease certain services; creating the Human Resource Benefit Fund; permissible expenditures; establishing Human Resource Benefit Advisory Board and setting criteria for its membership; powers and duties; authorizing certain complimentary services; restricting who may enter the designated gaming area of the hotel to overnight guests, certain participants at hotel-based events and residents; clarifying and specifying forfeiture of property provisions; authorizing commission to operate slot machines and video lottery games; establishing requirements for video lottery terminals; establishing specific duties required of the gaming facility; creating Capital Reinvestment Fund; imposing surcharge against share of gross terminal income to be paid into the Capital Reinvestment Fund; declaring all authorized games to be owned by the state; preempting inconsistent county and municipal ordinances or rules; limiting taxing authority; declaring exemption from federal law to facilitate authorization of legal gaming; establishing rules of play and dispute resolution; authorizing shipment of gambling devices into state; modifying distribution of revenue; license suspension and revocation; revising civil penalties; authorizing emergency rulemaking; and establishing and modifying criminal offenses and penalties.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-22-29; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-8, §29-25-9, §29-25-11, §29-25-12, §29-25-13, §29-25-16, §29-25-17, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-22, §29-25-23, §29-25-24, §29-25-25 and §29-25-26 of said code be amended and reenacted; and that said code be amended by adding thereto twelve new sections, designated §29-25-22a, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-33, §29-25-34, §29-25-35, §29-25-36, §29-25-37 and §29-25-38, all to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

- **§29-22-29. Moneys transferred or allocated to nongovernmental entities are state moneys and have been so in the past; right to audit state moneys transferred to nongovernmental entities.**

(a) Moneys transferred by the commission under provisions of this article and articles twenty-two-a, twenty-two-b, twenty-two-c and twenty-five of this chapter to nongovernmental recipients, are state moneys and have been state moneys in prior fiscal periods.

(b) All nongovernmental entities that have received state moneys as described in subsection (a) of this section are subject to audit by the commission. An audit provided for by this section may be conducted by employees or agents of the commission. An audit provided for by this section may also be conducted by the Legislative Auditor.

**ARTICLE 25. AUTHORIZED GAMING FACILITY.**

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

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 games permitted by  
4 this article and the related operation of a gaming facility  
5 and ancillary activities is not unlawful when conducted  
6 under the terms specified in this article and article  
7 twenty-two-c of this chapter.

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

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

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

36 the Legislature that amendments made to this article  
37 during the 2009 regular session will establish appropriate  
38 conformity between the operations of video lottery and  
39 West Virginia Lottery table games at the licensed gaming  
40 facility under this article and the operations of video  
41 lottery and table games at the pari-mutuel racetracks  
42 licensed under articles twenty-two-a and twenty-two-c of  
43 this chapter.

**§29-25-2. Definitions.**

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

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

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

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

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

19 (e) "Controlling interest" means:

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

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

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

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

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

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

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

40 (j) "Erasable programmable read-only memory chips" or  
41 "EPROM" means the electronic storage medium on which  
42 the operation software for all games playable on a video  
43 lottery terminal resides and can also be in the form of CD  
44 ROM, flash ROM or other new technology medium that the  
45 commission may from time to time approve for use in  
46 video lottery terminals. All electronic storage media are  
47 considered to be property of the State of West Virginia.

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

51 (l) "Gaming devices and supplies" mean gaming tables  
52 for all West Virginia Lottery table games, roulette wheels,  
53 wheels of fortune, video lottery terminals, cards, dice,  
54 chips, tokens, markers or any other mechanical, electronic

55 or other device, mechanism or equipment or related  
56 supplies utilized in the operation of a West Virginia  
57 Lottery table game.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

105 (w) "Licensed gaming facility supplier" means a person  
106 who is licensed by the commission to engage in the busi-  
107 ness of supplying gaming devices and gaming supplies to  
108 a gaming facility.

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

112 (y) "Manufacturer" means any person holding a license  
113 granted by the commission to engage in the business of  
114 designing, building, constructing, assembling or manufac-  
115 turing video lottery terminals, the electronic computer  
116 components of the video lottery terminals, the random  
117 number generator of the video lottery terminals, or the

118 cabinet in which it is housed, and whose product is  
119 intended for sale, lease or other assignment to a licensed  
120 gaming facility in West Virginia and who contracts  
121 directly with the licensee for the sale, lease or other  
122 assignment to a licensed gaming facility in West Virginia.

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

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

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

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

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

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

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

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

163 (4) Is based upon a computer-generated random selec-  
164 tion of winning combinations based totally or predomi-  
165 nantly on chance;

166 (5) In the case of a video lottery game which allows the  
167 player an option to select replacement symbols or numbers  
168 or additional symbols or numbers after the game is  
169 initiated and in the course of play, either:

170 (A) Signals the player, prior to any optional selection by  
171 the player of randomly generated replacement symbols or  
172 numbers, as to which symbols or numbers should be  
173 retained by the player to present the best chance, based  
174 upon probabilities, that the player may select a winning  
175 combination;

176 (B) Signals the player, prior to any optional selection by  
177 the player of randomly generated additional symbols or  
178 numbers, as to whether such additional selection presents  
179 the best chance, based upon probabilities, that the player  
180 may select a winning combination; or

181 (C) Randomly generates additional or replacement  
182 symbols and numbers for the player after automatically

183 selecting the symbols and numbers which should be  
184 retained to present the best chance, based upon probabili-  
185 ties, for a winning combination, so that in any event, the  
186 player is not permitted to benefit from any personal skill,  
187 based upon a knowledge of probabilities, before deciding  
188 which optional numbers or symbols to choose in the course  
189 of video lottery game play;

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

194 (7) Does not use the following game themes commonly  
195 associated with casino gambling: Roulette, dice or bacca-  
196 rat card games: *Provided*, That games having a display  
197 with symbols which appear to roll on drums to simulate a  
198 classic casino slot machine, game themes of other card  
199 games and keno may be used.

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

202 (ff) "West Virginia Lottery table game" means any game  
203 played with cards, dice or any mechanical, electrome-  
204 chanical or electronic device or machine for money, credit  
205 or any representative of value, including, but not limited  
206 to, baccarat, blackjack, poker, craps, roulette, wheel of  
207 fortune or any variation of these games similar in design  
208 or operation and expressly authorized by rule of the  
209 commission, including multiplayer electronic table games,  
210 machines and devices, but excluding video lottery,  
211 punchboards, faro, numbers tickets, push cards, jar  
212 tickets, pull tabs or similar games.

