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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2001

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# ENROLLED

## House Bill No. 102

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

—●—

Passed April 21, 2001

In Effect from Passage

**FILED**

2001 MAY -8 P 3 19

**OFFICE WEST VIRGINIA  
SECRETARY OF STATE**

**ENROLLED**

**H. B. 102**

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

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[April 21, 2001; in effect from passage.]

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AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; to amend and reenact section five, article two, chapter fifteen of said code; to amend and reenact section eight, article nine-d, chapter eighteen of said code; to amend and reenact sections two, two-a, three, eight and eight-a, article four, chapter eighteen-a of said code; to amend and reenact section thirteen-c, article twenty-three, chapter nineteen of said code; to amend and reenact sections five and eighteen, article twenty-two, chapter twenty-nine of said code; to further amend said article by adding thereto a new section, designated section eighteen-a; to amend and reenact sections six and ten, article twenty-two-a of said chapter; to further amend said article by adding thereto two new sections, designated sections ten-b and ten-c; and to amend said chapter by adding thereto a new article, designated article twenty-two-b, all relating generally to lottery games, and providing for the distribution of funds generated therefrom;

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providing a senior citizen and certain disabled persons tax credit for property tax paid on the first ten thousand dollars of taxable assessed value of a homestead in this state; providing funding from funds generated from lottery games for the cost of the senior citizen and certain disabled persons tax credit and for salary increases for teachers, service personnel, members of the state police, corrections officers and other state employees; increasing cap on bonds which may be issued by school building authority; authorizing lottery commission to enter into international lottery agreements; expenditure of lottery distributions; providing for administrative costs of state lottery commission; creating state excess lottery revenue fund and providing for distribution and expenditure of the moneys in the fund; expenditure of racetrack video lottery distributions; increasing allowable wager for racetrack video lottery; providing for distribution of amounts exceeding actual administrative costs of state lottery commission; providing for distribution of excess net terminal income; imposition and use of surcharge on excess of total of net terminal income; creating capital reinvestment fund and providing for its expenditure; allowing video lottery games to be played at restricted access adult-only facilities pursuant to licensure by alcohol beverage control commissioner and by lottery commission under regulation of lottery commission; providing short title and statements of legislative purposes, findings and intents; providing definition of words and terms; providing authority of lottery commission and director; prohibiting advertising or promotional activities of limited video lottery; providing requirements, qualification and fees for licensure necessary to participate in limited video lottery activities; providing for lottery commission action on applications for licenses; providing for background investigations of applicants for licenses; providing duties and responsibilities of limited video lottery licensees; providing additional duties of limited video lottery retailers who are permittees; requiring lottery commission approval of video lottery terminals; providing certain hardware and software

requirements for video lottery terminals; providing for video lottery terminals to be connected to lottery commission's central computer system; establishing conditions for sale or lease of video lottery terminals; providing for allocation and distribution of video lottery terminals; limiting aggregate number of video lottery terminals that may be located at all licensed restricted access adult-only facilities; limiting number of video lottery terminals that may be operated by one person; limiting number of video lottery terminals that may be placed on an authorized premises of a limited video lottery retailer; providing for permits to own, lease or operate video lottery terminals; providing for reservation of authority to have video lottery terminals on a premises for certain license applicants; providing for allocation of certain video lottery terminals through competitive bid; providing for reduction of number of video lottery terminals authorized in a license; providing for posting and dissemination of materials providing information relating to problem gambling; providing requirements for operating video lottery terminals; providing for placement and transportation of video lottery terminals; requiring registration decals; providing for maintenance and repair of video lottery terminals; providing for calculation, collection and distribution of gross terminal income generated from video lottery terminals and the state's share of gross terminal income; providing for examination of accounts, statements and records of permittees; providing administrative procedures; providing administrative and judicial remedies; providing administrative and judicial due process; providing certain civil money penalties; providing criminal penalties for certain violations; declaring video gambling machines contraband after specified date; providing for forfeiture, seizure and disposition of contraband; providing for distribution of proceeds of forfeiture; limiting applicability of certain local taxes or regulation on limited video lottery activities regulated by the state; and establishing the timing of implementation of the limited video lottery act provisions.

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

That article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-one; that section five, article two, chapter fifteen of said code be amended and reenacted; that section eight, article nine-d, chapter eighteen of said code be amended and reenacted; that sections two, two-a, three, eight and eight-a, article four, chapter eighteen-a of said code be amend and reenacted; that section thirteen-c, article twenty-three, chapter nineteen of said code be amended and reenacted; that sections five and eighteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted; that said article twenty-two be further amended by adding thereto a new section, designated section eighteen-a; that sections six and ten, article twenty-two-a, of said chapter be amended and reenacted; that said article twenty-two-a be further amended by adding thereto two new sections, designated sections ten-b and ten-c; and that said chapter twenty-nine be further amended by adding thereto a new article, designated article twenty-two-b, all to read as follows:

## CHAPTER 11. TAXATION.

### PART I. GENERAL.

#### ARTICLE 21. PERSONAL INCOME TAX.

##### **§11-21-21. Senior citizens tax credit for property tax paid on first \$10,000 of taxable assessed value of a homestead in this state.**

- 1       (a) *Allowance of credit.* – A low-income person who is
- 2 allowed a twenty-thousand dollar homestead exemption from
- 3 the assessed value of his or her homestead for ad valorem
- 4 property tax purposes as provided in section three, article six-b,
- 5 of this chapter, shall be allowed a refundable credit against the
- 6 taxes imposed by this article equal to the amount of ad valorem

7 property taxes paid on up to the first ten thousand dollars of  
8 taxable assessed value of the homestead for property tax years  
9 that begin on or after the first day of January two thousand two.

10 (b) *Terms defined.* – For purposes of this section:

11 (1) “Low income” means federal adjusted gross income for  
12 the taxable year that is one hundred fifty percent or less of the  
13 federal poverty guideline for the year in which property tax was  
14 paid, based upon the number of individuals in the family unit  
15 residing in the homestead, as determined annually by the United  
16 States Secretary of Health and Human Services.

17 (2) “Taxes paid” means the aggregate of regular levies,  
18 excess levies and bond levies extended against not more than  
19 ten thousand dollars of the taxable assessed value of a home-  
20 stead that are paid during the calendar year, determined after  
21 application of any discount for early payment of taxes but  
22 before application of any penalty or interest for late payment of  
23 property taxes for a property tax year that begins on or after the  
24 first day of January, two thousand two.

25 (c) *Legislative rule.* – The tax commissioner shall propose  
26 a legislative rule for promulgation as provided in article three,  
27 chapter twenty-nine-a of this code to explain and implement  
28 this section.

29 (d) *Confidentiality.* – The tax commissioner shall utilize  
30 property tax information in the statewide electronic data  
31 processing system network to the extent necessary for the  
32 purpose of administering this section, notwithstanding any  
33 provision of this code to the contrary.

## CHAPTER 15. PUBLIC SAFETY.

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

**§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.**

1           (a) The superintendent shall establish within the West  
2 Virginia state police a system to provide for: The promotion of  
3 members to the supervisory ranks of sergeant, first sergeant,  
4 second lieutenant and first lieutenant; the classification of  
5 nonsupervisory members within the field operations force to the  
6 ranks of trooper, senior trooper, trooper first class or corporal;  
7 the classification of members assigned to the forensic labora-  
8 tory as criminalist I-VII; and the temporary reclassification of  
9 members assigned to administrative duties as administrative  
10 support specialist I-VIII.

11           (b) The superintendent is authorized to propose legislative  
12 rules for promulgation in accordance with article three, chapter  
13 twenty-nine-a of this code for the purpose of ensuring consis-  
14 tency, predictability and independent review of any system  
15 developed under the provisions of this section.

16           (c) The superintendent shall provide to each member a  
17 written manual governing any system established under the  
18 provisions of this section and specific procedures shall be  
19 identified for the evaluation and testing of members for  
20 promotion or reclassification and the subsequent placement of  
21 any members on a promotional eligibility or reclassification  
22 recommendation list.

23           (d) Beginning on the first day of July, two thousand one,  
24 and continuing thereafter, members shall receive annual salaries  
25 as follows:

## 26 ANNUAL SALARY SCHEDULE (BASE PAY)

## 27 SUPERVISORY AND NONSUPERVISORY RANKS

28	Cadet During Training . . . . .	\$2,039 Mo.	\$24,476
29	Cadet Trooper After Training . . . . .	2,442 Mo.	29,312
30	Trooper Second Year . . . . .		29,768
31	Trooper Third Year . . . . .		30,140
32	Trooper Fourth & Fifth Year . . . . .		30,440
33	Senior Trooper . . . . .		32,528
34	Trooper First Class . . . . .		34,616
35	Corporal . . . . .		36,704
36	Sergeant . . . . .		40,880
37	First Sergeant . . . . .		42,968
38	Second Lieutenant . . . . .		45,056
39	First Lieutenant . . . . .		47,144
40	Captain . . . . .		49,232
41	Major . . . . .		51,320
42	Lieutenant Colonel . . . . .		53,408

## 43 ANNUAL SALARY SCHEDULE (BASE PAY)

## 44 ADMINISTRATION

## 45 SUPPORT SPECIALIST CLASSIFICATION

46	I . . . . .		30,440
47	II . . . . .		32,528
48	III . . . . .		34,616
49	IV . . . . .		36,704
50	V . . . . .		40,880
51	VI . . . . .		42,968
52	VII . . . . .		45,056
53	VIII . . . . .		47,144

## 54 ANNUAL SALARY SCHEDULE (BASE PAY)

## 55 CRIMINALIST CLASSIFICATION

56	I . . . . .		30,440
57	II . . . . .		32,528



58	III .....	34,616
59	IV .....	36,704
60	V .....	40,880
61	VI .....	42,968
62	VII .....	45,056

63        Each member of the West Virginia state police whose  
64 salary is fixed and specified in this annual salary schedule is  
65 entitled to the length of service increases set forth in subsection  
66 (f) of this section and supplemental pay as provided in subsec-  
67 tion (g) of this section.

68        (e) Each member of the West Virginia state police whose  
69 salary is fixed and specified pursuant to this section shall  
70 receive, and is entitled to, an increase in salary over that set  
71 forth in subsection (d) of this section, for grade in rank, based  
72 on length of service, including that service served before and  
73 after the effective date of this section with the West Virginia  
74 state police as follows: At the end of five years of service with  
75 the West Virginia state police, the member shall receive a  
76 salary increase of six hundred dollars to be effective during his  
77 or her next three years of service and a like increase at  
78 three-year intervals thereafter, with the increases to be cumula-  
79 tive.

80        (f) In applying the salary schedules set forth in this section  
81 where salary increases are provided for length of service,  
82 members of the West Virginia state police in service at the time  
83 the schedules become effective shall be given credit for prior  
84 service and shall be paid such salaries as the same length of  
85 service entitles them to receive under the provisions of this  
86 section.

87        (g) The Legislature finds and declares that because of the  
88 unique duties of members of the West Virginia state police, it  
89 is not appropriate to apply the provisions of state wage and hour

90 laws to them. Accordingly, members of the West Virginia state  
91 police are excluded from the provisions of state wage and hour  
92 law. This express exclusion shall not be construed as any  
93 indication that the members were or were not covered by the  
94 wage and hour law prior to this exclusion.

95 In lieu of any overtime pay they might otherwise have  
96 received under the wage and hour law, and in addition to their  
97 salaries and increases for length of service, members who have  
98 completed basic training and who are exempt from federal Fair  
99 Labor Standards Act guidelines may receive supplemental pay  
100 as provided in this section.

101 The superintendent shall, within thirty days after the  
102 effective date of this section, propose a legislative rule for  
103 promulgation in accordance with article three, chapter  
104 twenty-nine-a of this code, to establish the number of hours per  
105 month which constitute the standard work month for the  
106 members of the West Virginia state police. The rule shall  
107 further establish, on a graduated hourly basis, the criteria for  
108 receipt of a portion or all of supplemental payment when hours  
109 are worked in excess of the standard work month. The superin-  
110 tendent shall certify monthly to the West Virginia state police's  
111 payroll officer the names of those members who have worked  
112 in excess of the standard work month and the amount of their  
113 entitlement to supplemental payment. The supplemental  
114 payment may not exceed two hundred thirty-six dollars  
115 monthly. The superintendent and civilian employees of the  
116 West Virginia state police are not eligible for any supplemental  
117 payments.

118 (h) Each member of the West Virginia state police, except  
119 the superintendent and civilian employees, shall execute, before  
120 entering upon the discharge of his or her duties, a bond with  
121 security in the sum of five thousand dollars payable to the state  
122 of West Virginia, conditioned upon the faithful performance of

123 his or her duties, and the bond shall be approved as to form by  
124 the attorney general and as to sufficiency by the governor.

125 (i) Any member of the West Virginia state police who is  
126 called to perform active duty for training or inactive duty  
127 training in the national guard or any reserve component of the  
128 armed forces of the United States annually shall be granted,  
129 upon request, leave time not to exceed thirty calendar days for  
130 the purpose of performing the active duty for training or  
131 inactive duty training and the time granted may not be deducted  
132 from any leave accumulated as a member of the West Virginia  
133 state police.

## CHAPTER 18. EDUCATION.

### ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

#### §18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

1 (a) The maximum aggregate face value of bonds that may  
2 be issued by the authority, for which the moneys in the school  
3 building debt service fund are to be pledged, is four hundred  
4 million dollars. The issuance of revenue bonds under the  
5 provisions of this article shall be authorized from time to time  
6 by resolution or resolutions of the school building authority,  
7 which shall set forth the proposed projects and provide for the  
8 issuance of bonds in amounts sufficient, when sold as hereinaf-  
9 ter provided, to provide moneys considered sufficient by the  
10 authority to pay the costs, less the amounts of any other funds  
11 available for the costs or from any appropriation, grant or gift  
12 for the costs: *Provided*, That bond issues from which bond  
13 revenues are to be distributed in accordance with section fifteen  
14 of this article shall not be required to set forth the proposed  
15 projects in the resolution. The resolution shall prescribe the  
16 rights and duties of the bondholders and the school building  
17 authority, and for that purpose may prescribe the form of the  
18 trust agreement hereinafter referred to. The bonds may be

19 issued from time to time, in such amounts; shall be of such  
20 series; bear such date or dates; mature at such time or times not  
21 exceeding forty years from their respective dates; bear interest  
22 at such rate or rates; be in such denominations; be in such form,  
23 either coupon or registered, carrying such registration,  
24 exchangeability and interchangeability privileges; be payable  
25 in such medium of payment and at such place or places within  
26 or without the state; be subject to such terms of redemption at  
27 such prices not exceeding one hundred five percent of the  
28 principal amount of the bonds; and be entitled to such priorities  
29 on the revenues paid into the fund pledged for repayment of the  
30 bonds as may be provided in the resolution authorizing the  
31 issuance of the bonds or in any trust agreement made in  
32 connection with the bonds: *Provided, however,* That revenue  
33 bonds issued on or after the first day of January, one thousand  
34 nine hundred ninety-four, which are secured by lottery proceeds  
35 shall mature at such time or times not exceeding ten years from  
36 their respective dates.

37 (b) The bonds shall be signed by the governor, and by the  
38 president or vice president of the authority, under the great seal  
39 of the state, attested by the secretary of state, and the coupons  
40 attached to the bonds shall bear the facsimile signature of the  
41 president or vice president of the authority. In case any of the  
42 officers whose signatures appear on the bonds or coupons cease  
43 to be officers before the delivery of the bonds, the signatures  
44 shall nevertheless be valid and sufficient for all purposes the  
45 same as if such officers had remained in office until such  
46 delivery. The revenue bonds shall be sold in the manner  
47 determined by the authority to be for the best interests of the  
48 state.