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

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

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

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

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

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

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

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

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

27 (8) Issue all licenses;

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

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

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

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

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

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

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

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

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

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

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

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

**§29-25-5. Rules.**

1 The commission shall propose for promulgation legisla-  
2 tive rules in accordance with the provisions of article

3 three, chapter twenty-nine-a of this code as are necessary  
4 to provide for implementation and enforcement of the  
5 provisions of this article. Any legislative rules proposed  
6 by the commission before September 1, 2009, may be by  
7 emergency rule.

**§29-25-6. Law enforcement.**

1 (a) *Generally.* – Notwithstanding any provision of this  
2 code to the contrary, the commission shall, by contract or  
3 cooperative agreement with the West Virginia State  
4 Police, arrange for those law-enforcement services  
5 uniquely related to gaming as such occurs at the gaming  
6 facility that are necessary to enforce the provisions of this  
7 article.

8 (b) *Costs.* — The actual cost of services provided by the  
9 West Virginia State Police pursuant to a contract or  
10 cooperative agreement entered into pursuant to the  
11 provisions of subsection (a) of this section, including, but  
12 not limited to, necessary training costs, shall be paid by  
13 the commission as an administrative expense.

14 (c) Notwithstanding any provision of this code to the  
15 contrary, the West Virginia State Police shall have exclu-  
16 sive jurisdiction over felony offenses committed on the  
17 grounds of the gaming facility.

**§29-25-8. Licenses required.**

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

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

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

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

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

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

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

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

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

13 (b) *Applicant qualifications.* –The applicant shall be the  
14 actual operator of the gaming facility to be located on the  
15 premises of an existing historic resort hotel. The applicant  
16 may be the owner of the existing historic resort hotel or a  
17 person that leases well-defined spaces on the premises of  
18 the historic resort hotel in order to operate a gaming  
19 facility as defined by this article. The resort hotel shall be  
20 located within the jurisdiction of a county approving the  
21 operation of a gaming facility in accordance with section  
22 seven of this article. The applicant shall meet the qualifi-



23 cations and requirements set forth in this article and rules  
24 adopted by the commission. In determining whether to  
25 grant a license to operate a gaming facility to an appli-  
26 cant, the commission shall consider:

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

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

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

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

42 (c) *Floor plan submission requirement.* – Prior to com-  
43 mencing the operation of any West Virginia Lottery table  
44 game in a designated gaming area, the gaming facility  
45 licensee shall submit to the commission for its approval a  
46 detailed floor plan depicting the location of the designated  
47 gaming area in which West Virginia Lottery table game  
48 gaming equipment will be located and its proposed  
49 arrangement of the West Virginia Lottery table game  
50 gaming equipment. If the floor plans for the designated  
51 gaming area preserve the historic integrity of the historic  
52 resort hotel where the licensed gaming facility is located,  
53 then any floor plan submission that satisfies the require-  
54 ments of the rules promulgated by the commission shall be  
55 considered approved by the commission unless a gaming

56 facility is notified in writing to the contrary within one  
57 month of filing a detailed floor plan.

58 (d) *Management service contracts.* –

59 (1) *Approval.* – A gaming facility may not enter into any  
60 management service contract that would permit any  
61 person other than the licensee to act as the commission's  
62 agent in operating West Virginia Lottery table game  
63 unless the management service contract: (A) Is with a  
64 person licensed under this article to provide management  
65 services; (B) is in writing; and (C) the contract has been  
66 approved by the commission.

67 (2) *Material change.* – A licensed gaming facility shall  
68 submit any material change in a management service  
69 contract previously approved by the commission to the  
70 commission for its approval or rejection before the mate-  
71 rial change may take effect.

72 (3) *Prohibition on assignment or transfer.* – A manage-  
73 ment services contract may not be assigned or transferred  
74 to a third party.

75 (4) *Other commission approvals and licenses.* – The  
76 duties and responsibility of a management services  
77 provider under a management services contract may not  
78 be assigned, delegated, subcontracted or transferred to a  
79 third party to perform without the prior approval of the  
80 commission. Third parties shall be licensed under this  
81 article before providing service. The commission shall  
82 license and require the display of West Virginia Lottery  
83 game logos on appropriate game surfaces and other  
84 gaming items and locations as the commission considers  
85 appropriate.

86 (e) *License application requirements.* – An applicant for  
87 a license to operate a gaming facility shall:

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

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

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

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

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

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

110 (f) *Privately held corporations.* – In the event that an  
111 applicant or any controlling person of an applicant is a  
112 privately held corporation, then the commission may not  
113 grant a license until the commission determines that each  
114 person who has control of the applicant also meets all of  
115 the qualifications the applicant must meet to hold the  
116 license for which application is made. The following  
117 persons are considered to have control of an applicant:

118 (1) Each person associated with a corporate applicant,  
119 including any corporate holding company, parent com-  
120 pany or subsidiary company of the applicant, but not

121 including a bank or other licensed lending institution  
122 which holds a mortgage or other lien acquired in the  
123 ordinary course of business, who has the ability to control  
124 the activities of the corporate applicant or elect a majority  
125 of the board of directors of that corporation;

126 (2) Each person associated with a noncorporate appli-  
127 cant who directly or indirectly holds any beneficial or  
128 proprietary interest in the applicant or who the commis-  
129 sion determines to have the ability to control the appli-  
130 cant; and

131 (3) Key personnel of an applicant, including any execu-  
132 tive, employee or agent, having the power to exercise  
133 significant influence over decisions concerning any part of  
134 the applicant's business operation.

135 (g) *Publicly traded corporations.* – In the event that an  
136 applicant or any controlling person of an applicant is a  
137 publicly traded corporation, then information otherwise  
138 required to be furnished by an applicant with respect to  
139 stockholders, directors and executive officers of the  
140 publicly traded corporation shall be limited to information  
141 concerning only those executive officers of the publicly  
142 traded corporation whose ongoing and regular responsibil-  
143 ities relate or are expected to relate directly to the opera-  
144 tion or oversight of the gaming facility. “Publicly traded  
145 corporation” as used herein means any corporation or  
146 other legal entity, except a natural person, which has one  
147 or more classes of securities registered pursuant to Section  
148 twelve of the Securities Exchange Act of 1934, as amended  
149 (15 U. S. C. §78), or is an issuer subject to Section fifteen-d  
150 of said act.

151 (h) *Gaming facility qualifications.* – An applicant for a  
152 license to operate a gaming facility shall demonstrate that  
153 the gaming facility will: (1) Be accessible to disabled  
154 individuals; (2) not be located at the main entrance to the  
155 historic resort hotel; (3) be licensed in accordance with all

156 other applicable federal, state and local laws; and (4) meet  
157 any other qualifications specified by rules adopted by the  
158 commission.

159 (i) *Surety bond requirement.* – The licensed gaming  
160 facility shall execute a surety bond to be given to the state  
161 to guarantee the licensee faithfully makes all payments in  
162 accordance with the provisions of this article and rules  
163 promulgated by the commission. The surety bond shall be:

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

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

168 (3) With a surety approved by the commission who is  
169 licensed to write surety insurance in this state. The bond  
170 shall remain in effect during the term of the license and  
171 may not be canceled by a surety on less than thirty days'  
172 notice in writing to the commission. The total and aggre-  
173 gate liability of the surety on the bond is limited to the  
174 amount specified in the bond.

175 (j) *Authorization of license.* – A license to operate a  
176 gaming facility authorizes the licensee to engage in the  
177 business of operating a gaming facility while the license is  
178 effective. A license to operate a gaming facility is not  
179 transferable or assignable and cannot be sold or pledged  
180 as collateral.

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

188 (l) *Annual license renewal fee.* – For the second year  
189 that it is licensed, the licensed gaming facility shall pay to  
190 the commission a license renewal fee of \$250,000. For the  
191 third year that it is licensed, the licensed gaming facility  
192 shall pay to the commission a license renewal fee of  
193 \$500,000. For every year after the third year that it is  
194 licensed, the licensed gaming facility shall pay to the  
195 commission a license renewal fee that is calculated by  
196 determining the annual average gross receipts of the West  
197 Virginia pari-mutuel racetracks with table games licenses  
198 for the last full fiscal year of adjusted gross receipts  
199 available, and dividing that number into the licensed  
200 gaming facility operator’s adjusted gross receipts for the  
201 same full fiscal year of adjusted gross receipts to obtain a  
202 percentage, and by multiplying the resulting percentage by  
203 \$2,500,000: *Provided*, That the amount required to be paid  
204 by the licensed gaming facility shall be not less than  
205 \$500,000, nor more than \$2,500,000.

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

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

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

5 (b) *License qualifications.* – To qualify for a license, an  
6 applicant shall meet the requirements of this section.  
7 Each applicant who is an individual who is a controlling  
8 person of an applicant that is not an individual shall be of  
9 good moral character and reputation and shall have the  
10 necessary experience and financial ability to successfully  
11 carry out the functions of a gaming facility supplier. The

12 commission may adopt rules establishing additional  
13 requirements for a gaming facility supplier.

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

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

23 (1) Submit an application to the commission on the form  
24 that the commission requires including adequate informa-  
25 tion to serve as a basis for a thorough background check;

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

39 (3) Pay to the commission a nonrefundable application  
40 fee in the amount of \$100 to be retained by the commission  
41 as reimbursement for the licensing process.

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

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

50 (g) *Annual license renewal fee.*– A licensed gaming  
51 facility supplier shall pay to the commission an annual  
52 license renewal fee of \$100.

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

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

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

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

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

20 (2) Submit fingerprints for a national criminal records  
21 check by the Criminal Identification Bureau of the West  
22 Virginia State Police and the Federal Bureau of Investiga-  
23 tion. The fingerprints shall be furnished by all persons  
24 required to be named in the application and shall be



25 accompanied by a signed authorization for the release of  
26 information by the Criminal Investigation Bureau and the  
27 Federal Bureau of Investigation. The commission may  
28 require any applicant seeking the renewal of a license or  
29 permit to furnish fingerprints for a national criminal  
30 records check by the Criminal Identification Bureau of the  
31 West Virginia State Police and the Federal Bureau of  
32 Investigation; and

33 (3) Pay to the commission a nonrefundable application  
34 fee in the amount of \$100 to be retained by the commission  
35 as reimbursement for the licensing process. This fee may  
36 be paid on behalf of the applicant by the employer.

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

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

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

1 (a) Any person who knowingly makes a false statement  
2 on an application is guilty of a misdemeanor and, upon  
3 conviction thereof, shall be fined not more than \$1,000 and  
4 confined in jail for not more than six months except that  
5 in the case of a person other than a natural person, the  
6 amount of the fine imposed may not be more than \$25,000.

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

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

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

17 (3) Has been convicted of a felony, an offense of moral  
18 turpitude, a gambling offense, a theft or fraud offense or  
19 has otherwise demonstrated, either by a police record or  
20 other satisfactory evidence, a lack of respect for law and  
21 order;

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

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

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

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

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

39 (c) In addition to any other grounds specified in this  
40 article, and subject to the hearing provisions of section  
41 seventeen of this article, in the case of a license to operate

42 a gaming facility the commission may deny a license to  
43 any applicant, reprimand any licensee, or suspend or  
44 revoke a license if the applicant or licensee or any control-  
45 ling person of the applicant or licensee knowingly employs  
46 an individual in a senior management position who has  
47 been convicted of a felony under the laws of this state,  
48 another state, a territory of the United States, or the  
49 United States or employs any individual in a senior  
50 management position who has had a license relating to the  
51 operation of a gaming facility revoked by this state or any  
52 other state.

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

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

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

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

8 (2) Fraudulently or deceptively uses a license;

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

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

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

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

**§29-25-17. Hearing procedures.**

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

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

13 (c) *Failure to comply with subpoena.* – If a person fails  
14 to comply with a subpoena issued under this section, on  
15 petition of the commission, the circuit court may compel  
16 obedience to the subpoena. If after due notice the person  
17 against whom the action is contemplated fails or refuses to  
18 appear, the commission may hear and determine the  
19 matter.

20 (d) *Appeal.* – Any person aggrieved by a final decision of  
21 the commission in a contested case may file a petition for  
22 appeal in the circuit court of Kanawha County within  
23 thirty days after the person received notice of the final  
24 order or decision, as provided in section four, article five,  
25 chapter twenty-nine-a of this code.