49 (c) Any pledge of revenues made by the school building  
50 authority for revenue bonds issued prior to the twentieth day of  
51 July, one thousand nine hundred ninety-three, pursuant to this  
52 article is valid and binding between the parties from the time

53 the pledge is made; and the revenues pledged shall immediately  
54 be subject to the lien of the pledge without any further physical  
55 delivery thereof or further act. The lien of the pledge is valid  
56 and binding against all parties having claims of any kind in tort,  
57 contract or otherwise, irrespective of whether the parties have  
58 notice of the lien of the pledge, and the pledge shall be a prior  
59 and superior charge over any other use of the revenues pledged.

60 (d) The proceeds of any bonds shall be used solely for the  
61 purpose or purposes as may be generally or specifically set  
62 forth in the resolution authorizing those bonds and shall be  
63 disbursed in the manner and with the restrictions, if any, that  
64 the authority provides in the resolution authorizing the issuance  
65 of the bonds or in the trust agreement hereinafter referred to  
66 securing the same. If the proceeds of the bonds, by error in  
67 calculations or otherwise, are less than the cost of any projects  
68 specifically set forth in the resolution, additional bonds may in  
69 like manner be issued to provide the amount of the deficiency;  
70 and unless otherwise provided for in the resolution or trust  
71 agreement hereinafter mentioned, the additional bonds shall be  
72 considered to be of the same issue, and are entitled to payment  
73 from the same fund, without preference or priority, as the bonds  
74 before issued for the projects. If the proceeds of bonds issued  
75 for the projects specifically set forth in the resolution authoriz-  
76 ing the bonds issued by the authority exceed the cost of the  
77 bonds, the surplus may be used for any other projects deter-  
78 mined by the school building authority or in any other manner  
79 that the resolution authorizing the bonds provides. Prior to the  
80 preparation of definitive bonds, the authority may, under like  
81 restrictions, issue temporary bonds with or without coupons,  
82 exchangeable for definitive bonds upon the issuance of the  
83 definitive bonds.

84 (e) After the issuance of any of revenue bonds, the revenues  
85 pledged for the revenue bonds shall not be reduced as long as  
86 any of the revenue bonds are outstanding and unpaid except  
87 under the terms, provisions and conditions that are contained in  
88 the resolution, trust agreement or other proceedings under  
89 which the revenue bonds were issued.

90 (f) The revenue bonds and the revenue refunding bonds,  
91 and bonds issued for combined purposes shall, together with the  
92 interest on the bonds, are exempt from all taxation by the state  
93 of West Virginia, or by any county, school district, municipality  
94 or political subdivision thereof.

95 (g) To meet the operational costs of the school building  
96 authority, the school building authority may transfer to a special  
97 revenue account in the state treasury interest on any debt  
98 service reserve funds created within any resolution authorizing  
99 the issue of bonds or any trust agreement made in connection  
100 with the bonds, for expenditure in accordance with legislative  
101 appropriation or allocation of appropriation.

102 (h) Any school construction bonds issued under this section  
103 shall be issued on parity with any existing school building  
104 authority bonds previously issued under this article.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

#### **§18A-4-2. State minimum salaries for teachers.**

1 (a) Each teacher shall receive the amount prescribed in the  
2 "state minimum salary schedule I" as set forth in this section,  
3 specific additional amounts prescribed in this section or article,  
4 and any county supplement in effect in a county pursuant to  
5 section five-a of this article during the contract year: *Provided,*

6 That beginning on the first day of the second quarter of the  
 7 teacher's employment term in the school year two thousand  
 8 one-two thousand two, and thereafter, each teacher shall receive  
 9 the amount prescribed in "state minimum salary schedule II" as  
 10 set forth in this section, specific additional amounts prescribed  
 11 in this section or article, and any county supplement in effect in  
 12 a county pursuant to section five-a of this article during the  
 13 contract year.

14

**STATE MINIMUM SALARY SCHEDULE I**

15	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
16	Years	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>		A.B.		M.A.	M.A.	M.A.	Doc-
17	Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
18	0	20,084	20,721	20,976	22,186	22,921	24,629	25,364	26,099	26,834	27,834
19	1	20,365	21,002	21,257	22,651	23,386	25,094	25,829	26,564	27,299	28,299
20	2	20,646	21,284	21,539	23,116	23,851	25,559	26,294	27,029	27,764	28,764
21	3	20,928	21,565	21,820	23,581	24,316	26,024	26,759	27,494	28,229	29,229
22	4	21,445	22,082	22,338	24,282	25,017	26,725	27,460	28,195	28,930	29,930
23	5	21,726	22,364	22,619	24,747	25,482	27,190	27,925	28,660	29,395	30,395
24	6	22,008	22,645	22,900	25,212	25,947	27,655	28,390	29,125	29,860	30,860
25	7		22,926	23,182	25,677	26,412	28,120	28,855	29,590	30,325	31,325
26	8		23,208	23,463	26,142	26,877	28,585	29,320	30,055	30,790	31,790
27	9			23,744	26,607	27,342	29,050	29,785	30,520	31,255	32,255
28	10			24,025	27,073	27,808	29,516	30,251	30,986	31,721	32,721
29	11				27,538	28,273	29,981	30,716	31,451	32,186	33,186
30	12				28,003	28,738	30,446	31,181	31,916	32,651	33,651
31	13				28,468	29,203	30,911	31,646	32,381	33,116	34,116
32	14						31,376	32,111	32,846	33,581	34,581
33	15						31,841	32,576	33,311	34,046	35,046
34	16						32,306	33,041	33,776	34,511	35,511
35	17								34,241	34,976	35,976
36	18								34,706	35,441	36,441
37	19								35,171	35,906	36,906

38

**STATE MINIMUM SALARY SCHEDULE II**

39	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
40	Years	4 <sup>th</sup>	3 <sup>rd</sup>	2 <sup>nd</sup>		A.B.		M.A.	M.A.	M.A.	Doc-
41	Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
42	0	21,084	21,721	21,976	23,186	23,921	25,629	26,364	27,099	27,834	28,834
43	1	21,365	22,002	22,257	23,651	24,386	26,094	26,829	27,564	28,299	29,299
44	2	21,646	22,284	22,539	24,116	24,851	26,559	27,294	28,029	28,764	29,764
45	3	21,928	22,565	22,820	24,581	25,316	27,024	27,759	28,494	29,229	30,229
46	4	22,445	23,082	23,338	25,282	26,017	27,725	28,460	29,195	29,930	30,930
47	5	22,726	23,364	23,619	25,747	26,482	28,190	28,925	29,660	30,395	31,395
48	6	23,008	23,645	23,900	26,212	26,947	28,655	29,390	30,125	30,860	31,860
49	7		23,926	24,182	26,677	27,412	29,120	29,855	30,590	31,325	32,325
50	8		24,208	24,463	27,142	27,877	29,585	30,320	31,055	31,790	32,790
51	9			24,744	27,607	28,342	30,050	30,785	31,520	32,255	33,255
52	10			25,025	28,073	28,808	30,516	31,251	31,986	32,721	33,721
53	11				28,538	29,273	30,981	31,716	32,451	33,186	34,186
54	12				29,003	29,738	31,446	32,181	32,916	33,651	34,651
55	13				29,468	30,203	31,911	32,646	33,381	34,116	35,116
56	14						32,376	33,111	33,846	34,581	35,581
57	15						32,841	33,576	34,311	35,046	36,046
58	16						33,306	34,041	34,776	35,511	36,511
59	17								35,241	35,976	36,976
60	18								35,706	36,441	37,441
61	19								36,171	36,906	37,906

62 (b) Six hundred dollars shall be paid annually to each  
63 classroom teacher who has at least twenty years of teaching  
64 experience. The payments: (i) Shall be in addition to any  
65 amounts prescribed in the applicable state minimum salary  
66 schedule; (ii) shall be paid in equal monthly installments; and  
67 (iii) shall be considered a part of the state minimum salaries for  
68 teachers.

69 (c) Effective the first day of July, two thousand one, in  
70 addition to any amounts prescribed in the applicable state



71 minimum salary schedule, each professional educator shall be  
 72 paid annually the following incremental increases in accordance  
 73 with their years of experience. The payments shall be paid in  
 74 equal monthly installments and shall be considered a part of the  
 75 state minimum salaries for teachers.

76	Years of Experience	Increment
77	31	534
78	32	534
79	33	534
80	34	534
81	35	534

**§18A-4-2a. State minimum salary bonus for classroom teachers  
with national board certification.**

1 (a) The Legislature hereby finds and declares that the  
 2 rigorous standards and processes for certification by the  
 3 national board for professional teaching standards (NBPTS)  
 4 helps to promote the quality of teaching and learning. There-  
 5 fore, classroom teachers in the public schools of West Virginia  
 6 should be encouraged to achieve national board certification  
 7 through a reimbursement of expenses and an additional salary  
 8 bonus which reflects their additional certification, to be paid in  
 9 accordance with the provisions of this section.

10 (b) One thousand dollars shall be paid annually to each  
 11 classroom teacher who holds a valid certificate issued by the  
 12 national board of professional teaching standards for the life of  
 13 the certification, but in no event more than ten years for any one  
 14 certification: *Provided*, That beginning on the first day of July,  
 15 two thousand one, in lieu of the one thousand dollars, two  
 16 thousand five hundred dollars shall be paid annually to each  
 17 classroom teacher who holds a valid certificate issued by the  
 18 national board of professional teaching standards for the life of  
 19 the certification, but in no event more than ten years for any one  
 20 certification.

21 (c) The payments: (i) Shall be in addition to any amounts  
22 prescribed in the applicable state minimum salary schedule; (ii)  
23 shall be paid in equal monthly installments; and (iii) shall be  
24 considered a part of the state minimum salaries for teachers.

25 (d) One thousand dollars shall be paid for reimbursement  
26 once to each teacher who enrolls in the program for the national  
27 board for professional teaching standards certification and one  
28 thousand dollars shall be paid for reimbursement once to each  
29 teacher who completes the national board for professional  
30 teaching standards certification. Effective the first day of July,  
31 two thousand one, in lieu of the one thousand dollar payment  
32 for reimbursements, one-half the certification fee shall be paid  
33 for reimbursement once to each teacher who enrolls in the  
34 program for the national board for professional teaching  
35 standards certification and one-half the certification fee shall be  
36 paid for reimbursement once to each teacher who completes the  
37 national board for professional teaching standards certification.  
38 Teachers who achieve national board for professional teaching  
39 standards certification may be reimbursed a maximum of six  
40 hundred dollars for expenses actually incurred while obtaining  
41 the national board for professional teaching standards certifica-  
42 tion.

43 (e) The state board shall limit the number of teachers who  
44 receive the initial reimbursements of the certification fees set  
45 forth in subsection (d) to one hundred teachers annually.  
46 Effective the first day of July, two thousand one, in lieu of the  
47 limit of one hundred teachers annually, the state board shall  
48 limit the number of teachers who receive the initial reimburse-  
49 ments of the certification fees set forth in subsection (d) to two  
50 hundred teachers annually. The state board shall establish  
51 selection criteria for the teachers by the legislative rule required  
52 pursuant to subsection (g) of this section.

53 (f) Subject to the provisions of subsection (e) of this  
54 section, funding for reimbursement of the certification fee and  
55 expenses actually incurred while obtaining the national board

56 for professional teaching standards certifications shall be  
57 administered by the state department of education from an  
58 appropriation established for that purpose by the Legislature.  
59 If funds appropriated by the Legislature to accomplish the  
60 purposes of this subsection are insufficient, the state department  
61 shall prorate the reimbursements for expenses and shall request  
62 of the Legislature, at its next regular session, funds sufficient to  
63 accomplish the purposes of this subsection, including needed  
64 retroactive payments.

65 (g) The state board shall promulgate legislative rules  
66 pursuant to article three-b, chapter twenty-nine-a of this code to  
67 implement the provisions of this section.

**§18A-4-3. State minimum annual salary increments for principals and assistant principals.**

1 In addition to any salary increments for principals and  
2 assistant principals, in effect on the first day of January, one  
3 thousand nine hundred ninety-six, and paid from local funds,  
4 and in addition to the county schedule in effect for teachers, the  
5 county board shall pay each principal, a principal's salary  
6 increment and each assistant principal an assistant principal's  
7 salary increment as prescribed by this section commencing on  
8 the first day of July, one thousand nine hundred ninety-six,  
9 from state funds appropriated for the salary increments.

10 State funds for this purpose shall be paid within the West  
11 Virginia public school support plan in accordance with article  
12 nine-a, chapter eighteen of this code.

13 The salary increment in this section for each principal shall  
14 be determined by multiplying the basic salary for teachers in  
15 accordance with the classification of certification and of  
16 training of the principal as prescribed in this article, by the  
17 appropriate percentage rate prescribed in this section according  
18 to the number of teachers supervised.

19 STATE MINIMUM SALARY INCREMENT  
20 RATES FOR PRINCIPALS

21	No. of Teachers	
22	Supervised	Rates
23	1-7	6.0%
24	8-14	6.5%
25	15-24	7.0%
26	25-38	7.5%
27	39-57	8.0%
28	58 and up	8.5%

29 Effective the first day of July, two thousand one, in addition  
30 to any salary increments for principals and assistant principals,  
31 in effect on the first day of January, two thousand one, and paid  
32 from local funds, the following schedule shall be used for  
33 calculating the salary increment for principals and assistant  
34 principals:

35 STATE MINIMUM SALARY INCREMENT  
36 RATES FOR PRINCIPALS

37	No. of Teachers	
38	Supervised	Rates
39	1-7	9.0%
40	8-14	9.5%
41	15-24	10.0%
42	25-38	10.5%
43	39-57	11.0%
44	58 and up	11.5%

45 The salary increment in this section for each assistant  
46 principal shall be determined in the same manner as that for  
47 principals, utilizing the number of teachers supervised by the  
48 principal under whose direction the assistant principal works,

49 except that the percentage rate shall be fifty percent of the rate  
50 prescribed for the principal.

51 Salaries for employment beyond the minimum employment  
52 term shall be at the same daily rate as the salaries for the  
53 minimum employment terms.

54 For the purpose of determining the number of teachers  
55 supervised by a principal, the county board shall use data for  
56 the second school month of the prior school term and the  
57 number of teachers shall be interpreted to mean the total  
58 number of professional educators assigned to each school on a  
59 full-time equivalency basis: *Provided*, That if there is a change  
60 in circumstances because of consolidation or catastrophe, the  
61 county board shall determine what is a reasonable number of  
62 supervised teachers in order to establish the appropriate  
63 increment percentage rate.

64 No county may reduce local funds allocated for salary  
65 increments for principals and assistant principals in effect on  
66 the first day of January, one thousand nine hundred ninety-six,  
67 and used in supplementing the state minimum salaries as  
68 provided for in this article, unless forced to do so by defeat of  
69 a special levy, or a loss in assessed values or events over which  
70 it has no control and for which the county board has received  
71 approval from the state board prior to making the reduction.

72 Nothing in this section prevents a county board from  
73 providing, in a uniform manner, salary increments greater than  
74 those required by this section.

**§18A-4-8. Employment term and class titles of service personnel;  
definitions.**

1 (a) The purpose of this section is to establish an employ-  
2 ment term and class titles for service personnel. The employ-  
3 ment term for service personnel may be no less than ten

4 months. A month is defined as twenty employment days:  
5 *Provided*, That the county board may contract with all or part  
6 of these service personnel for a longer term. The beginning and  
7 closing dates of the ten-month employment term may not  
8 exceed forty-three weeks.

9 (b) Service personnel employed on a yearly or twelve-  
10 month basis may be employed by calendar months. Whenever  
11 there is a change in job assignment during the school year, the  
12 minimum pay scale and any county supplement are applicable.

13 (c) Service personnel employed in the same classification  
14 for more than the two hundred day minimum employment term  
15 shall be paid for additional employment at a daily rate of not  
16 less than the daily rate paid for the two hundred day minimum  
17 employment term.