**§29-25-18. Inspection and seizure.**

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

6 (1) Inspect and examine all premises of the gaming  
7 facility with West Virginia Lottery table games, gaming  
8 devices, the premises where gaming equipment is manu-  
9 factured, sold, distributed or serviced or any premises in  
10 which any records of the activities are prepared or main-  
11 tained;

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

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

18 (4) Inspect, examine and audit all books, records and  
19 documents pertaining to a gaming facility licensee's  
20 operation;

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

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

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

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

8 (b) *Commission discretion in gaming operations.*— Video  
9 lottery terminals operated at the gaming facility may not  
10 allow more than five dollars to be wagered on a single  
11 game.

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

15 (A) Maximum and minimum wagers;

16 (B) Advertising and promotional activities;

17 (C) Hours of operation; and

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

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

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

30 (1) Minimum and maximum payout percentages;

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

33 (3) Limitations on the types and amounts of financial  
34 transactions, including extension of credit to a patron,  
35 which a gaming facility can enter into with its patrons.

36 (d) *Posting of betting limits.* – A gaming facility shall  
37 conspicuously post a sign at each West Virginia Lottery  
38 table game indicating the permissible minimum and  
39 maximum wagers pertaining at that table. A gaming  
40 facility licensee may not require any wager to be greater  
41 than the stated minimum or less than the stated maximum.  
42 However, any wager actually made by a patron and not  
43 rejected by a gaming facility licensee prior to the com-  
44 mencement of play shall be treated as a valid wager.

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

1 The licensed gaming facility shall submit thirty-six  
2 percent of the gross terminal income from video lottery  
3 games at the licensed gaming facility to the commission  
4 through electronic funds transfer to be deposited into the  
5 Historic Resort Hotel Fund created in section twenty-two  
6 of this article. The licensed gaming facility shall also  
7 submit seventeen percent of the gross terminal income  
8 from video lottery games at the licensed gaming facility to  
9 the commission through electronic funds transfer to be  
10 deposited into the Human Resource Benefit Fund created  
11 in section twenty-two-a of this article. Each of these  
12 submissions shall be made to the commission weekly. The  
13 gaming licensee shall furnish to the commission all  
14 information and bank authorizations required to facilitate  
15 the timely transfer of moneys to the commission. The  
16 gaming licensee shall provide the commission thirty days'

17 advance notice of any proposed account changes in order  
18 to assure the uninterrupted electronic transfer of funds.

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

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

20 (b) *Computation and payment of tax.* – The taxes levied  
21 under the provisions of this section are due and payable to  
22 the commission in weekly installments on or before the  
23 Wednesday of each week. The taxpayer shall, on or before  
24 the Wednesday of each week, make out and submit by  
25 electronic communication to the commission a return for  
26 the preceding week, in the form prescribed by the commis-  
27 sion, showing: (1) The total gross receipts from the gaming  
28 facility for that month and the adjusted gross receipts; (2)  
29 the amount of tax for which the taxpayer is liable; and (3)  
30 any further information necessary in the computation and  
31 collection of the tax which the Tax Commissioner or the  
32 commission may require. Payment of the amount of tax



33 due shall accompany the return. All payments made  
34 pursuant to this section shall be deposited in accordance  
35 with sections twenty-two and twenty-two-a of this article.  
36 Payments due to the commission under this section and  
37 payments due to the commission under section twenty of  
38 this article shall be sent simultaneously.

39 (c) *Negative adjusted gross receipts.* – When adjusted  
40 gross receipts for a week is a negative number because the  
41 winnings paid to patrons wagering on the gaming facility’s  
42 West Virginia Lottery table games exceeds the gaming  
43 facility’s gross receipts from the purchase of table game  
44 tokens, chips or electronic media by patrons, the commis-  
45 sion shall allow the licensee to, pursuant to rules of the  
46 commission, carry over the negative amount of adjusted  
47 gross receipts to returns filed for subsequent weeks. The  
48 negative amount of adjusted gross receipts may not be  
49 carried back to an earlier week and the commission is not  
50 required to refund any tax received by the commission,  
51 except when the licensee surrenders its license to act as  
52 agent of the commission in operating West Virginia  
53 Lottery table game under this article and the licensee’s  
54 last return filed under this section shows negative adjusted  
55 gross receipts. In that case, the commission shall multiply  
56 the amount of negative adjusted gross receipts by the  
57 applicable rate of tax and pay the amount to the licensee,  
58 in accordance with rules of the commission.

59 (d) *Prohibition on credits.* – Notwithstanding any other  
60 provision of this code to the contrary, no credits may be  
61 allowed against any tax imposed on any taxpayer by this  
62 code for an investment in gaming devices and supplies, for  
63 an investment in real property which would be directly  
64 utilized for the operation of a gaming facility or for any  
65 jobs created at a gaming facility. Notwithstanding any  
66 other provision of this code to the contrary, the tax  
67 imposed by this section may not be added to federal  
68 taxable income in determining West Virginia taxable

69 income of a taxpayer for purposes of article twenty-four,  
70 chapter eleven of this code.

71 (e) *Tax imposed by this section is in lieu of other*  
72 *taxes.* —

73 (1) With the exception of the ad valorem property tax  
74 collected under chapter eleven-a of this code, the tax  
75 imposed by this section is in lieu of all other state taxes  
76 and fees imposed on the operation of, or the proceeds from  
77 operation of West Virginia Lottery table games, except as  
78 otherwise provided in this section. The consumers sales  
79 and service tax imposed pursuant to article fifteen,  
80 chapter eleven of this code shall not apply to the licensee's  
81 gross receipts from any wagering on a West Virginia  
82 Lottery table game pursuant to this article or to the  
83 licensee's purchasing of gaming equipment, supplies or  
84 services directly used in operation of a West Virginia  
85 Lottery table games authorized by this article. These  
86 purchases are also exempt from the use tax imposed by  
87 article fifteen-a, chapter eleven of this code.

88 (2) With the exception of the ad valorem property tax  
89 collected under chapter eleven-a of this code, the tax  
90 imposed by this section is in lieu of all local taxes and fees  
91 levied on or imposed with respect to the privilege of  
92 offering a West Virginia Lottery table game to the public,  
93 including, but not limited to, the municipal business and  
94 occupation taxes and amusement taxes authorized by  
95 article thirteen, chapter eight of this code and the municipi-  
96 pal sales and service tax and use tax authorized by article  
97 thirteen-c of said chapter.