18 (d) No service employee, without his or her agreement, may  
19 be required to report for work more than five days per week and  
20 no part of any working day may be accumulated by the em-  
21 ployer for future work assignments, unless the employee agrees  
22 thereto.

23 (e) If an employee whose regular work week is scheduled  
24 from Monday through Friday agrees to perform any work  
25 assignments on a Saturday or Sunday, the employee shall be  
26 paid for at least one-half day of work for each day he or she  
27 reports for work, and if the employee works more than three  
28 and one-half hours on any Saturday or Sunday, he or she shall  
29 be paid for at least a full day of work for each day.

30 (f) Custodians, aides, maintenance, office and school lunch  
31 employees required to work a daily work schedule that is  
32 interrupted, that is, who do not work a continuous period in one  
33 day, shall be paid additional compensation equal to at least one  
34 eighth of their total salary as provided by their state minimum  
35 salary and any county pay supplement, and payable entirely

36 from county funds: *Provided*, That when engaged in duties of  
37 transporting students exclusively, aides shall not be regarded as  
38 working an interrupted schedule. Maintenance personnel are  
39 defined as personnel who hold a classification title other than  
40 in a custodial, aide, school lunch, office or transportation  
41 category as provided in section one, article one of this chapter.

42 (g) Upon the change in classification or upon meeting the  
43 requirements of an advanced classification of or by any  
44 employee, the employee's salary shall be made to comply with  
45 the requirements of this article, and to any county salary  
46 schedule in excess of the minimum requirements of this article,  
47 based upon the employee's advanced classification and allow-  
48 able years of employment.

49 (h) An employee's contract as provided in section five,  
50 article two of this chapter shall state the appropriate monthly  
51 salary the employee is to be paid, based on the class title as  
52 provided in this article and any county salary schedule in excess  
53 of the minimum requirements of this article.

54 (i) The column heads of the state minimum pay scale and  
55 class titles, set forth in section eight-a of this article, are defined  
56 as follows:

57 (1) "Pay grade" means the monthly salary applicable to  
58 class titles of service personnel;

59 (2) "Years of employment" means the number of years  
60 which an employee classified as service personnel has been  
61 employed by a board in any position prior to or subsequent to  
62 the effective date of this section and including service in the  
63 armed forces of the United States, if the employee were  
64 employed at the time of his or her induction. For the purpose of  
65 section eight-a of this article, years of employment shall be  
66 limited to the number of years shown and allowed under the

67 state minimum pay scale as set forth in section eight-a of this  
68 article;

69 (3) "Class title" means the name of the position or job held  
70 by service personnel;

71 (4) "Accountant I" means personnel employed to maintain  
72 payroll records and reports and perform one or more operations  
73 relating to a phase of the total payroll;

74 (5) "Accountant II" means personnel employed to maintain  
75 accounting records and to be responsible for the accounting  
76 process associated with billing, budgets, purchasing and related  
77 operations;

78 (6) "Accountant III" means personnel who are employed in  
79 the county board office to manage and supervise accounts  
80 payable and/or payroll procedures;

81 (7) "Accounts payable supervisor" means personnel who  
82 are employed in the county board office who have primary  
83 responsibility for the accounts payable function, which may  
84 include the supervision of other personnel, and who have either  
85 completed twelve college hours of accounting courses from an  
86 accredited institution of higher education or have at least eight  
87 years of experience performing progressively difficult account-  
88 ing tasks;

89 (8) "Aide I" means those personnel selected and trained for  
90 teacher-aide classifications such as monitor aide, clerical aide,  
91 classroom aide or general aide;

92 (9) "Aide II" means those personnel referred to in the "Aide  
93 I" classification who have completed a training program  
94 approved by the state board, or who hold a high school diploma  
95 or have received a general educational development certificate.



96 Only personnel classified in an Aide II class title may be  
97 employed as an aide in any special education program;

98 (10) "Aide III" means those personnel referred to in the  
99 "Aide I" classification who hold a high school diploma or a  
100 general educational development certificate and have completed  
101 six semester hours of college credit at an institution of higher  
102 education or are employed as an aide in a special education  
103 program and have one year's experience as an aide in special  
104 education;

105 (11) "Aide IV" means personnel referred to in the "Aide I"  
106 classification who hold a high school diploma or a general  
107 educational development certificate and who have completed  
108 eighteen hours of state board-approved college credit at a  
109 regionally accredited institution of higher education, or who  
110 have completed fifteen hours of state board-approved college  
111 credit at a regionally accredited institution of higher education  
112 and successfully completed an in-service training program  
113 determined by the state board to be the equivalent of three  
114 hours of college credit;

115 (12) "Audiovisual technician" means personnel employed  
116 to perform minor maintenance on audiovisual equipment, films,  
117 supplies and the filling of requests for equipment;

118 (13) "Auditor" means personnel employed to examine and  
119 verify accounts of individual schools and to assist schools and  
120 school personnel in maintaining complete and accurate records  
121 of their accounts;

122 (14) "Autism mentor" means personnel who work with  
123 autistic students and who meet standards and experience to be  
124 determined by the state board: *Provided*, That if any employee  
125 has held or holds an aide title and becomes employed as an  
126 autism mentor, the employee shall hold a multiclassification

127 status that includes aide and autism mentor titles, in accordance  
128 with section eight-b of this article;

129 (15) "Braille or sign language specialist" means personnel  
130 employed to provide braille and/or sign language assistance to  
131 students: *Provided*, That if any employee has held or holds an  
132 aide title and becomes employed as a braille or sign language  
133 specialist, the employee shall hold a multiclassification status  
134 that includes aide and braille or sign language specialist title, in  
135 accordance with section eight-b of this article;

136 (16) "Bus operator" means personnel employed to operate  
137 school buses and other school transportation vehicles as  
138 provided by the state board;

139 (17) "Buyer" means personnel employed to review and  
140 write specifications, negotiate purchase bids and recommend  
141 purchase agreements for materials and services that meet  
142 predetermined specifications at the lowest available costs;

143 (18) "Cabinetmaker" means personnel employed to  
144 construct cabinets, tables, bookcases and other furniture;

145 (19) "Cafeteria manager" means personnel employed to  
146 direct the operation of a food services program in a school,  
147 including assigning duties to employees, approving requisitions  
148 for supplies and repairs, keeping inventories, inspecting areas  
149 to maintain high standards of sanitation, preparing financial  
150 reports and keeping records pertinent to food services of a  
151 school;

152 (20) "Carpenter I" means personnel classified as a carpen-  
153 ter's helper;

154 (21) "Carpenter II" means personnel classified as a journey-  
155 man carpenter;

156 (22) "Chief mechanic" means personnel employed to be  
157 responsible for directing activities which ensure that student  
158 transportation or other board-owned vehicles are properly and  
159 safely maintained;

160 (23) "Clerk I" means personnel employed to perform  
161 clerical tasks;

162 (24) "Clerk II" means personnel employed to perform  
163 general clerical tasks, prepare reports and tabulations and  
164 operate office machines;

165 (25) "Computer operator" means qualified personnel  
166 employed to operate computers;

167 (26) "Cook I" means personnel employed as a cook's  
168 helper;

169 (27) "Cook II" means personnel employed to interpret  
170 menus, to prepare and serve meals in a food service program of  
171 a school and shall include personnel who have been employed  
172 as a "Cook I" for a period of four years, if the personnel have  
173 not been elevated to this classification within that period of  
174 time;

175 (28) "Cook III" means personnel employed to prepare and  
176 serve meals, make reports, prepare requisitions for supplies,  
177 order equipment and repairs for a food service program of a  
178 school system;

179 (29) "Crew leader" means personnel employed to organize  
180 the work for a crew of maintenance employees to carry out  
181 assigned projects;

182 (30) "Custodian I" means personnel employed to keep  
183 buildings clean and free of refuse;

184 (31) "Custodian II" means personnel employed as a  
185 watchman or groundsman;

186 (32) "Custodian III" means personnel employed to keep  
187 buildings clean and free of refuse, to operate the heating or  
188 cooling systems and to make minor repairs;

189 (33) "Custodian IV" means personnel employed as head  
190 custodians. In addition to providing services as defined in  
191 "custodian III," their duties may include supervising other  
192 custodian personnel;

193 (34) "Director or coordinator of services" means personnel  
194 who are assigned to direct a department or division. Nothing in  
195 this subdivision may prohibit professional personnel or profes-  
196 sional educators as defined in section one, article one of this  
197 chapter, from holding this class title, but professional personnel  
198 may not be defined or classified as service personnel unless the  
199 professional personnel held a service personnel title under this  
200 section prior to holding class title of "director or coordinator of  
201 services." Directors or coordinators of service positions shall be  
202 classified as either a professional personnel or service personnel  
203 position for state aid formula funding purposes and funding for  
204 directors or coordinators of service positions shall be based  
205 upon the employment status of the director or coordinator either  
206 as a professional personnel or service personnel;

207 (35) "Draftsman" means personnel employed to plan,  
208 design and produce detailed architectural/engineering drawings;

209 (36) "Electrician I" means personnel employed as an  
210 apprentice electrician helper or who holds an electrician helper  
211 license issued by the state fire marshal;

212 (37) "Electrician II" means personnel employed as an  
213 electrician journeyman or who holds a journeyman electrician  
214 license issued by the state fire marshal;

215 (38) "Electronic technician I" means personnel employed  
216 at the apprentice level to repair and maintain electronic equip-  
217 ment;

218 (39) "Electronic technician II" means personnel employed  
219 at the journeyman level to repair and maintain electronic  
220 equipment;

221 (40) "Executive secretary" means personnel employed as  
222 the county school superintendent's secretary or as a secretary  
223 who is assigned to a position characterized by significant  
224 administrative duties;

225 (41) "Food services supervisor" means qualified personnel  
226 not defined as professional personnel or professional educators  
227 in section one, article one of this chapter, employed to manage  
228 and supervise a county school system's food service program.  
229 The duties would include preparing in-service training pro-  
230 grams for cooks and food service employees, instructing  
231 personnel in the areas of quantity cooking with economy and  
232 efficiency and keeping aggregate records and reports;

233 (42) "Foremen" means skilled persons employed for  
234 supervision of personnel who work in the areas of repair and  
235 maintenance of school property and equipment;

236 (43) "General maintenance" means personnel employed as  
237 helpers to skilled maintenance employees and to perform minor  
238 repairs to equipment and buildings of a county school system;

239 (44) "Glazier" means personnel employed to replace glass  
240 or other materials in windows and doors and to do minor  
241 carpentry tasks;

242 (45) "Graphic artist" means personnel employed to prepare  
243 graphic illustrations;

244 (46) "Groundsmen" means personnel employed to perform  
245 duties that relate to the appearance, repair and general care of  
246 school grounds in a county school system. Additional assign-  
247 ments may include the operation of a small heating plant and  
248 routine cleaning duties in buildings;

249 (47) "Handyman" means personnel employed to perform  
250 routine manual tasks in any operation of the county school  
251 system;

252 (48) "Heating and air conditioning mechanic I" means  
253 personnel employed at the apprentice level to install, repair and  
254 maintain heating and air conditioning plants and related  
255 electrical equipment;

256 (49) "Heating and air conditioning mechanic II" means  
257 personnel employed at the journeyman level to install, repair  
258 and maintain heating and air conditioning plants and related  
259 electrical equipment;

260 (50) "Heavy equipment operator" means personnel em-  
261 ployed to operate heavy equipment;

262 (51) "Inventory supervisor" means personnel who are  
263 employed to supervise or maintain operations in the receipt,  
264 storage, inventory and issuance of materials and supplies;

265 (52) "Key punch operator" means qualified personnel  
266 employed to operate key punch machines or verifying ma-  
267 chines;

268 (53) "Locksmith" means personnel employed to repair and  
269 maintain locks and safes;

270 (54) "Lubrication man" means personnel employed to  
271 lubricate and service gasoline or diesel-powered equipment of  
272 a county school system;

273 (55) "Machinist" means personnel employed to perform  
274 machinist tasks which include the ability to operate a lathe,  
275 planer, shaper, threading machine and wheel press. These  
276 personnel should also have, the ability to work from blueprints  
277 and drawings;

278 (56) "Mail clerk" means personnel employed to receive,  
279 sort, dispatch, deliver or otherwise handle letters, parcels and  
280 other mail;

281 (57) "Maintenance clerk" means personnel employed to  
282 maintain and control a stocking facility to keep adequate tools  
283 and supplies on hand for daily withdrawal for all school  
284 maintenance crafts;

285 (58) "Mason" means personnel employed to perform tasks  
286 connected with brick and block laying and carpentry tasks  
287 related to such laying;

288 (59) "Mechanic" means personnel employed who can  
289 independently perform skilled duties in the maintenance and  
290 repair of automobiles, school buses and other mechanical and  
291 mobile equipment to use in a county school system;

292 (60) "Mechanic assistant" means personnel employed as a  
293 mechanic apprentice and helper;

294 (61) "Multiclassification" means personnel employed to  
295 perform tasks that involve the combination of two or more class  
296 titles in this section. In these instances the minimum salary  
297 scale shall be the higher pay grade of the class titles involved;

298 (62) "Office equipment repairman I" means personnel  
299 employed as an office equipment repairman apprentice or  
300 helper;

301 (63) "Office equipment repairman II" means personnel  
302 responsible for servicing and repairing all office machines and  
303 equipment. Personnel are responsible for parts being purchased  
304 necessary for the proper operation of a program of continuous  
305 maintenance and repair;

306 (64) "Painter" means personnel employed to perform duties  
307 of painting, finishing and decorating of wood, metal and  
308 concrete surfaces of buildings, other structures, equipment,  
309 machinery and furnishings of a county school system;

310 (65) "Paraprofessional" means a person certified pursuant  
311 to section two-a, article three of this chapter to perform duties  
312 in a support capacity including, but not limited to, facilitating  
313 in the instruction and direct or indirect supervision of pupils  
314 under the direction of a principal, a teacher or another desig-  
315 nated professional educator: *Provided*, That no person em-  
316 ployed on the effective date of this section in the position of an  
317 aide may be reduced in force or transferred to create a vacancy  
318 for the employment of a paraprofessional: *Provided, however*,  
319 That if any employee has held or holds an aide title and  
320 becomes employed as a paraprofessional, the employee shall  
321 hold a multiclassification status that includes aide and  
322 paraprofessional titles in accordance with section eight-b of this  
323 article: *Provided further*, That once an employee who holds an  
324 aide title becomes certified as a paraprofessional and is required  
325 to perform duties that may not be performed by an aide without  
326 paraprofessional certification, he or she shall receive the  
327 paraprofessional title pay grade;

328 (66) "Payroll supervisor" means personnel who are  
329 employed in the county board office who have primary respon-  
330 sibility for the payroll function, which may include the supervi-  
331 sion of other personnel, and who have either completed twelve  
332 college hours of accounting from an accredited institution of



333 higher education or have at least eight years of experience  
334 performing progressively difficult accounting tasks;

335 (67) "Plumber I" means personnel employed as an appren-  
336 tice plumber and helper;

337 (68) "Plumber II" means personnel employed as a journey-  
338 man plumber;

339 (69) "Printing operator" means personnel employed to  
340 operate duplication equipment, and as required, to cut, collate,  
341 staple, bind and shelve materials;

342 (70) "Printing supervisor" means personnel employed to  
343 supervise the operation of a print shop;

344 (71) "Programmer" means personnel employed to design  
345 and prepare programs for computer operation;

346 (72) "Roofing/sheet metal mechanic" means personnel  
347 employed to install, repair, fabricate and maintain roofs,  
348 gutters, flashing and duct work for heating and ventilation;

349 (73) "Sanitation plant operator" means personnel employed  
350 to operate and maintain a water or sewage treatment plant to  
351 ensure the safety of the plant's effluent for human consumption  
352 or environmental protection;