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

1 (a) There is hereby created a special fund in the State  
2 Treasury which shall be designated and known as the  
3 Historic Resort Hotel Fund. Thirty-six percent of the

4 gross terminal income received by the commission under  
5 section twenty of this article and thirty percent of the  
6 adjusted gross receipts received by the commission under  
7 section twenty-one of this article shall be deposited with  
8 the State Treasurer and placed in the Historic Resort Hotel  
9 Fund. The fund shall be an interest bearing account with  
10 interest to be credited to and deposited in the Historic  
11 Resort Hotel Fund.

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

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

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

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

32 (3) The Tourism Promotion Fund established in section  
33 twelve, article two, chapter five-b of this code shall receive  
34 three percent of the Historic Resort Hotel Fund net  
35 income;

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

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

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

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

58 (8) The governing body of each municipality in the state  
59 that is not eligible to receive a distribution under subdivi-  
60 sions (5) and (6) of this subsection shall receive equal  
61 shares of two and one-half percent of the Historic Resort  
62 Hotel Fund net income: *Provided*, That funds transferred  
63 to municipalities under this subdivision shall be used only  
64 to pay for debt reduction in municipal police and fire  
65 pension funds and the costs of infrastructure improve-  
66 ments and other capital improvements.

67 (d) Notwithstanding any provision of this article to the  
68 contrary, all limited gaming facility license fees and  
69 license renewal fees received by the commission pursuant

70 to section nine of this article shall be deposited into the  
71 Community-Based Service Fund created in section  
72 twenty-seven, article twenty-two-c of this chapter.

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

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

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

12 (b) For each dollar expended by the historic resort hotel  
13 for fringe benefits for the employees of the historic resort  
14 hotel, the commission shall transfer to the historic resort  
15 hotel one dollar of recoupment from the Human Resource  
16 Benefit Fund: *Provided*, That the historic resort hotel is  
17 not entitled to recoupment for money spent on fringe  
18 benefits beyond the amount of money available to be  
19 expended from the Human Resource Benefit Fund at the  
20 time the request for recoupment is made by the historic  
21 resort hotel.

22 (c) The commission shall have full rights and powers to  
23 audit the spending of money from the Human Resource  
24 Benefit Fund to ensure that the money is being used in the

25 manner prescribed under this section. The commission  
26 shall have the power and authority to audit as frequently  
27 as it sees fit, so long as it conducts at least two audits each  
28 fiscal year.

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

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

34 (A) One member shall be a representative of the collec-  
35 tive bargaining unit that represents a majority of the  
36 employees of the historic resort hotel;

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

39 (C) Three members shall be employees of the commis-  
40 sion.

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

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

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

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

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

61 (7) Within thirty days of any board meeting, the board  
62 shall report to the commission its findings and any recom-  
63 mendations it may have. The report to the commission  
64 shall be made at a commission meeting that is open to the  
65 public.

66 (e) In the event that an audit conducted by the commis-  
67 sion, or suggested changes to the audit submitted by the  
68 board and adopted by the commission, reveals that the  
69 historic resort hotel has acted improperly or negligently in  
70 its claim for money from the Human Resource Benefit  
71 Fund, the commission may impose a civil penalty against  
72 the historic resort hotel of up to one hundred percent of  
73 the improperly claimed amount. Any civil penalty im-  
74 posed on the historic resort hotel by the commission under  
75 this subsection shall be deposited by the commission into  
76 the Historic Resort Hotel Fund.

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

1 (a) A gaming licensee may not permit any form of  
2 wagering except as authorized under this article or article  
3 twenty-two, twenty-two-a or twenty-two-c of this chap-  
4 ter.

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

7 (c) All gaming facility operations shall utilize a cashless  
8 wagering system whereby all players' money is converted  
9 to tokens, paper vouchers, electronic cards or chips at the

10 request of the wagerer which can only be used for wager-  
11 ing in a licensed gaming facility and wagering may not be  
12 conducted with money or other negotiable currency:

13 (1) Wagering on West Virginia Lottery table games may  
14 not be conducted with money or other negotiable currency  
15 or with tokens, electronic cards or other electronic media  
16 or chips not issued by the gaming facility where the West  
17 Virginia Lottery table game will be played.

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

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

26 (d) The gaming licensee is prohibited from offering any  
27 complimentary service, gift, cash or other item of value to  
28 any person unless:

29 (1) The complimentary consists of room, food, beverage  
30 or entertainment expenses provided directly to the patron  
31 and his or her guests by the gaming facility licensee or  
32 indirectly to the patron and his or her guests on behalf of  
33 the licensee by a third party;

34 (2) The complimentary consists of documented transpor-  
35 tation expenses provided directly to the patron and his or  
36 her guests on behalf of a gaming facility licensee by a third  
37 party: *Provided*, That the licensee complies with the rules  
38 promulgated by the commission to ensure that a patron's  
39 and his or her guests' documented transportation expenses  
40 are paid for or reimbursed only once; or

41 (3) The complimentary consists of coins, tokens, cash or  
42 other complimentary items or services provided through



43 any complimentary distribution program, the terms of  
44 which shall be filed with the commission upon implemen-  
45 tation of the program or maintained pursuant to commis-  
46 sion rule. Any change in the terms of a complimentary  
47 program shall be filed with the commission upon imple-  
48 mentation of the change.

49 (e) Notwithstanding any provision of subsection (d) of  
50 this section to the contrary, a gaming facility licensee may  
51 offer and provide complimentary cash or noncash gifts  
52 that are not otherwise included in that subsection to any  
53 person: *Provided*, That any complimentary cash or non-  
54 cash gifts in excess of an amount per trip to be set by  
55 interpretive rule of the commission are supported by  
56 documentation regarding the reason the gift was provided  
57 to the patron and his or her guests, including, where  
58 applicable, a patron's player rating. The documentation  
59 shall be maintained by a gaming facility licensee in  
60 accordance with commission rules. For purposes of this  
61 subsection, all gifts presented to a patron and a patron's  
62 guests directly by the gaming facility licensee or indirectly  
63 on behalf of the licensee by a third party within any five-  
64 day period shall be considered to have been made during  
65 a single trip.

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

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

3 (1) Is either;

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

6 (B) A person who is a not a registered overnight guest,  
7 but is a registered participant at a convention or event  
8 being held at the historic resort hotel: *Provided*, That this  
9 paragraph does not apply on any calendar day when less

10 than four hundred guest rooms are occupied at the historic  
11 resort hotel; or

12 (C) A member of a homeowner or facility association  
13 that entitles members to substantial privileges at the  
14 historic resort hotel on whose premises the gaming facility  
15 is located or an overnight guest of such a member: *Pro-*  
16 *vided*, That the association was in existence as of April 1,  
17 2009;

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

19 (3) Is not visibly intoxicated;

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

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

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

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

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

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

7 (2) The licensee acts or employs another person to act as  
8 if he or she is not an agent or employee of the licensee in

9 order to encourage participation in a West Virginia  
10 Lottery table game in a gaming facility;

11 (3) The licensee knowingly permits an individual under  
12 the age of twenty-one years of age to enter or remain in a  
13 designated gaming area or to play video lottery terminals  
14 or West Virginia Lottery table game at a licensed gaming  
15 facility;

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

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

24 (6) The licensee knowingly conducts, carries on, operates  
25 or exposes for play or allows to be conducted, carried on,  
26 operated or exposed for play any West Virginia Lottery  
27 table game, video lottery game, video lottery terminal or  
28 other device, equipment or material that has in any  
29 manner been tampered with or placed in a condition or  
30 operated in a manner, the result of which is designed to  
31 deceive the public; or

32 (7) The licensee employs an individual in a position or to  
33 perform duties, for which a license is required by this  
34 article or rules of the commission and the employee does  
35 not have a license issued under the provisions of this  
36 article or the licensee continues to employ the individual  
37 in a position or to perform duties, for which a license is  
38 required by this article or rules of the commission, after  
39 the employee's license expired, was revoked by the com-  
40 mission or not renewed by the commission.

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

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

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

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

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

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

68 (1) The person offers, promises or gives anything of value  
69 or benefit to a person who has an ownership or financial  
70 interest in, is employed by or has a service contract with  
71 a gaming facility or to that person's spouse or any depend-  
72 ent child or dependent parent, pursuant to an agreement  
73 or arrangement, in fact or implied from the circumstances,  
74 with intent that the promise or thing of value or benefit  
75 will influence the actions of the person in order to affect

76 or attempt to affect the outcome of a West Virginia  
77 Lottery table game or to influence official action of the  
78 commission. For the purposes of this subdivision and  
79 subdivision (2) of this subsection, the term "person who is  
80 connected with a gaming facility" includes, but is not  
81 limited to, a person licensed under this article as well as  
82 an officer or employee of a licensee;

83 (2) The person solicits or knowingly accepts or receives  
84 a promise of anything of value or benefit while the person  
85 is connected with a gaming facility, pursuant to an  
86 understanding or arrangement or with the intent that the  
87 promise or thing of value or benefit will influence the  
88 actions of the person to affect or attempt to affect the  
89 outcome of a West Virginia Lottery table game or to  
90 influence official action of the commission;

91 (3) The person uses or possesses on property owned by  
92 the licensed gaming facility or on property contiguous to  
93 the gaming facility, with the intent to use, an electronic,  
94 electrical or mechanical device that is designed, con-  
95 structed or programmed to assist the user or another  
96 person:

97 (A) In projecting the outcome of a West Virginia Lottery  
98 table game;

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

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

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

105 (E) In obtaining an advantage at playing any West  
106 Virginia Lottery table game at a licensed gaming facility  
107 authorized under this article to operate a West Virginia  
108 Lottery table game;

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

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

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

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

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

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

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

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

142 gaming facility, any device, by whatever name called,  
143 intended to be used to violate a provision of this article or  
144 a rule of the commission implementing or explaining a  
145 provision of this article; or

146 (12) The person, not a gaming licensee or agent of a  
147 gaming licensee acting in furtherance of the gaming  
148 licensee's interests, has in his or her possession any key or  
149 device designed for the purpose of opening, entering or  
150 affecting the operation of a West Virginia Lottery table  
151 game, drop box or an electronic or mechanical device  
152 connected with or used in connection with a West Virginia  
153 Lottery table game in a gaming facility or for removing  
154 coins, tokens, chips or other contents therefrom.

155 (d) Any person who violates the provisions of subsection  
156 (a) or (b) of this section is guilty of a misdemeanor and,  
157 upon conviction thereof, shall be fined not more than  
158 \$1,000 and confined in jail for not more than six months,  
159 except that in the case of a person other than a natural  
160 person, the amount of the fine imposed may not be more  
161 than \$25,000.

162 (e) Any person who violates the provisions of subsection  
163 (c) of this section is guilty ~~of~~ a felony and, upon conviction  
164 thereof, shall be fined not less than \$5,000 nor more than  
165 \$10,000 and committed to a state correctional facility for  
166 a term of imprisonment of not less than one year nor more  
167 than five years.

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

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

1 (a) Anything of value, including all traceable proceeds  
2 including, but not limited to, real and personal property,

of pen.

3 moneys, negotiable instruments, securities and convey-  
4 ances, is subject to forfeiture to the State of West Virginia  
5 if the item was used for any of the following:

6 (1) As a bribe intended to affect the outcome of a West  
7 Virginia Lottery table game in a gaming facility; 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  
11 and sale of items under the provisions of this section is not  
12 contemplated to be a forfeiture as that term is used in  
13 section five, article XII of the Constitution of West Vir-  
14 ginia and, to the extent that a seizure and sale may be  
15 found to be a forfeiture, the Legislature hereby finds and  
16 declares that the proceeds from a seizure and sale under  
17 this article are not part of net proceeds as it is contem-  
18 plated by section five, article XII of the Constitution of  
19 West Virginia.

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

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

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



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

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

6 (b) A manufacturer may not sell or lease a video lottery  
7 terminal for placement at the gaming facility unless the  
8 terminal has been approved by the commission. Only  
9 manufacturers with licenses may apply for approval of a  
10 video lottery terminal or associated equipment. The  
11 manufacturer shall submit two copies of terminal illustra-  
12 tions, schematics, block diagrams, circuit analysis, techni-  
13 cal and operation manuals and any other information  
14 requested by the commission for the purpose of analyzing  
15 and testing the video lottery terminal or associated  
16 equipment.