353 (74) "School bus supervisor" means qualified personnel  
354 employed to assist in selecting school bus operators and routing  
355 and scheduling of school buses, operate a bus when needed,  
356 relay instructions to bus operators, plan emergency routing of  
357 buses and promoting good relationships with parents, pupils,  
358 bus operators and other employees;

359 (75) "Secretary I" means personnel employed to transcribe  
360 from notes or mechanical equipment, receive callers, perform  
361 clerical tasks, prepare reports and operate office machines;

362 (76) "Secretary II" means personnel employed in any  
363 elementary, secondary, kindergarten, nursery, special education,  
364 vocational or any other school as a secretary. The duties may  
365 include performing general clerical tasks, transcribing from  
366 notes or stenotype or mechanical equipment or a sound-  
367 producing machine, preparing reports, receiving callers and  
368 referring them to proper persons, operating office machines,  
369 keeping records and handling routine correspondence. There is  
370 nothing implied in this subdivision that would prevent the  
371 employees from holding or being elevated to a higher classifi-  
372 cation;

373 (77) "Secretary III" means personnel assigned to the county  
374 board office administrators in charge of various instructional,  
375 maintenance, transportation, food services, operations and  
376 health departments, federal programs or departments with  
377 particular responsibilities of purchasing and financial control or  
378 any personnel who have served in a position which meets the  
379 definition of "secretary II" or "secretary III" in this section for  
380 eight years;

381 (78) "Supervisor of maintenance" means skilled personnel  
382 not defined as professional personnel or professional educators  
383 as in section one, article one of this chapter. The responsibilities  
384 would include directing the upkeep of buildings and shops,  
385 issuing instructions to subordinates relating to cleaning, repairs  
386 and maintenance of all structures and mechanical and electrical  
387 equipment of a board;

388 (79) "Supervisor of transportation" means qualified  
389 personnel employed to direct school transportation activities,  
390 properly and safely, and to supervise the maintenance and

391 repair of vehicles, buses and other mechanical and mobile  
392 equipment used by the county school system;

393 (80) "Switchboard operator-receptionist" means personnel  
394 employed to refer incoming calls, to assume contact with the  
395 public, to direct and to give instructions as necessary, to operate  
396 switchboard equipment and to provide clerical assistance;

397 (81) "Truck driver" means personnel employed to operate  
398 light or heavy duty gasoline and diesel-powered vehicles;

399 (82) "Warehouse clerk" means personnel employed to be  
400 responsible for receiving, storing, packing and shipping goods;

401 (83) "Watchman" means personnel employed to protect  
402 school property against damage or theft. Additional assign-  
403 ments may include operation of a small heating plant and  
404 routine cleaning duties; and

405 (84) "Welder" means personnel employed to provide  
406 acetylene or electric welding services for a school system.

407 (j) In addition to the compensation provided for in section  
408 eight-a of this article, for service personnel, each service  
409 employee is, notwithstanding any provisions in this code to the  
410 contrary, entitled to all service personnel employee rights,  
411 privileges and benefits provided under this or any other chapter  
412 of this code without regard to the employee's hours of employ-  
413 ment or the methods or sources of compensation.

414 (k) Service personnel whose years of employment exceed  
415 the number of years shown and provided for under the state  
416 minimum pay scale set forth in section eight-a of this article  
417 may not be paid less than the amount shown for the maximum  
418 years of employment shown and provided for in the classifica-  
419 tion in which he or she is employed.

420 (l) The county boards shall review each service personnel  
421 employee job classification annually and shall reclassify all  
422 service employees as required by the job classifications. The  
423 state superintendent of schools may withhold state funds  
424 appropriated pursuant to this article for salaries for service  
425 personnel who are improperly classified by the county boards.  
426 Further, the state superintendent shall order county boards to  
427 correct immediately any improper classification matter and with  
428 the assistance of the attorney general shall take any legal action  
429 necessary against any county board to enforce the order.

430 (m) No service employee, without his or her written  
431 consent, may be reclassified by class title, nor may a service  
432 employee, without his or her written consent, be relegated to  
433 any condition of employment which would result in a reduction  
434 of his or her salary, rate of pay, compensation or benefits  
435 earned during the current fiscal year or which would result in a  
436 reduction of his or her salary, rate of pay, compensation or  
437 benefits for which he or she would qualify by continuing in the  
438 same job position and classification held during that fiscal year  
439 and subsequent years.

440 (n) Any board failing to comply with the provisions of this  
441 article may be compelled to do so by mandamus, and is liable  
442 to any party prevailing against the board for court costs and the  
443 prevailing party's reasonable attorney fee, as determined and  
444 established by the court.

445 (o) Notwithstanding any provisions in this code to the  
446 contrary, service personnel who hold a continuing contract in a  
447 specific job classification and who are physically unable to  
448 perform the job's duties as confirmed by a physician chosen by  
449 the employee shall be given priority status over any employee  
450 not holding a continuing contract in filling other service  
451 personnel job vacancies if qualified as provided in section  
452 eight-e of this article.

**§18A-4-8a. Service personnel minimum monthly salaries.**

1 (1) The minimum monthly pay for each service employee  
 2 whose employment is for a period of more than three and  
 3 one-half hours a day shall be at least the amounts indicated in  
 4 the "state minimum pay scale pay grade I" and the minimum  
 5 monthly pay for each service employee whose employment is  
 6 for a period of three and one-half hours or less a day shall be at  
 7 least one-half the amount indicated in the "state minimum pay  
 8 scale pay grade I" set forth in this section: *Provided*, That  
 9 beginning the first day of the second quarter of the employment  
 10 term in the school year two thousand one-two thousand two the  
 11 minimum monthly pay for each service employee whose  
 12 employment is for a period of more than three and one-half  
 13 hours a day shall be at least the amounts indicated in the "state  
 14 minimum pay scale pay grade II" and the minimum monthly  
 15 pay for each service employee whose employment is for a  
 16 period of three and one-half hours or less a day shall be at least  
 17 one-half the amount indicated in the "state minimum pay scale  
 18 pay grade II" set forth in this section.

**19 STATE MINIMUM PAY SCALE PAY GRADE I****20 Years of****21 Employment****Pay Grade**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	
22									
23	0	1,220	1,240	1,280	1,330	1,380	1,440	1,470	1,540
24	1	1,249	1,269	1,309	1,359	1,409	1,469	1,499	1,569
25	2	1,278	1,298	1,338	1,388	1,438	1,498	1,528	1,598
26	3	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
27	4	1,336	1,356	1,396	1,446	1,496	1,556	1,586	1,656
28	5	1,365	1,385	1,425	1,475	1,525	1,585	1,615	1,685
29	6	1,394	1,414	1,454	1,504	1,554	1,614	1,644	1,714
30	7	1,423	1,443	1,483	1,533	1,583	1,643	1,673	1,743

31	8	1,452	1,472	1,512	1,562	1,612	1,672	1,702	1,772
32	9	1,481	1,501	1,541	1,591	1,641	1,701	1,731	1,801
33	10	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
34	11	1,539	1,559	1,599	1,649	1,699	1,759	1,789	1,859
35	12	1,568	1,588	1,628	1,678	1,728	1,788	1,818	1,888
36	13	1,597	1,617	1,657	1,707	1,757	1,817	1,847	1,917
37	14	1,626	1,646	1,686	1,736	1,786	1,846	1,876	1,946
38	15	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
39	16	1,684	1,704	1,744	1,794	1,844	1,904	1,934	2,004
40	17	1,713	1,733	1,773	1,823	1,873	1,933	1,963	2,033
41	18	1,742	1,762	1,802	1,852	1,902	1,962	1,992	2,062
42	19	1,771	1,791	1,831	1,881	1,931	1,991	2,021	2,091
43	20	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
44	21	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
45	22	1,858	1,878	1,918	1,968	2,018	2,078	2,108	2,178
46	23	1,887	1,907	1,947	1,997	2,047	2,107	2,137	2,207
47	24	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
48	25	1,945	1,965	2,005	2,055	2,105	2,165	2,195	2,265
49	26	1,974	1,994	2,034	2,084	2,134	2,194	2,224	2,294
50	27	2,003	2,023	2,063	2,113	2,163	2,223	2,253	2,323
51	28	2,032	2,052	2,092	2,142	2,192	2,252	2,282	2,352
52	29	2,061	2,081	2,121	2,171	2,221	2,281	2,311	2,381
53	30	2,090	2,110	2,150	2,200	2,250	2,310	2,340	2,410
54	31	2,119	2,139	2,179	2,229	2,279	2,339	2,369	2,439
55	32	2,148	2,168	2,208	2,258	2,308	2,368	2,398	2,468
56	33	2,177	2,197	2,237	2,287	2,337	2,397	2,427	2,497
57	34	2,206	2,226	2,266	2,316	2,366	2,426	2,456	2,526
58	35	2,235	2,255	2,295	2,345	2,395	2,455	2,485	2,555
59	36	2,264	2,284	2,324	2,374	2,424	2,484	2,514	2,584
60	37	2,293	2,313	2,353	2,403	2,453	2,513	2,543	2,613
61	38	2,322	2,342	2,382	2,432	2,482	2,542	2,572	2,642
62	39	2,351	2,371	2,411	2,461	2,511	2,571	2,601	2,671
63	40	2,380	2,400	2,440	2,490	2,540	2,600	2,630	2,700

## 64 STATE MINIMUM PAY SCALE PAY GRADE II

65 Years of

66 Employment

Pay Grade

		A	B	C	D	E	F	G	H
67	0	1,295	1,315	1,355	1,405	1,455	1,515	1,545	1,615
68	1	1,325	1,345	1,385	1,435	1,485	1,545	1,575	1,645
69	2	1,355	1,375	1,415	1,465	1,515	1,575	1,605	1,675
70	3	1,385	1,405	1,445	1,495	1,545	1,605	1,635	1,705
71	4	1,415	1,435	1,475	1,525	1,575	1,635	1,665	1,735
72	5	1,445	1,465	1,505	1,555	1,605	1,665	1,695	1,765
73	6	1,475	1,495	1,535	1,585	1,635	1,695	1,725	1,795
74	7	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
75	8	1,535	1,555	1,595	1,645	1,695	1,755	1,785	1,855
76	9	1,565	1,585	1,625	1,675	1,725	1,785	1,815	1,885
77	10	1,595	1,615	1,655	1,705	1,755	1,815	1,845	1,915
78	11	1,625	1,645	1,685	1,735	1,785	1,845	1,875	1,945
79	12	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
80	13	1,685	1,705	1,745	1,795	1,845	1,905	1,935	2,005
81	14	1,715	1,735	1,775	1,825	1,875	1,935	1,965	2,035
82	15	1,745	1,765	1,805	1,855	1,905	1,965	1,995	2,065
83	16	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095
84	17	1,805	1,825	1,865	1,915	1,965	2,025	2,055	2,125
85	18	1,835	1,855	1,895	1,945	1,995	2,055	2,085	2,155
86	19	1,865	1,885	1,925	1,975	2,025	2,085	2,115	2,185
87	20	1,895	1,915	1,955	2,005	2,055	2,115	2,145	2,215
88	21	1,925	1,945	1,985	2,035	2,085	2,145	2,175	2,245
89	22	1,955	1,975	2,015	2,065	2,115	2,175	2,205	2,275
90	23	1,985	2,005	2,045	2,095	2,145	2,205	2,235	2,305
91	24	2,015	2,035	2,075	2,125	2,175	2,235	2,265	2,335
92	25	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
93	26	2,075	2,095	2,135	2,185	2,235	2,295	2,325	2,395
94	27	2,105	2,125	2,165	2,215	2,265	2,325	2,355	2,425
95	28	2,135	2,155	2,195	2,245	2,295	2,355	2,385	2,455
96	29	2,165	2,185	2,225	2,275	2,325	2,385	2,415	2,485
97	30	2,195	2,215	2,255	2,305	2,355	2,415	2,445	2,515
98	31	2,225	2,245	2,285	2,335	2,385	2,445	2,475	2,545
99	32	2,255	2,275	2,315	2,365	2,415	2,475	2,505	2,575
100	33	2,285	2,305	2,345	2,395	2,445	2,505	2,535	2,605
101	34	2,315	2,335	2,375	2,425	2,475	2,535	2,565	2,635
102	35	2,345	2,365	2,405	2,455	2,505	2,565	2,595	2,665

103	36	2,375	2,395	2,435	2,485	2,535	2,595	2,625	2,695
104	37	2,405	2,425	2,465	2,515	2,565	2,625	2,655	2,725
105	38	2,435	2,455	2,495	2,545	2,595	2,655	2,685	2,755
106	39	2,465	2,485	2,525	2,575	2,625	2,685	2,715	2,785
107	40	2,495	2,515	2,555	2,605	2,655	2,715	2,745	2,815

108	CLASS TITLE	PAY GRADE
109	Accountant I .....	D
110	Accountant II .....	E
111	Accountant III .....	F
112	Accounts Payable Supervisor .....	G
113	Aide I .....	A
114	Aide II .....	B
115	Aide III .....	C
116	Aide IV .....	D
117	Audiovisual Technician .....	C
118	Auditor .....	G
119	Autism Mentor .....	E
120	Braille or Sign Language Specialist .....	E
121	Bus Operator .....	D
122	Buyer .....	F
123	Cabinetmaker .....	G
124	Cafeteria Manager .....	D
125	Carpenter I .....	E
126	Carpenter II .....	F
127	Chief Mechanic .....	G
128	Clerk I .....	B
129	Clerk II .....	C
130	Computer Operator .....	E
131	Cook I .....	A
132	Cook II .....	B
133	Cook III .....	C
134	Crew Leader .....	F
135	Custodian I .....	A
136	Custodian II .....	B
137	Custodian III .....	C



138	Custodian IV	D
139	Director or Coordinator of Services	H
140	Draftsman	D
141	Electrician I	F
142	Electrician II	G
143	Electronic Technician I	F
144	Electronic Technician II	G
145	Executive Secretary	G
146	Food Services Supervisor	G
147	Foreman	G
148	General Maintenance	C
149	Glazier	D
150	Graphic Artist	D
151	Groundsman	B
152	Handyman	B
153	Heating and Air Conditioning Mechanic I	E
154	Heating and Air Conditioning Mechanic II	G
155	Heavy Equipment Operator	E
156	Inventory Supervisor	D
157	Key Punch Operator	B
158	Locksmith	G
159	Lubrication Man	C
160	Machinist	F
161	Mail Clerk	D
162	Maintenance Clerk	C
163	Mason	G
164	Mechanic	F
165	Mechanic Assistant	E
166	Office Equipment Repairman I	F
167	Office Equipment Repairman II	G
168	Painter	E
169	Paraprofessional	F
170	Payroll Supervisor	G
171	Plumber I	E
172	Plumber II	G

173	Printing Operator .....	B
174	Printing Supervisor .....	D
175	Programmer .....	H
176	Roofing/Sheet Metal Mechanic .....	F
177	Sanitation Plant Operator .....	F
178	School Bus Supervisor .....	E
179	Secretary I .....	D
180	Secretary II .....	E
181	Secretary III .....	F
182	Supervisor of Maintenance .....	H
183	Supervisor of Transportation .....	H
184	Switchboard Operator-Receptionist .....	D
185	Truck Driver .....	D
186	Warehouse Clerk .....	C
187	Watchman .....	B
188	Welder .....	F

189       (2) An additional ten dollars per month shall be added to  
 190 the minimum monthly pay of each service employee who holds  
 191 a high school diploma or its equivalent: *Provided*, That  
 192 effective the first day of July, two thousand one, an additional  
 193 twelve dollars per month shall be added to the minimum  
 194 monthly pay of each service employee who holds a high school  
 195 diploma or its equivalent.

196       (3) An additional ten dollars per month also shall be added  
 197 to the minimum monthly pay of each service employee for  
 198 each of the following:

199       (A) A service employee who holds twelve college hours or  
 200 comparable credit obtained in a trade or vocational school as  
 201 approved by the state board;

202       (B) A service employee who holds twenty-four college  
 203 hours or comparable credit obtained in a trade or vocational  
 204 school as approved by the state board;

205 (C) A service employee who holds thirty-six college hours  
206 or comparable credit obtained in a trade or vocational school as  
207 approved by the state board;

208 (D) A service employee who holds forty-eight college  
209 hours or comparable credit obtained in a trade or vocational  
210 school as approved by the state board;

211 (E) A service employee who holds sixty college hours or  
212 comparable credit obtained in a trade or vocational school as  
213 approved by the state board;

214 (F) A service employee who holds seventy-two college  
215 hours or comparable credit obtained in a trade or vocational  
216 school as approved by the state board;

217 (G) Effective the first day of July, two thousand one, a  
218 service employee who holds eighty-four college hours or  
219 comparable credit obtained in a trade or vocational school as  
220 approved by the state board;

221 (H) Effective the first day of July, two thousand one, a  
222 service employee who holds ninety-six college hours or  
223 comparable credit obtained in a trade or vocational school as  
224 approved by the state board;

225 (I) Effective the first day of July, two thousand one, a  
226 service employee who holds one hundred eight college hours  
227 or comparable credit obtained in a trade or vocational school as  
228 approved by the state board;

229 (J) Effective the first day of July, two thousand one, a  
230 service employee who holds one hundred twenty college hours  
231 or comparable credit obtained in a trade or vocational school as  
232 approved by the state board;

233 (K) Effective the first day of July, two thousand one, a  
234 service employee who holds a bachelor's degree; and

235 (L) Effective the first day of July, two thousand one, a  
236 service employee who holds a master's degree.

237 (4) When any part of a school service employee's daily  
238 shift of work is performed between the hours of six o'clock  
239 p.m. and five o'clock a.m. the following day, the employee  
240 shall be paid no less than an additional ten dollars per month  
241 and one half of the pay shall be paid with local funds.

242 (5) Any service employee required to work on any legal  
243 school holiday shall be paid at a rate one and one-half times the  
244 employee's usual hourly rate.

245 (6) Any full-time service personnel required to work in  
246 excess of their normal working day during any week which  
247 contains a school holiday for which they are paid shall be paid  
248 for the additional hours or fraction of the additional hours at a  
249 rate of one and one-half times their usual hourly rate and paid  
250 entirely from county board funds.

251 (7) No service employee may have his or her daily work  
252 schedule changed during the school year without the em-  
253 ployee's written consent and the employee's required daily  
254 work hours may not be changed to prevent the payment of time  
255 and one-half wages or the employment of another employee.

256 (8) The minimum hourly rate of pay for extra duty assign-  
257 ments as defined in section eight-b of this article shall be no  
258 less than one seventh of the employee's daily total salary for  
259 each hour the employee is involved in performing the assign-  
260 ment and paid entirely from local funds: *Provided*, That an  
261 alternative minimum hourly rate of pay for performing extra  
262 duty assignments within a particular category of employment

263 may be utilized if the alternate hourly rate of pay is approved  
264 both by the county board and by the affirmative vote of a two-  
265 thirds majority of the regular full-time employees within that  
266 classification category of employment within that county:  
267 *Provided, however,* That the vote shall be by secret ballot if  
268 requested by a service personnel employee within that classifi-  
269 cation category within that county. The salary for any fraction  
270 of an hour the employee is involved in performing the assign-  
271 ment shall be prorated accordingly. When performing extra  
272 duty assignments, employees who are regularly employed on  
273 a one-half day salary basis shall receive the same hourly extra  
274 duty assignment pay computed as though the employee were  
275 employed on a full-day salary basis.

276 (9) The minimum pay for any service personnel employees  
277 engaged in the removal of asbestos material or related duties  
278 required for asbestos removal shall be their regular total daily  
279 rate of pay and no less than an additional three dollars per hour  
280 or no less than five dollars per hour for service personnel  
281 supervising asbestos removal responsibilities for each hour  
282 these employees are involved in asbestos related duties.  
283 Related duties required for asbestos removal include, but are  
284 not limited to, travel, preparation of the work site, removal of  
285 asbestos decontamination of the work site, placing and removal  
286 of equipment and removal of structures from the site. If any  
287 member of an asbestos crew is engaged in asbestos related  
288 duties outside of the employee's regular employment county,  
289 the daily rate of pay shall be no less than the minimum amount  
290 as established in the employee's regular employment county  
291 for asbestos removal and an additional thirty dollars per each  
292 day the employee is engaged in asbestos removal and related  
293 duties. The additional pay for asbestos removal and related  
294 duties shall be payable entirely from county funds. Before  
295 service personnel employees may be utilized in the removal of  
296 asbestos material or related duties, they shall have completed

297 a federal Environmental Protection Act approved training  
298 program and be licensed. The employer shall provide all  
299 necessary protective equipment and maintain all records  
300 required by the Environmental Protection Act.

301 (10) For the purpose of qualifying for additional pay as  
302 provided in section eight, article five of this chapter, an aide  
303 shall be considered to be exercising the authority of a supervi-  
304 sory aide and control over pupils if the aide is required to  
305 supervise, control, direct, monitor, escort or render service to  
306 a child or children when not under the direct supervision of  
307 certificated professional personnel within the classroom,  
308 library, hallway, lunchroom, gymnasium, school building,  
309 school grounds or wherever supervision is required. For  
310 purposes of this section, "under the direct supervision of  
311 certificated professional personnel" means that certificated  
312 professional personnel is present, with and accompanying the  
313 aide.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 23. HORSE AND DOG RACING.

#### **§19-23-13c. Expenditure of racetrack video lottery distribution.**

1 (a) Funds received by the racing commission pursuant to  
2 subdivision (6), subsection (c), section ten, article twenty-two-  
3 a, chapter twenty-nine of this code, and subdivision (5),  
4 subsection (a), section 10b, article twenty-two-a, chapter  
5 twenty-nine of this code, after the effective date of this section  
6 together with the balance in the bank account previously  
7 established by the commission to receive those funds shall be  
8 deposited in a banking institution of its choice in a special  
9 account to be known as "West Virginia Racing Commission  
10 Racetrack Video Lottery Account." Notice of the amount, date  
11 and place of each deposit shall be given by the racing commis-  
12 sion, in writing, to the state treasurer.

13 (b) Funds in this account shall be allocated and expended  
14 as follows:

15 (1) For each fiscal year, the first eight hundred thousand  
16 dollars deposited in the separate account plus the amount then  
17 remaining of the June thirtieth, one thousand nine hundred  
18 ninety-seven, balance in the separate account previously  
19 established for the West Virginia breeders classic under section  
20 thirteen of this article, shall be used by the commission for  
21 promotional activities, advertising, administrative costs and  
22 purses for the West Virginia thoroughbred breeders classic,  
23 which shall give equal consideration to all horses qualifying  
24 under the West Virginia breeders program for each stake race,  
25 based solely on the horses' sex, age and earnings.

26 (2) For each fiscal year, the next two hundred thousand  
27 dollars deposited into the separate account shall be used by the  
28 commission for promotional activities and purses for open stake  
29 races for a race event to be known as the West Virginia derby  
30 to be held at a thoroughbred racetrack which does not partici-  
31 pate in the West Virginia thoroughbred development fund.

32 (3) For each fiscal year, once the amounts provided in  
33 subdivisions (1) and (2) of this subsection (b) have been  
34 deposited into separate bank accounts for use in connection  
35 with the West Virginia thoroughbred breeders classics and the  
36 West Virginia derby, the commission shall return to each  
37 racetrack all additional amounts deposited which originate  
38 during that fiscal year from each respective racetrack pursuant  
39 to subdivision (6), subsection (c), section ten, article twenty-  
40 two-a, chapter twenty-nine of this code, which returned excess  
41 funds shall be used as follows:

42 (A) For each dog racetrack, one half of the returned excess  
43 funds shall be used for capital improvements at the racetrack  
44 and one half of the returned excess funds shall be deposited into

45 the West Virginia racing commission special account - West  
46 Virginia greyhound breeding development fund.

47 (B) At those thoroughbred racetracks that have participated  
48 in the West Virginia thoroughbred development fund for a  
49 period of more than four consecutive calendar years prior to the  
50 thirty-first day of December, one thousand nine hundred ninety-  
51 two, one half of the returned excess funds shall be used for  
52 capital improvements at the licensee's racetrack and one half of  
53 the returned excess funds shall be equally divided between the  
54 West Virginia thoroughbred breeders classic and the West  
55 Virginia thoroughbred development fund.

56 (C) At those thoroughbred horse racetracks which do not  
57 participate in the West Virginia thoroughbred development  
58 fund, one half of the returned excess funds shall be used for  
59 capital improvements at the licensee's racetrack and one half of  
60 the returned excess funds shall be used for purses for the open  
61 stakes race event known as the West Virginia derby.

62 (c) All expenditures that are funded under this section must  
63 be approved in writing by the West Virginia racing commission  
64 before the funds are expended for any of the purposes autho-  
65 rized by this section.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

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

#### **§29-22-5. State lottery commission; powers and duties; coopera- tion of other agencies.**

1 (a) The commission has the authority to:

2 (1) Promulgate rules in accordance with chapter twenty-  
3 nine-a of this code: *Provided*, That those rules promulgated by  
4 the commission that are necessary to begin the lottery games



5 selected shall be exempted from the provisions of chapter  
6 twenty-nine-a of this code in order that the selected games may  
7 commence as soon as possible;

8 (2) Establish rules for conducting lottery games, a manner  
9 of selecting the winning tickets and manner of payment of  
10 prizes to the holders of winning tickets;

11 (3) Select the type and number of public gaming systems or  
12 games, to be played in accordance with the provisions of this  
13 article;

14 (4) Contract, if deemed desirable, with the educational  
15 broadcasting authority to provide services through its micro-  
16 wave interconnection system to make available to public  
17 broadcasting stations servicing this state and, at no charge, for  
18 rebroadcast to commercial broadcasting stations within this  
19 state, any public gaming system or games drawing;

20 (5) Enter into interstate and international lottery agreements  
21 with other states or foreign countries, or any combination of  
22 one or more states and one or more foreign countries;

23 (6) Adopt an official seal;

24 (7) Maintain a principal office and, if necessary, regional  
25 suboffices at locations properly designated or provided;

26 (8) Prescribe a schedule of fees and charges;

27 (9) Sue and be sued;

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

32 (11) Designate one of the deputy directors to serve as acting  
33 director during the absence of the director;

34 (12) Hold hearings on any matter of concern to the commis-  
35 sion relating to the lottery, subpoena witnesses, administer  
36 oaths, take testimony, require the production of evidence and  
37 documentary evidence and designate hearing examiners and  
38 employees to so act; and

39 (13) To make and enter into all agreements and do all acts  
40 necessary or incidental to the performance of its duties and the  
41 exercise of its powers under this article.

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

45 (c) Upon the request of the deputy director for the security  
46 and licensing division in conjunction with the director, the  
47 attorney general, department of public safety and all other law-  
48 enforcement agencies shall furnish to the director and the  
49 deputy director such information as may tend to assure the  
50 security, honesty, fairness and integrity in the operation and  
51 administration of the lottery as they may have in their posses-  
52 sion, including, but not limited to, manual or computerized  
53 information and data. The director is to designate such employ-  
54 ees of the security and licensing division as may be necessary  
55 to act as enforcement agents. Such agents are authorized to  
56 investigate complaints made to the commission or the state  
57 lottery office concerning possible violation of the provisions of  
58 this article and determine whether to recommend criminal  
59 prosecution. If it is determined that action is necessary, an  
60 agent, after approval of the director, is to make such recommen-  
61 dation to the prosecuting attorney in the county wherein the  
62 violation occurred or to any appropriate law-enforcement  
63 agency.

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

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

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

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

18 (d) Not more than fifteen percent of the gross amount  
19 received from each lottery may be allocated to and may be  
20 disbursed as necessary for fund operation and administration  
21 expenses: *Provided*, That for the period beginning the first day  
22 of January, two thousand two, through the thirtieth day of June,  
23 two thousand three, not more than seventeen percent of the  
24 gross amount received from each lottery shall be allocated to

25 and may be disbursed as necessary for fund operation and  
26 administration expenses.

27 (e) The excess of the aggregate of the gross amount  
28 received from all lotteries over the sum of the amounts allo-  
29 cated by subsections (c) and (d) of this section shall be allo-  
30 cated as net profit. In the event that the percentage allotted for  
31 operations and administration generates a surplus, the surplus  
32 shall be allowed to accumulate to an amount not to exceed two  
33 hundred fifty thousand dollars. On a monthly basis, the director  
34 shall report to the joint committee on government and finance  
35 of the Legislature any surplus in excess of two hundred fifty  
36 thousand dollars and remit to the state treasurer the entire  
37 amount of those surplus funds in excess of two hundred fifty  
38 thousand dollars which shall be allocated as net profit.

39 (f) After first satisfying the requirements for funds dedi-  
40 cated to the school building debt service fund in subsection (h)  
41 of this section to retire the ten-year bonds authorized to be  
42 issued pursuant to section eight, article nine-d, chapter eighteen  
43 of this code, and then satisfying the requirements for funds  
44 dedicated to the education, arts, sciences and tourism debt  
45 service fund in subsection (i) of this section to retire the bonds  
46 authorized to be issued pursuant to section eleven-a, article six,  
47 chapter five of this code, the Legislature shall annually appro-  
48 priate all of the remaining amounts allocated as net profits in  
49 subsection (e) of this section, in such proportions as it considers  
50 beneficial to the citizens of this state, to: (1) The lottery  
51 education fund created in subsection (g) of this section; (2) the  
52 school construction fund created in section six, article nine-d,  
53 chapter eighteen of this code; (3) the lottery senior citizens fund  
54 created in subsection (j) of this section; and (4) the division of  
55 natural resources created in section three, article one, chapter  
56 twenty of this code and the West Virginia development office  
57 as created in section one, article two, chapter five-b of this  
58 code, in accordance with subsection (k) of this section. No

59 transfer to any account other than the school building debt  
60 service account and the education, arts, sciences and tourism  
61 debt service fund may be made in any period of time in which  
62 a default exists in respect to debt service on bonds issued by the  
63 school building authority and the state building commission  
64 which are secured by lottery proceeds. No additional transfer  
65 may be made to any account other than the school building debt  
66 service account and the education, arts, sciences and tourism  
67 debt service fund when net profits for the preceding twelve  
68 months are not at least equal to one hundred fifty percent of  
69 debt service on bonds issued by the school building authority  
70 and the state building commission which are secured by net  
71 profits.

72 (g) There is hereby continued a special revenue fund in the  
73 state treasury which shall be designated and known as the  
74 "lottery education fund." The fund shall consist of the amounts  
75 allocated pursuant to subsection (f) of this section, which shall  
76 be deposited into the lottery education fund by the state  
77 treasurer. The lottery education fund shall also consist of all  
78 interest earned from investment of the lottery education fund  
79 and any other appropriations, gifts, grants, contributions or  
80 moneys received by the lottery education fund from any source.  
81 The revenues received or earned by the lottery education fund  
82 shall be disbursed in the manner provided below and may not  
83 be treated by the auditor and treasurer as part of the general  
84 revenue of the state. Annually, the Legislature shall appropriate  
85 the revenues received or earned by the lottery education fund to  
86 the state system of public and higher education for these  
87 educational programs it considers beneficial to the citizens of  
88 this state.