17 (c) The commission may require that two working  
18 models of a video lottery terminal be transported to the  
19 location designated by the commission for testing, exami-  
20 nation and analysis.

21 (1) The manufacturer shall pay all costs of testing,  
22 examination, analysis and transportation of such video  
23 lottery terminal models. The testing, examination and  
24 analysis of any video lottery terminal model may require  
25 dismantling of the terminal and some tests may result in  
26 damage or destruction to one or more electronic compo-  
27 nents of such terminal model. The commission may  
28 require that the manufacturer provide specialized equip-

29 ment or pay for the services of an independent technical  
30 expert to test the terminal.

31 (2) The manufacturer shall pay the cost of transportation  
32 of two video lottery terminals to lottery headquarters. The  
33 commission shall conduct an acceptance test to determine  
34 terminal functions and central system compatibility. If  
35 the video lottery terminal fails the acceptance test con-  
36 ducted by the commission, the manufacturer shall make  
37 all modifications required by the commission.

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

50 (e) The video lottery terminal manufacturer and licensed  
51 gaming facility are jointly responsible for the assembly  
52 and installation of all video lottery terminals and associ-  
53 ated equipment. The manufacturer and licensed gaming  
54 facility shall not change the assembly or operational  
55 functions of a terminal licensed for placement in West  
56 Virginia unless a request for modification of an existing  
57 video terminal prototype is approved by the commission.  
58 The request shall contain a detailed description of the type  
59 of change, the reasons for the change and technical  
60 documentation of the change.

61 (f) Each video lottery terminal approved for placement  
62 at the gaming facility shall conform to the exact specifica-  
63 tions of the video lottery terminal prototype tested and

64 approved by the commission. If any video lottery terminal  
65 or any video lottery terminal modification, which has not  
66 been approved by the commission, is supplied by a manu-  
67 facturer and operated by the gaming facility, the commis-  
68 sion shall seize and destroy all of that licensed gaming  
69 facility's and manufacturer's noncomplying video lottery  
70 terminals and shall suspend the license and permit of the  
71 licensed gaming facility and manufacturer.

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

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

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

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

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

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

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

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

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

38 (8) The cash compartment shall be located in a separate  
39 locked area within or attached to the video lottery termi-  
40 nal.

41 (9) No hardware switches, jumpers, wire posts or any  
42 other means of manipulation may be installed which alter  
43 the pay tables or payout percentages in the operation of a  
44 game. Hardware switches on a video lottery terminal to  
45 control the terminal's graphic routines, speed of play,  
46 sound and other purely cosmetic features may be approved  
47 by the commission.

48 (10) Each video lottery terminal shall contain a single  
49 printing mechanism capable of printing an original ticket  
50 and capturing and retaining an electronic copy of the  
51 ticket data as approved by the commission: *Provided*, That

52 the printing mechanism is optional on any video lottery  
53 terminal which is designed and equipped exclusively for  
54 coin or token payouts. The following information shall be  
55 recorded on the ticket when credits accrued on a video  
56 lottery terminal are redeemed for cash:

- 57 (i) The number of credits accrued;
- 58 (ii) Value of the credits in dollars and cents displayed in  
59 both numeric and written form;
- 60 (iii) Time of day and date;
- 61 (iv) Validation number; and
- 62 (v) Any other information required by the commission.

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

- 67 (i) Manufacturer of the video lottery terminal;
- 68 (ii) Serial number of the terminal; and
- 69 (iii) Model number of the terminal.

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

82 (13) Communication equipment and devices shall be  
83 installed to enable each video lottery terminal to commu-  
84 nicate with the commission's central computer system by  
85 use of a communications protocol provided by the com-  
86 mission to each permitted manufacturer, which protocol  
87 shall include information retrieval and terminal activation  
88 and disable programs, and the commission may require  
89 each licensed racetrack to pay the cost of a central site  
90 computer as a part of the licensing requirement.

91 (14) All video lottery terminals shall have a security  
92 system which temporarily disables the gaming function of  
93 the terminal while opened.

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

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

103 (2) *Runs test.* – Each symbol or number may not produce  
104 a significant statistic with regard to producing patterns of  
105 occurrences. Each symbol or number is random if it meets  
106 the ninety-nine percent confidence level with regard to the  
107 “runs test” for the existence of recurring patterns within  
108 a set of data.

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

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

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

126 (d) Each video lottery terminal shall be capable of  
127 continuing the current game with all current game fea-  
128 tures after a video lottery terminal malfunction is cleared.  
129 If a video lottery terminal is rendered totally inoperable  
130 during game play, the current wager and all credits  
131 appearing on the video lottery terminal screen prior to the  
132 malfunction shall be returned to the player.

133 (e) Each video lottery terminal shall at all times main-  
134 tain electronic accounting regardless of whether the  
135 terminal is being supplied with electrical power. Each  
136 meter shall be capable of maintaining a total of no less  
137 than eight digits in length for each type of data required.  
138 The electronic meters shall record the following informa-  
139 tion:

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

143 (2) Number of credits wagered;

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

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

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

- 147 (6) Number of times the logic area was accessed;
- 148 (7) Number of times the cash door was accessed;
- 149 (8) Number of credits wagered in the current game;
- 150 (9) Number of credits won in the last complete video  
151 lottery game; and
- 152 (10) Number of cumulative credits representing money  
153 inserted by a player and credits for video lottery games  
154 won, but not collected.
- 155 (f) No video lottery terminal may have any mechanism  
156 which allows the electronic accounting meters to clear  
157 automatically. Electronic accounting meters may not be  
158 cleared without the prior approval of the commission.  
159 Both before and after any electronic accounting meter is  
160 cleared, all meter readings shall be recorded in the pres-  
161 ence of a commission employee.
- 162 (g) The primary responsibility for the control and  
163 regulation of any video lottery games and video lottery  
164 terminals operated pursuant to this article rests with the  
165 commission.
- 166 (h) The commission shall directly or through a contract  
167 with a third party vendor other than the video lottery  
168 licensee, maintain a central site system of monitoring the  
169 lottery terminals, utilizing an online or dial-up inquiry.  
170 The central site system shall be capable of monitoring the  
171 operation of each video lottery game or video lottery  
172 terminal operating pursuant to this article and, at the  
173 direction of the director, immediately disable and cause  
174 not to operate any video lottery game and video lottery  
175 terminal. As provided in this section, the commission may  
176 require the licensed racetrack to pay the cost of a central  
177 site computer as part of the licensing requirement.



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

1 The gaming facility licensee shall:

2 (a) Acquire video lottery terminals by purchase, lease or  
3 other assignment and provide a secure location for the  
4 placement, operation and play of the video lottery termi-  
5 nals;

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

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

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

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

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

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

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

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

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

36 (k) Report promptly to the manufacturer and the com-  
37 mission all video lottery terminal malfunctions and notify  
38 the commission of the failure of a manufacturer or service  
39 technician to provide prompt service and repair of such  
40 terminals and associated equipment;

41 (l) Install, post and display prominently at locations  
42 within or about the licensed gaming facility signs, redemp-  
43 tion information and other promotional material as  
44 required by the commission; and

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

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

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

5 (b) The Capital Reinvestment Fund is hereby created  
6 within the Lottery Fund. The surcharge amount attribut-  
7 able to the historic resort hotel shall be retained by the  
8 commission and deposited into a separate capital reinvest-  
9 ment account for the historic resort hotel. For each dollar  
10 expended by the historic resort hotel for capital improve-  
11 ments at the historic resort hotel, of any amenity associ-  
12 ated with the historic resort hotel's destination resort  
13 facility operations, or at adjacent facilities owned by the  
14 historic resort hotel having a useful life of seven or more  
15 years and placed in service after April 1, 2009, the licensed  
16 gaming facility shall receive one dollar in recoupment

17 from its Capital Reinvestment Fund account: If a historic  
18 resort hotel's unrecouped capital improvements exceed its  
19 Capital Reinvestment Fund account at the end of any  
20 fiscal year, the excess improvements may be carried  
21 forward to seven subsequent fiscal years.

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

**§29-25-33. 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 manage-  
3 ment services contract to a gaming facility when the  
4 commission determines that the person meets the require-  
5 ments 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,  
9 as provided in subsection (f), section two of this article,  
10 shall be of good moral character, honesty and integrity  
11 and shall have the necessary experience and financial  
12 ability to successfully carry out the functions of a manage-  
13 ment services provider. The commission may adopt rules  
14 establishing additional requirements for an authorized  
15 management services provider. The commission may  
16 accept licensing by another jurisdiction, specifically  
17 determined by the commission to have similar licensing  
18 requirements, as evidence the applicant meets authorized  
19 management services provider licensing requirements.

20 (c) *Management service provider specifications.* – An  
21 applicant for a license to provide management services to  
22 a gaming facility licensee shall demonstrate that the  
23 management services that the applicant plans to offer to  
24 the gaming facility licensee conform or will conform to

25 standards established by rules of the commission and  
26 applicable state law.

27 (d) *License application requirements.* – An applicant for  
28 a license to provide management services to a gaming  
29 facility licensee shall:

30 (1) Submit an application to the commission in the form  
31 required by the commission including adequate informa-  
32 tion to serve as a basis for a thorough background check;

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

46 (3) Pay to the commission a nonrefundable application  
47 fee for deposit into the Historic Resort Hotel Fund in the  
48 amount of \$100.

49 (e) *Authorization.* – A license to provide management  
50 services to a gaming facility licensee authorizes the  
51 licensee to provide management service to a gaming  
52 facility while the license is active. The commission may by  
53 rule establish the conditions which constitute an emer-  
54 gency under which the commission may issue provisional  
55 licenses pending completion of final action on an applica-  
56 tion.

57 (f) *Fees, expiration date and renewal.* – A licensed  
58 provider of management services shall pay to the commis-  
59 sion an annual license fee of \$100 for an initial term  
60 beginning prior to the date of the provider’s first contract  
61 with a gaming facility licensee and continuing through the  
62 end of the twelfth month thereafter whenever the licensee  
63 has paid the renewal fee and has continued to comply with  
64 all applicable statutory and rule requirements. The  
65 commission shall renew a license to provide management  
66 services to a gaming facility annually thereafter. A  
67 gaming facility licensee may continue to use the manage-  
68 ment services provided by the management services  
69 provider while that provider was licensed, notwithstand-  
70 ing the expiration of the provider’s license, unless the  
71 commission finds the services provided are not conforming  
72 to standards established by rule of the commission and  
73 applicable state law.

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

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

**§29-25-35. Preemption.**

1 No local law or rule providing any penalty, disability,  
2 restriction, regulation or prohibition for operating a  
3 historic resort hotel with West Virginia Lottery table

4 games or supplying a licensed gaming facility may be  
5 enacted and the provisions of this article preempt all  
6 regulations, rules, ordinances and laws of any county or  
7 municipality in conflict with this article.

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

1 Pursuant to Section 2, 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  
5 that the state is exempt from Chapter 1194, 64 Stat. 1134,  
6 15 U. S. C. §1171 to §1178.

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

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

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

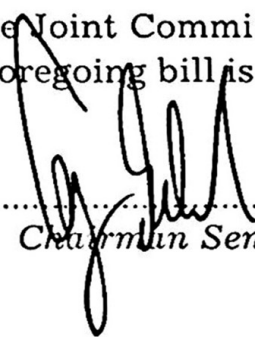
16 (c) The gaming facility licensee shall make available in  
17 printed form to any patron, upon request of the patron, the  
18 complete texts of the rules of play of any West Virginia  
19 Lottery table games in operation at the gaming facility,  
20 pay-offs of winning wagers and any other advice to the  
21 player required by the commission.

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

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

1 All shipments of gambling devices, including video  
2 lottery machines, to the licensed gaming facility in this  
3 state, the registering, recording and labeling of which have  
4 been 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  
7 into the State of West Virginia.

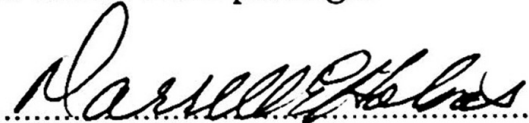
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

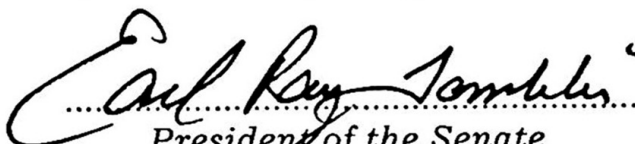
  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this the 7<sup>th</sup> .....  
Day of May ....., 2009.

  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

MAY 1 2009

Time 2:50 pm