89 (h) On or before the twenty-eighth day of each month  
90 through the twentieth day of June, two thousand five, the lottery  
91 director shall allocate to the school building debt service fund  
92 created pursuant to the provisions of section six, article nine-d,

93 chapter eighteen of this code, as a first priority from the net  
94 profits of the lottery for the preceding month, an amount equal  
95 to one tenth of the projected annual principal, interest and  
96 coverage ratio requirements on any and all revenue bonds and  
97 refunding bonds issued, or to be issued, on or after the first day  
98 of April, one thousand nine hundred ninety-four, as certified to  
99 the lottery director in accordance with the provisions of section  
100 six, article nine-d, chapter eighteen of this code. In no event  
101 shall the monthly amount allocated exceed one million eight  
102 hundred thousand dollars, nor may the total allocation of the net  
103 profits to be paid into the school building debt service fund, as  
104 provided in this section, in any fiscal year exceed the lesser of  
105 the principal and interest requirements certified to the lottery  
106 director or eighteen million dollars. In the event there are  
107 insufficient funds available in any month to transfer the amount  
108 required to be transferred pursuant to this subsection to the  
109 school debt service fund, the deficiency shall be added to the  
110 amount transferred in the next succeeding month in which  
111 revenues are available to transfer the deficiency. A lien on the  
112 proceeds of the state lottery fund up to a maximum amount  
113 equal to the projected annual principal, interest and coverage  
114 ratio requirements, not to exceed twenty-seven million dollars  
115 annually, may be granted by the school building authority in  
116 favor of the bonds it issues which are secured by the net lottery  
117 profits.

118       When the school improvement bonds, secured by profits  
119 from the lottery and deposited in the school debt service fund,  
120 mature, the profits shall become available for debt service on  
121 additional school improvement bonds or may at the discretion  
122 of the authority be placed into the school construction fund  
123 created pursuant to the provisions of section six, article nine-d,  
124 chapter eighteen of this code.

125       (i) Beginning on or before the twenty-eighth day of July,  
126 one thousand nine hundred ninety-six, and continuing on or

127 before the twenty-eighth day of each succeeding month  
128 thereafter through the twenty-eighth day of June, two thousand  
129 twenty-one, the lottery director shall allocate to the education,  
130 arts, sciences and tourism debt service fund created pursuant to  
131 the provisions of section eleven-a, article six, chapter five of  
132 this code, as a second priority from the net profits of the lottery  
133 for the preceding month, an amount equal to one tenth of the  
134 projected annual principal, interest and coverage ratio require-  
135 ments on any and all revenue bonds and refunding bonds  
136 issued, or to be issued, on or after the first day of April, one  
137 thousand nine hundred ninety-six, as certified to the lottery  
138 director in accordance with the provisions of that section. In no  
139 event may the monthly amount allocated exceed one million  
140 dollars nor may the total allocation paid into the education, arts,  
141 sciences and tourism debt service fund, as provided in this  
142 section, in any fiscal year exceed the lesser of the principal and  
143 interest requirements certified to the lottery director or ten  
144 million dollars. In the event there are insufficient funds  
145 available in any month to transfer the amount required pursuant  
146 to this subsection to the education, arts, sciences and tourism  
147 debt service fund, the deficiency shall be added to the amount  
148 transferred in the next succeeding month in which revenues are  
149 available to transfer the deficiency. A second-in-priority lien on  
150 the proceeds of the state lottery fund up to a maximum amount  
151 equal to the projected annual principal, interest and coverage  
152 ratio requirements, not to exceed fifteen million dollars  
153 annually, may be granted by the state building commission in  
154 favor of the bonds it issues which are secured by the net lottery  
155 profits.

156 (j) There is hereby continued a special revenue fund in the  
157 state treasury which shall be designated and known as the  
158 "lottery senior citizens fund." The fund shall consist of the  
159 amounts allocated pursuant to subsection (f) of this section,  
160 which amounts shall be deposited into the lottery senior citizens  
161 fund by the state treasurer. The lottery senior citizens fund shall

162 also consist of all interest earned from investment of the lottery  
163 senior citizens fund and any other appropriations, gifts, grants,  
164 contributions or moneys received by the lottery senior citizens  
165 fund from any source. The revenues received or earned by the  
166 lottery senior citizens fund shall be distributed in the manner  
167 provided below and may not be treated by the auditor or  
168 treasurer as part of the general revenue of the state. Annually,  
169 the Legislature shall appropriate the revenues received or  
170 earned by the lottery senior citizens fund to such senior citizens  
171 medical care and other programs as it considers beneficial to  
172 the citizens of this state.

173 (k) The division of natural resources and the West Virginia  
174 development office, as appropriated by the Legislature, may use  
175 the amounts allocated to them pursuant to subsection (f) of this  
176 section for one or more of the following purposes: (1) The  
177 payment of any or all of the costs incurred in the development,  
178 construction, reconstruction, maintenance or repair of any  
179 project or recreational facility, as these terms are defined in  
180 section four, article five, chapter twenty of this code, pursuant  
181 to the authority granted to it under article five, chapter twenty  
182 of this code; (2) the payment, funding or refunding of the  
183 principal of, interest on or redemption premiums on any bonds,  
184 security interests or notes issued by the parks and recreation  
185 section of the division of natural resources under article five,  
186 chapter twenty of this code; or (3) the payment of any advertis-  
187 ing and marketing expenses for the promotion and development  
188 of tourism or any tourist facility or attraction in this state.

**§29-22-18a. State excess lottery revenue fund.**

1 (a) There is hereby created a special revenue fund within  
2 the state lottery fund in the state treasury which shall be  
3 designated and known as the "state excess lottery revenue  
4 fund". The fund shall consist of all appropriations to the fund  
5 and all interest earned from investment of the fund and any



6 gifts, grants or contributions received by the fund. All revenues  
7 received under the provisions of sections ten-b and ten-c, article  
8 twenty-two-a of this chapter and under article twenty-two-b of  
9 this chapter, except the amounts due the commission under  
10 section 29-22B-1408(a)(1) of this article, shall be deposited in  
11 the state treasury and placed into the "state excess lottery  
12 revenue fund". The revenue shall be disbursed in the manner  
13 provided in this section for the purposes stated in this section  
14 and shall not be treated by the auditor and the state treasurer as  
15 part of the general revenue of the state.

16 (b) For the fiscal year beginning the first day of July, two  
17 thousand one, the moneys of the fund established in this section  
18 shall be used for the purpose of subsidizing salary increases and  
19 associated employee benefits paid from the state general  
20 revenue fund as determined by the secretary of administration  
21 effective the first day of July, two thousand one or thereafter,  
22 including but not limited to the salary increase for teachers  
23 provided in section two, article four, chapter eighteen-a of this  
24 code, by enactment of the Legislature in two thousand one; the  
25 salary increase for members of the state police provided in  
26 section five, article two, chapter fifteen of this code by enact-  
27 ment of the Legislature in two thousand one; and general salary  
28 increases for state employees: *Provided*, That effective the first  
29 day of October, two thousand one, the full year salary increases  
30 for state employees other than correctional officers and mem-  
31 bers of the state police equal seven hundred fifty-six dollars for  
32 each full-time employee: *Provided, however*, That effective the  
33 first day of July, two thousand one, the full year salary in-  
34 creases for uniformed correctional officers equal two thousand  
35 dollars for each full-time employee; and that the full year salary  
36 increases for non-uniformed correctional staff, whose core  
37 duties include contact with inmates or juvenile detainees on a  
38 regular and frequent basis, equal one thousand two hundred  
39 fifty dollars for each full-time employee; but that for all other  
40 division of correction and division of juvenile services employ-

41 ees, the full year salary increase equals seven hundred fifty-six  
42 dollars for each full-time employee. Until the thirtieth day of  
43 June, two thousand two, the lottery commission shall, upon  
44 direction from the governor, transfer the moneys of the account  
45 to the state general revenue fund in the amounts specified in the  
46 governor's official revenue estimates to subsidize the funding  
47 of the salary increases described in this subsection. Beginning  
48 the first day of July, two thousand two, and thereafter, the  
49 transfer authority granted by this subsection is terminated. After  
50 first satisfying the funding requirements directed by this  
51 subsection, the monies remaining in the fund shall be disbursed  
52 in the manner provided by subsection (c) of this section.

53 (c) For the fiscal year beginning the first day of July, two  
54 thousand one, the commission shall deposit: (1) Five million  
55 five hundred thousand dollars into the account hereby created  
56 in the state treasury to be known as the "education improvement  
57 fund" for appropriation by the Legislature to the "promise  
58 scholarship fund" created in section seven, article seven,  
59 chapter eighteen-c of this code; (2) twenty-five million dollars  
60 to the school building debt service fund created in section six,  
61 article nine-d, chapter eighteen of this code for the issuance of  
62 revenue bonds; (3) twenty-five million dollars in the West  
63 Virginia infrastructure fund created in section nine, article  
64 fifteen-a, chapter thirty-one of this code to be spent in accor-  
65 dance with the provisions of that article; (4) ten million dollars  
66 into a separate account within the state lottery fund to be known  
67 as the higher education improvement fund for higher education;  
68 and (5) nine million dollars into a separate account within the  
69 state lottery fund to be known as the state park improvement  
70 fund for park improvements. For the fiscal year beginning the  
71 first day of July, two thousand two, the commission shall  
72 deposit: (1) Sixty-five million dollars into the subaccount of the  
73 state excess lottery revenue fund hereby created in the state  
74 treasury to be known as the "general purpose account" to be  
75 expended pursuant to appropriation of the Legislature; (2) ten

76 million dollars into the education improvement fund for  
77 appropriation by the Legislature to the “promise scholarship  
78 fund” created in section seven, article seven, chapter eighteen-c  
79 of this code; (3) twenty-five million dollars to the school  
80 building debt service fund created in section six, article nine-d,  
81 chapter eighteen of this code for the issuance of revenue bonds;  
82 (4) fifty million dollars in the West Virginia infrastructure fund  
83 created in section nine, article fifteen-a, chapter thirty-one of  
84 this code to be spent in accordance with the provisions of that  
85 article; (5) ten million dollars into the higher education im-  
86 provement fund for higher education; and (6) nine million  
87 dollars into the state park improvement fund for park improve-  
88 ments. For the fiscal year beginning the first day of July, two  
89 thousand three, the commission shall deposit: (1) Sixty-five  
90 million dollars into the general purpose account to be expended  
91 pursuant to appropriation of the Legislature; (2) seventeen  
92 million dollars into the education improvement fund for  
93 appropriation by the Legislature to the “promise scholarship  
94 fund” created in section seven, article seven, chapter eighteen-c  
95 of this code; (3) twenty-five million dollars to the school  
96 building debt service fund created in section six, article nine-d,  
97 chapter eighteen of this code for the issuance of revenue bonds;  
98 (4) fifty million dollars in the West Virginia infrastructure fund  
99 created in section nine, article fifteen-a, chapter thirty-one of  
100 this code to be spent in accordance with the provisions of that  
101 article; (5) ten million dollars into the higher education im-  
102 provement fund for higher education; and (6) nine million  
103 dollars into the state park improvement fund for park improve-  
104 ments. For the fiscal year beginning the first day of July, two  
105 thousand four, and subsequent fiscal years, the commission  
106 shall deposit: (1) Sixty-five million dollars into the general  
107 purpose account to be expended pursuant to appropriation of the  
108 Legislature; (2) twenty-seven million dollars into the education  
109 improvement fund for appropriation by the Legislature to the  
110 “promise scholarship fund” created in section seven, article

111 seven, chapter eighteen-c of this code; (3) twenty-five million  
112 dollars to the school building debt service fund created in  
113 section six, article nine-d, chapter eighteen of this code for the  
114 issuance of revenue bonds; (4) fifty million dollars in the West  
115 Virginia infrastructure fund created in section nine, article  
116 fifteen-a, chapter thirty-one of this code to be spent in accor-  
117 dance with the provisions of that article; (5) ten million dollars  
118 into the higher education improvement fund for higher educa-  
119 tion; and (6) nine million dollars into the state park improve-  
120 ment fund for park improvements.

121 (d) If the commission receives revenues in an amount that  
122 is not sufficient to fully comply with the requirements of  
123 subsection (c) of this section, the commission shall, after  
124 providing for the distribution to the education improvement  
125 fund for appropriation by the Legislature to the promise  
126 scholarship fund, distribute the revenue on a pro rata basis.

127 (e) For the fiscal year beginning on the first day of July,  
128 two thousand two, and each fiscal year thereafter, the commis-  
129 sion shall, after meeting the requirements of subsections (c) and  
130 (h) of this section, deposit fifty percent of the amount by which  
131 annual gross revenue deposited in the state excess lottery  
132 revenue fund exceeds two hundred twenty-five million dollars  
133 in a fiscal year in a separate account in the state lottery fund to  
134 be available for appropriation by the Legislature.

135 (f) When bonds are issued for the infrastructure, higher  
136 education or park improvement purposes described in this  
137 section that are secured by profits from lotteries deposited in  
138 the state excess lottery revenue fund, the lottery director shall  
139 allocate to the debt service fund created for that purpose, as a  
140 third priority from the net profits of the lottery under this  
141 section and section eighteen of this article for the preceding  
142 month, an amount equal to one-tenth of the projected annual  
143 principal, interest and coverage requirements on any and all

144 revenue bonds issued, or to be issued, on or after the first day  
145 of April, two thousand two, as certified to the lottery director in  
146 accordance with legislation authorizing issuance of the bonds.  
147 In the event there are insufficient funds available in any month  
148 to transfer the amount required pursuant to this subsection, the  
149 deficiency shall be added to the amount transferred in the next  
150 succeeding month in which revenues are available to transfer  
151 the deficiency. A third-in-priority lien on the proceeds of the  
152 state lottery fund and the state excess lottery revenue fund up to  
153 a maximum amount equal to the projected annual principle,  
154 interest and coverage ratio requirements, not to exceed an  
155 annual amount specified in legislation authorizing issuance of  
156 the bonds, may be granted by the state in favor of the bonds it  
157 issues which are secured by net lottery profits and state excess  
158 lottery revenue.

159 (g) No portion of the distributions made as provided in  
160 subsection (c) of this section may be used to pay debt service on  
161 bonded indebtedness until after the Legislature expressly  
162 authorizes issuance of the bonds and payment of debt service on  
163 the bonds through statutory enactment or the passage of a  
164 concurrent resolution by both houses of the Legislature. Until  
165 subsequent legislative enactment or adoption of a resolution  
166 that expressly authorizes issuance of the bonds and payment of  
167 debt service on the bonds with funds distributed under subsec-  
168 tion (c) of this section, the distributions may be used only to  
169 fund capital improvements that are not financed by bonds and  
170 only pursuant to appropriation of the Legislature.

171 (h) In fiscal year two thousand four, and thereafter, prior to  
172 the distributions provided in subsection (c) of this section, the  
173 lottery commission shall deposit into the general revenue fund  
174 amounts necessary to provide reimbursement for the refundable  
175 credit allowable under section twenty-one, article twenty-one,  
176 chapter eleven of this code.

177 (i)(1) The Legislature considers the following as priorities  
178 in the expenditure of any surplus revenue funds:

179 (A) Providing salary and/or increment increases for  
180 professional educators and public employees;

181 (B) Providing adequate funding for the public employees  
182 insurance agency; and

183 (C) Providing funding to help address the shortage of  
184 qualified teachers and substitutes in areas of need, both in  
185 number of teachers and in subject matters areas.

186 (2) The provisions of this subsection may not be construed  
187 by any court to require any appropriation or any specific  
188 appropriation or level of funding for the purposes set forth in  
189 this subsection.

190 (j) The Legislature further directs the Governor to focus  
191 resources on the creation of a prescription drug program for  
192 senior citizens by pursuing a medicaid waiver to offer prescrip-  
193 tion drug services to senior citizens; by investigating the  
194 establishment of purchasing agreements with other entities to  
195 reduce costs; by providing discount prices or rebate programs  
196 for seniors; by coordinating programs offered by pharmaceuti-  
197 cal manufacturers that provide reduced cost or free drugs; by  
198 coordinating a collaborative effort among all state agencies to  
199 ensure the most efficient and cost effective program possible  
200 for the senior citizens of this state; and by working closely with  
201 the state's congressional delegation to ensure that a national  
202 program is implemented. The Legislature further directs that the  
203 Governor report his progress back to the joint committee on  
204 government and finance on an annual basis beginning in  
205 November of the year two thousand one, until a comprehensive  
206 program has been fully implemented.

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

**§29-22A-6. 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) Video lottery terminals licensed for placement in this  
2 state shall meet the following hardware specifications:

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

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

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

16 (4) The operation of each video lottery terminal may not be  
17 adversely affected by any static discharge or other electromag-  
18 netic interference.

19 (5) A minimum of one electronic or mechanical coin  
20 acceptor or other means accurately and efficiently to establish  
21 credits shall be installed on each video lottery terminal. Each  
22 video lottery terminal may also contain bill acceptors for one or  
23 more of the following: One dollar bills, five dollar bills, ten  
24 dollar bills and twenty dollar bills. All coin and bill acceptors

25 shall be approved by the commission prior to use on any video  
26 lottery terminal in this state.

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

29 (7) The main logic boards and all erasable programmable  
30 read-only memory chips (EPROMS) are considered to be  
31 owned by the commission and shall be located in a separate  
32 locked and sealed area within the video lottery terminal.

33 (8) The cash compartment shall be located in a separate  
34 locked area within or attached to the video lottery terminal.

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

41 (10) Each video lottery terminal shall contain a single  
42 printing mechanism capable of printing an original ticket and  
43 retaining an exact legible copy within the video lottery terminal  
44 or other means of capturing and retaining an electronic copy of  
45 the ticket data as approved by the commission. The following  
46 information shall be recorded on the ticket when credits accrued  
47 on a video lottery terminal are redeemed for cash:

48 (i) The number of credits accrued;

49 (ii) Value of the credits in dollars and cents displayed in  
50 both numeric and written form;

51 (iii) Time of day and date;

52 (iv) Validation number; and



53 (v) Any other information required by the commission.

54 (11) A permanently installed and affixed identification plate  
55 shall appear on the exterior of each video lottery terminal and  
56 the following information shall be on the plate:

57 (i) Manufacturer of the video lottery terminal;

58 (ii) Serial number of the terminal; and

59 (iii) Model number of the terminal.

60 (12) The rules of play for each game shall be displayed on  
61 the video lottery terminal face or screen. The commission may  
62 reject any rules of play which are incomplete, confusing,  
63 misleading or inconsistent with game rules approved by the  
64 commission. For each video lottery game, there shall be a  
65 display detailing the credits awarded for the occurrence of each  
66 possible winning combination of numbers or symbols. A video  
67 lottery terminal may allow up to five dollars to be wagered on  
68 a single game. All information required by this subdivision  
69 shall be displayed under glass or another transparent substance.  
70 No stickers or other removable devices shall be placed on the  
71 video lottery terminal screen or face without the prior approval  
72 of the commission.

73 (13) Communication equipment and devices shall be  
74 installed to enable each video lottery terminal to communicate  
75 with the commission's central computer system by use of a  
76 communications protocol provided by the commission to each  
77 permitted manufacturer, which shall include information  
78 retrieval and terminal activation and disable programs, and the  
79 commission may require each licensed racetrack to pay the cost  
80 of a central site computer as a part of the licensing requirement.

81 (14) All video lottery terminals shall have a security system  
82 which temporarily disables the gaming function of the terminal  
83 while opened.

84 (b) Each video lottery terminal shall have a random number  
85 generator to determine randomly the occurrence of each  
86 specific symbol or number used in video lottery games. A  
87 selection process is random if it meets the following statistical  
88 criteria:

89 (1) Chi-square test. Each symbol or number shall satisfy the  
90 ninety-nine percent confidence limit using the standard chi-  
91 square statistical analysis of the difference between the ex-  
92 pected result and the observed result.

93 (2) Runs test. Each symbol or number may not produce a  
94 significant statistic with regard to producing patterns of  
95 occurrences. Each symbol or number is random if it meets the  
96 ninety-nine percent confidence level with regard to the "runs  
97 test" for the existence of recurring patterns within a set of data.

98 (3) Correlation test. Each pair of symbols or numbers is  
99 random if it meets the ninety-nine percent confidence level  
100 using standard correlation analysis to determine whether each  
101 symbol or number is independently chosen without regard to  
102 another symbol or number within a single game play.

103 (4) Serial correlation test. Each symbol or number is  
104 random if it meets the ninety-nine percent confidence level  
105 using standard serial correlation analysis to determine whether  
106 each symbol or number is independently chosen without  
107 reference to the same symbol or number in a previous game.

108 (c) Each video lottery terminal shall meet the following  
109 maximum and minimum theoretical percentage payout during  
110 the expected lifetime of the terminal:

111 (1) Video lottery games shall pay out no less than eighty  
112 percent and no more than ninety-five percent of the amount  
113 wagered. The theoretical payout percentage will be determined  
114 using standard methods of probability theory.

115 (2) Manufacturers must file a request and receive approval  
116 from the commission prior to manufacturing for placement in  
117 this state video lottery terminals programmed for a payout  
118 greater than ninety-two percent of the amount wagered.  
119 Commission approval shall be obtained prior to applying for  
120 testing of the high payout terminals.

121 (3) Each terminal shall have a probability greater than one  
122 in seventeen million of obtaining the maximum payout for each  
123 play.

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

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

137 (1) Number of coins inserted by players or the coin equiva-  
138 lent if a bill acceptor is being used or tokens or vouchers are  
139 used;

140 (2) Number of credits wagered;

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

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

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

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

**§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.**

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

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

26 state lottery fund. For all fiscal years beginning on or after the  
27 first day of July, two thousand one, the commission shall not  
28 receive an amount of gross terminal income in excess of the  
29 amount of gross terminal income received during the fiscal year  
30 ending on the thirtieth day of June, two thousand one, but four  
31 percent of any amount of gross terminal income received in  
32 excess of the amount of gross terminal income received during  
33 the fiscal year ending on the thirtieth day of June, two thousand  
34 one, shall be deposited into the fund established in section  
35 eighteen-a, article twenty-two of this chapter.

36 (c) Net terminal income shall be divided as set out in this  
37 subsection. For all fiscal years beginning on or after the first  
38 day of July, two thousand one, any amount of net terminal  
39 income received in excess of the amount of net terminal income  
40 received during the fiscal year ending on the thirtieth day of  
41 June, two thousand one, shall be divided as set out in section  
42 ten-b of this article. The licensed racetrack's share is in lieu of  
43 all lottery agent commissions and is considered to cover all  
44 costs and expenses required to be expended by the licensed  
45 racetrack in connection with video lottery operations. The  
46 division shall be made as follows:

47 (1) The commission shall receive thirty percent of net  
48 terminal income, which shall be paid into the state lottery fund  
49 as provided in section ten-a of this article.

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

55 (3) The county where the video lottery terminals are located  
56 shall receive two percent of the net terminal income: *Provided,*  
57 That:

58 (A) Beginning the first day of July, one thousand nine  
59 hundred ninety-nine, and thereafter, any amount in excess of  
60 the two percent received during fiscal year one thousand nine  
61 hundred ninety-nine by a county in which a racetrack is located  
62 that has participated in the West Virginia thoroughbred devel-  
63 opment fund since on or before the first day of January, one  
64 thousand nine hundred ninety-nine, shall be divided as follows:

65 (i) The county shall receive fifty percent of the excess  
66 amount; and

67 (ii) The municipalities of the county shall receive fifty  
68 percent of the excess amount, the fifty percent to be divided  
69 among the municipalities on a per capita basis as determined by  
70 the most recent decennial United States census of population;  
71 and

72 (B) Beginning the first day of July, one thousand nine  
73 hundred ninety-nine, and thereafter, any amount in excess of  
74 the two percent received during fiscal year one thousand nine  
75 hundred ninety-nine by a county in which a racetrack other than  
76 a racetrack described in paragraph (A) of this proviso is located  
77 and where the racetrack has been located in a municipality  
78 within the county since on or before the first day of January,  
79 one thousand nine hundred ninety-nine, shall be divided, if  
80 applicable, as follows:

81 (i) The county shall receive fifty percent of the excess  
82 amount; and

83 (ii) The municipality shall receive fifty percent of the  
84 excess amount; and

85 (C) This proviso shall not affect the amount to be received  
86 under this subdivision by any county other than a county  
87 described in paragraph (A) or (B) of this proviso;

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

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

108       (6) The West Virginia racing commission shall receive one  
109 percent of the net terminal income which shall be deposited and  
110 used as provided in section thirteen-c, article twenty-three,  
111 chapter nineteen of this code;

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

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

117       (9) The veterans memorial program shall receive one  
118 percent of the net terminal income until sufficient moneys have  
119 been received to complete the veterans memorial on the



120 grounds of the state capitol complex in Charleston, West  
121 Virginia. The moneys shall be deposited in the state treasury in  
122 the division of culture and history special fund created under  
123 section three, article one-i, chapter twenty-nine of this code:  
124 *Provided*, That only after sufficient moneys have been depos-  
125 ited in the fund to complete the veterans memorial and to pay  
126 in full the annual bonded indebtedness on the veterans memo-  
127 rial, not more than twenty thousand dollars of the one percent  
128 of net terminal income provided for in this subdivision shall be  
129 deposited into a special revenue fund in the state treasury, to be  
130 known as the "John F. 'Jack' Bennett Fund." The moneys in  
131 this fund shall be expended by the division of veterans affairs  
132 to provide for the placement of markers for the graves of  
133 veterans in perpetual cemeteries in this state. The division of  
134 veterans affairs shall promulgate legislative rules pursuant to  
135 the provisions of article three, chapter twenty-nine-a of this  
136 code specifying the manner in which the funds are spent,  
137 determine the ability of the surviving spouse to pay for the  
138 placement of the marker, and setting forth the standards to be  
139 used to determine the priority in which the veterans grave  
140 markers will be placed in the event that there are not sufficient  
141 funds to complete the placement of veterans grave markers in  
142 any one year, or at all. Upon payment in full of the bonded  
143 indebtedness on the veterans memorial, one hundred thousand  
144 dollars of the one percent of net terminal income provided for  
145 in this subdivision shall be deposited in the special fund in the  
146 division of culture and history created under section three,  
147 article one-i, chapter twenty-nine of this code and be expended  
148 by the division of culture and history to establish a West  
149 Virginia veterans memorial archives within the cultural center  
150 to serve as a repository for the documents and records pertain-  
151 ing to the veterans memorial, to restore and maintain the  
152 monuments and memorial on the capitol grounds: *Provided*,  
153 *however*, That five hundred thousand dollars of the one percent  
154 of net terminal income shall be deposited in the state treasury

155 in a special fund of the department of administration, created  
156 under section five, article four, chapter five-a of this code to be  
157 used for construction and maintenance of a parking garage on  
158 the state capitol complex: *Provided further*, That the remainder  
159 of the one percent of net terminal income shall be deposited in  
160 equal amounts in the capitol dome and improvements fund  
161 created under section two, article four, chapter five-a of this  
162 code and cultural facilities and capitol resources matching grant  
163 program fund created under section three, article one of this  
164 chapter.

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

177 (e) The commission's central control computer shall keep  
178 accurate records of all income generated by each video lottery  
179 terminal. The commission shall prepare and mail to the licensed  
180 racetrack a statement reflecting the gross terminal income  
181 generated by the licensee's video lottery terminals. Each  
182 licensed racetrack shall report to the commission any discrepan-  
183 cies between the commission's statement and each terminal's  
184 mechanical and electronic meter readings. The licensed  
185 racetrack is solely responsible for resolving income discrepan-  
186 cies between actual money collected and the amount shown on  
187 the accounting meters or on the commission's billing statement.

188 (f) Until an accounting discrepancy is resolved in favor of  
189 the licensed racetrack, the commission may make no credit  
190 adjustments. For any video lottery terminal reflecting a discrep-  
191 ancy, the licensed racetrack shall submit to the commission the  
192 maintenance log which includes current mechanical meter  
193 readings and the audit ticket which contains electronic meter  
194 readings generated by the terminal's software. If the meter  
195 readings and the commission's records cannot be reconciled,  
196 final disposition of the matter shall be determined by the  
197 commission. Any accounting discrepancies which cannot be  
198 otherwise resolved shall be resolved in favor of the commis-  
199 sion.

200 (g) Licensed racetracks shall remit payment by mail if the  
201 electronic transfer of funds is not operational or the commission  
202 notifies licensed racetracks that remittance by this method is  
203 required. The licensed racetracks shall report an amount equal  
204 to the total amount of cash inserted into each video lottery  
205 terminal operated by a licensee, minus the total value of game  
206 credits which are cleared from the video lottery terminal in  
207 exchange for winning redemption tickets, and remit the amount  
208 as generated from its terminals during the reporting period. The  
209 remittance shall be sealed in a properly addressed and stamped  
210 envelope and deposited in the United States mail no later than  
211 noon on the day when the payment would otherwise be com-  
212 pleted through electronic funds transfer.

213 (h) Licensed racetracks may, upon request, receive addi-  
214 tional reports of play transactions for their respective video  
215 lottery terminals and other marketing information not consid-  
216 ered confidential by the commission. The commission may  
217 charge a reasonable fee for the cost of producing and mailing  
218 any report other than the billing statements.

219 (i) The commission has the right to examine all accounts,  
220 bank accounts, financial statements and records in a licensed

221 racetrack's possession, under its control or in which it has an  
222 interest and the licensed racetrack shall authorize all third  
223 parties in possession or in control of the accounts or records to  
224 allow examination of any of those accounts or records by the  
225 commission.

**§29-22A-10b. Distribution of excess net terminal income.**

1 (a) For all years beginning on or after the first day of July,  
2 two thousand one, any amount of net terminal income generated  
3 annually by a licensed racetrack in excess of the amount of net  
4 terminal income generated by that licensed racetrack during the  
5 fiscal year ending on the thirtieth day of June, two thousand  
6 one, shall be divided as follows:

7 (1) The commission shall receive forty-one percent of net  
8 terminal income, which the commission shall deposit in the  
9 state excess lottery revenue fund created in section eighteen-a,  
10 article twenty-two of this chapter;

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

16 (3) The county where the video lottery terminals are located  
17 shall receive two percent of the net terminal income: *Provided,*  
18 *That:*

19 (A) Any amount by which the total amount under this  
20 section and subdivision three, subsection c, section ten of this  
21 article is in excess of the two percent received during fiscal year  
22 one thousand nine hundred ninety-nine by a county in which a  
23 racetrack is located that has participated in the West Virginia  
24 thoroughbred development fund since on or before the first day

25 of January, one thousand nine hundred ninety-nine, shall be  
26 divided as follows:

27 (i) The county shall receive fifty percent of the excess  
28 amount; and

29 (ii) The municipalities of the county shall receive fifty  
30 percent of the excess amount, the fifty percent to be divided  
31 among the municipalities on a per capita basis as determined by  
32 the most recent decennial United States census of population;  
33 and

34 (B) Any amount by which the total amount under this  
35 section and subdivision three, subsection c, section ten of this  
36 article is in excess of the two percent received during fiscal year  
37 one thousand nine hundred ninety-nine by a county in which a  
38 racetrack other than a racetrack described in paragraph (A) of  
39 this proviso is located and where the racetrack has been located  
40 in a municipality within the county since on or before the first  
41 day of January, one thousand nine hundred ninety-nine, shall be  
42 divided, if applicable, as follows:

43 (i) The county shall receive fifty percent of the excess  
44 amount; and

45 (ii) The municipality shall receive fifty percent of the  
46 excess amount; and

47 (C) This proviso shall not affect the amount to be received  
48 under this subdivision by any county other than a county  
49 described in paragraph (A) or (B) of this proviso;

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

54 into the pension plan for all employees of the licensed racing  
55 association;

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

70 (6) The West Virginia racing commission shall receive one  
71 percent of the net terminal income which shall be deposited and  
72 used as provided in section thirteen-c, article twenty-three,  
73 chapter nineteen of this code;

74 (7) A licensee shall receive forty-two percent of net  
75 terminal income;

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

79 (9) One percent of the net terminal income shall be depos-  
80 ited in equal amounts in the capitol dome and improvements  
81 fund created under section two, article four, chapter five-a of  
82 this code and cultural facilities and capitol resources matching  
83 grant program fund created under section three, article one of  
84 this chapter.

85 (b) The commission may establish orderly and effective  
86 procedures for the collection and distribution of funds under  
87 this section in accordance with the provisions of this section  
88 and section ten of this article.

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

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

7 (b) A capital reinvestment fund is hereby created within the  
8 lottery fund. Forty-two percent of the surcharge amount  
9 attributable to each racetrack shall be retained by the commis-  
10 sion and deposited into a separate capital reinvestment account  
11 for that licensed racetrack. For each dollar expended by a  
12 licensed racetrack for capital improvements at the racetrack and  
13 adjacent facilities owned by the licensee having a useful life of  
14 fifteen or more years and placed in service after the first day of  
15 April, two thousand one, the licensed racetrack shall receive  
16 one dollar in recoupment from its capital reinvestment fund  
17 account: *Provided*, That in the case of thoroughbred horse  
18 tracks, four cents of every dollar in recoupment shall be spent  
19 on capital improvements and upgrading in the barn area or other  
20 areas at the track approved by the horsemen's benevolent and  
21 protective association acting on behalf of the horsemen:  
22 *Provided, however*, That in the case of greyhound race tracks,  
23 four cents of every dollar in recoupment shall be spent on  
24 capital improvements and upgrading in the kennel area or other  
25 areas at the track approved by the racing commission. If a  
26 licensed racetrack's unrecouped capital improvements exceed  
27 its capital reinvestment fund account at the end of any fiscal

28 year, the excess improvements may be carried forward to three  
29 subsequent fiscal years.

30 (c) Fifty-eight percent of the surcharge amount plus any  
31 moneys remaining in a racetrack's capital reinvestment fund  
32 account at the end of any fiscal year shall be deposited in the  
33 state excess lottery revenue fund created in section eighteen-a,  
34 article twenty-two of this chapter.

**ARTICLE 22B. LIMITED VIDEO LOTTERY.**

**PART 1. GENERAL PROVISIONS.**

**§29-22B-101. Short title.**

1 This article shall be known and may be cited as the  
2 "Limited Video Lottery Act".

**§29-22B-102. Authorization for limited video lottery; regulation  
by lottery commission.**

1 Limited video lottery is hereby authorized and may be  
2 operated and maintained subject to the provisions of this article.  
3 The limited video lottery authorized by this article, being a  
4 lottery, is subject to regulation by the West Virginia lottery  
5 commission.

**§29-22B-103. Exceptions.**

1 (a) Nothing in this article shall be construed in any way to  
2 modify, amend, or otherwise affect the validity of any provi-  
3 sions regulating charitable bingo and raffles as set forth in  
4 articles 47-20-1, *et seq.*, and 47-21-1, *et seq.*, of this code.

5 (b) Nothing contained in this article shall be construed to  
6 modify, amend, or otherwise affect the validity of any provi-  
7 sions regulating racetrack video lottery as set forth in article  
8 22A of this chapter.



**PART 2. LEGISLATIVE FINDINGS.**

**§29-22B-201. Legislative finding; constitutional authority; limited video lottery is a lottery.**

1       The Legislature finds and declares that:

2       (1) The Constitution grants to the Legislature the authority  
3 to establish, by general law, lotteries which are regulated,  
4 controlled, owned and operated by the state of West Virginia;  
5 and

6       (2) The limited video lottery authorized by this article is a  
7 “lottery” as that term is commonly understood and as that term  
8 is used in the West Virginia Constitution, article 6, section 36.  
9 The limited video lottery authorized as video lottery games in  
10 this article is a system of lottery games that utilize advanced  
11 computer technology.

**§29-22B-202. Legislative finding; state ownership of video lottery through outright ownership or possession of a proprietary interest in computer hardware and software.**

1       The Legislature further finds and declares that:

2       (1) The state can control, own and operate a video lottery  
3 by possessing a proprietary interest in the main logic boards, all  
4 erasable, programmable read-only memory chips used in any  
5 video lottery equipment or games, and software consisting of  
6 computer programs, documentation and other related materials  
7 necessary for the video lottery system to be operated;

8       (2) The state may possess a proprietary interest in video  
9 lottery game software, for purposes of this article, through  
10 outright ownership or through an exclusive product license  
11 agreement with a manufacturer whereby (A) the manufacturer

12 retains copyrighted ownership of the software, (B) the product  
13 license granted to the state is nontransferable, and (C) the  
14 agreement authorizes the state to run the software program,  
15 solely for its own use, on the state's central equipment unit and  
16 electronic video terminals networked to the central equipment  
17 unit; and

18 (3) The state can control and regulate a video lottery if the  
19 state (A) restricts licensure to a limited number of video lottery  
20 terminals at qualified locations, (B) extends strict and exclusive  
21 state regulation to all persons, locations, practices and associa-  
22 tions related to the operation of licensed limited video lottery  
23 facilities, and (C) provides comprehensive law enforcement  
24 supervision of limited video lottery activities.

**§29-22B-203. Legislative finding; license to participate in limited  
video lottery is a privilege.**

1 The Legislature further finds and declares that:

2 (1) A person seeking a license or other affirmative lottery  
3 commission approval has no right to a license or to the granting  
4 of the approval sought. Any license issued or other commission  
5 approval granted pursuant to the provisions of this article is a  
6 revocable privilege;

7 (2) The licensing, control and regulation of limited video  
8 lottery by the state does not create (A) any property right in a  
9 license issued pursuant to this article, (B) any right to transfer  
10 or encumber a license, (C) any vested right in a license, or (D)  
11 the accrual of any value to the privilege of participation in any  
12 limited video lottery activity; and

13 (3) That the privilege of participation in limited video  
14 lottery operations is conditioned upon (A) the proper and  
15 continuing individual qualification of an applicant or licensee,  
16 and (B) the discharge of the affirmative responsibility of each

17 licensee to provide the regulatory and investigatory authorities  
18 with any assistance and information necessary to assure that the  
19 policies declared by this article are achieved.

### **PART 3. DEFINITIONS.**

#### **§29-22B-301. Applicability of definitions.**

1 For the purposes of this article, the words or terms defined  
2 in this part 3, and any variation of those words or terms  
3 required by the context, have the meanings ascribed to them in  
4 this part 3. These definitions are applicable unless a different  
5 meaning clearly appears from the context.

#### **§29-22B-302. Applicant defined.**

1 “Applicant” means a person applying for a license required  
2 by this article for lawful participation in limited video lottery.

#### **§29-22B-303. Associated equipment defined.**

1 “Associated equipment” means any hardware located on the  
2 premises of a video lottery retailers, other than the video lottery  
3 terminals themselves, that is connected to the video lottery  
4 terminal or to the central computer for the purpose of perform-  
5 ing communication, validation or other functions. “Associated  
6 equipment” does not include the communication equipment and  
7 facilities of a regulated public utility.

#### **§29-22B-304. Background investigation defined.**

1 “Background investigation” means a security, criminal and  
2 credit investigation of an applicant who has applied for the  
3 issuance or renewal of a license pursuant to this article, or a  
4 licensee who holds a current license.

#### **§29-22B-305. Central computer, central control computer or central site system defined.**

1       “Central computer,” “central control computer” or “central  
2 site system” means any central site computer provided to and  
3 controlled by the commission to which video lottery terminals  
4 communicate for purposes of information retrieval and terminal  
5 activation and to disable programs.

**§29-22B-306. Commission or state lottery commission defined.**

1       “Commission” or “state lottery commission” means the  
2 West Virginia lottery commission created by article 22 of this  
3 chapter.

**§29-22B-307. Control defined.**

1       “Control” means the authority to direct the management  
2 and policies of an applicant or a license holder.

**§29-22B-308. Director defined.**

1       “Director” means the individual appointed by the governor  
2 to provide management and administration necessary to direct  
3 the state lottery office.

**§29-22B-309. Disable or terminal disable defined.**

1       “Disable” or “terminal disable” means the process of  
2 executing a shutdown command from the central control  
3 computer which causes video lottery terminals to cease func-  
4 tioning.

**§29-22B-310. Display defined.**

1       “Display” means the visual presentation of video lottery  
2 game features on the video display monitor or screen of a video  
3 lottery terminal.

**§29-22B-311. EPROM and erasable programmable read-only  
memory chips defined.**

1       “EPROM” and “erasable programmable read-only memory  
2 chips” means the electronic storage medium on which the  
3 operation software for all games playable on a video lottery  
4 terminal resides and which can also be in the form of CD-ROM,  
5 flash RAM or other new technology medium that the commis-  
6 sion may from time to time approve for use in video lottery  
7 terminals. All electronic storage media are considered to be the  
8 property of the state of West Virginia.

**§29-22B-312. Identification document defined.**

1       “Identification document” means a document made or  
2 issued by or under the authority of the United States govern-  
3 ment, a state, a political subdivision of a state, a foreign  
4 government or a political subdivision of a foreign government,  
5 which, when completed with information concerning a particu-  
6 lar individual, is of the type intended or commonly accepted for  
7 the purpose of identifying individuals.

**§29-22B-313. Indirect ownership defined.**

1       “Indirect ownership” means an interest a person owns in an  
2 entity or in property solely as a result of application of con-  
3 structive ownership rules without regard to any direct owner-  
4 ship interest (or other beneficial interest) in the entity or  
5 property. “Indirect ownership” shall be determined under the  
6 same rules applicable to determining whether a gain or loss  
7 between related parties is recognized for federal income tax  
8 purposes.

**§29-22B-314. License defined.**

1       “License” or “video lottery license” means authorization  
2 granted by the commission pursuant to this article to a person  
3 permitting that person to engage in the activity for which the  
4 license was issued. “License used in this article” means a  
5 license issued by the commission as provided in this article that

6 has not expired or been cancelled, revoked or suspended by the  
7 director or the commission.

**§29-22B-315. Location defined.**

1 “Location” means a restricted access adult-only facility  
2 located on premises in which the limited video lottery retailer  
3 holds a license as provided in section 22B-501 of this article.

**§29-22B-316. Limited video lottery retailer defined.**

1 “Limited video lottery retailer” means a person who holds  
2 either a valid license issued under article 60-7-1, *et seq.*, of this  
3 code, to operate a private club, or who holds a valid Class A  
4 license issued under article 11-16-1, *et seq.*, of this code, to  
5 operate a business where nonintoxicating beer is sold for  
6 consumption on the premises, or who holds both licenses, and  
7 the person also holds a valid limited video lottery retailer’s  
8 license issued under this article.

**§29-22B-317. Lottery defined.**

1 “Lottery” means the public gaming systems or games  
2 regulated, controlled, owned and operated by the state lottery  
3 commission as provided in this article and in articles 29-22-1,  
4 *et seq.*, 29-22A-1, *et seq.*, and article 29-25-1, *et seq.*

**§29-22B-318. Manufacturer defined.**

1 “Manufacturer” means any person holding a license issued  
2 under this article by the commission which allows the person to  
3 engage in the business of designing, building, constructing,  
4 assembling or manufacturing video lottery terminals, the  
5 electronic computer components of the video lottery terminals,  
6 the random number generator of the video lottery terminals, or  
7 the cabinet in which the video lottery terminal is housed, and  
8 whose product is intended for sale, lease or other assignment to

9 a person who is issued a permit under this under this article  
10 allowing the person to purchase or lease video lottery terminals  
11 from a manufacturer.

**§29-22B-319. National criminal history background check system defined.**

1 “National criminal history background check system”  
2 means the criminal history record system maintained by the  
3 Federal Bureau of Investigation based on fingerprint identifica-  
4 tion or any other method of positive identification.

**§29-22B-320. Net terminal income and gross terminal income defined.**

1 “Net terminal income” means the portion of gross terminal  
2 income collected by the commission from the permittees  
3 determined to be net terminal income as calculated under  
4 subsection 22B-1408(a) of this article. “Gross terminal income”  
5 means the total amount of cash inserted into video lottery  
6 terminals operated by a licensee, minus the total value of game  
7 credits which are cleared from the video lottery terminals in  
8 exchange for winning redemption tickets. A licensee may not  
9 deduct costs or expenses related to the operation of video  
10 lottery games from net terminal income.

**§29-22B-321. Operator defined.**

1 “Operator” means a person holding an operator’s license  
2 granted under this article by the commission allowing the  
3 person to: (1) Own or lease a specified number of video lottery  
4 terminals from one or more manufacturers; (2) service and  
5 repair those video lottery terminals; and (3) enter into contracts  
6 with limited video lottery retailers for placement of those video  
7 lottery terminals in a restricted access adult-only facility located  
8 on the premises of the limited video lottery retailers.

**§29-22B-322. Own defined.**

1       “Own” means any beneficial or proprietary interest in any  
2 property and includes, but is not limited to, any direct or  
3 indirect beneficial or proprietary interest in any business of an  
4 applicant or licensee.

**§29-22B-323. Permit defined.**

1       “Permit” means the authorization issued by the commission  
2 allowing a person licensed as an permittee under this article to  
3 own or lease a specified number of video lottery terminals.

**§29-22B-324. Permittee defined.**

1       “Permittee” means a licensed operator or a licensed limited  
2 video lottery retailer who has a permit for video lottery termi-  
3 nals issued under part 11 of this article.

**§29-22B-325. Person defined.**

1       “Person” means any natural person, and any corporation,  
2 association, partnership, limited partnership, limited liability  
3 company or other entity, regardless of its form, structure or  
4 nature, other than a government agency or instrumentality.

**§29-22B-326. Player defined.**

1       “Player” means a person who plays a video lottery game on  
2 a video lottery terminal at a restricted access adult-only facility.

**§29-22B-327. Resident of this state defined.**

1       “Resident of this state” means an individual who: (1)  
2 Maintains a bona fide full time primary place of abode in this  
3 state; (2) is not registered to vote in any other state; (3) if  
4 licensed to drive, holds a valid driver’s license in this state and  
5 does not hold a current driver’s license issued by any other



6 state; (4) timely filed personal income tax returns as a resident  
7 of this state for the four preceding calendar years (determined  
8 by including any authorized extension of time for filing the  
9 return); and (5) does not claim to be a resident of any other state  
10 for any purpose whatsoever.

**§29-22B-328. Restricted access adult-only facility defined.**

1 “Restricted access adult-only facility” means:

2 (a)(1) A private club licensed under article 60-7-1, *et seq.*,  
3 of this code that is licensed under this article by the commission  
4 to allow its members and their guests to play video lottery  
5 games: *Provided*, That when the private club is frequented by  
6 minors and their parents, video lottery terminals shall be  
7 located in a separate room suitable for the location of video  
8 lottery terminals with adult-only restricted access, the interior  
9 of which is not visible to persons outside the room; and

10 (2) A place of business that: (A) Has a “Class A” license  
11 issued under article 11-16-1, *et seq.*, of this code to sell nonin-  
12 toxicating beer for consumption on the premises; (B) derives at  
13 least forty percent of its annual gross receipts at that location  
14 from sales of nonintoxicating beer to consumers and of such  
15 sales, at least eighty percent are sales of nonintoxicating beer  
16 for consumption on the premises; (C) maintains a suitable  
17 kitchen and dining facility and related equipment for serving  
18 meals for on-premises consumption; (D) regularly prepares and  
19 sells meals for consumption on the premises; (E) has a separate  
20 room suitable for the location of video lottery terminals with  
21 adult-only restricted access, the interior of which is not visible  
22 to persons outside the room; and (F) after meeting any addi-  
23 tional standards developed by the commission to implement and  
24 apply this subdivision (2), is licensed under this article by the  
25 commission to allow video lottery games to be played in the  
26 restricted access adult-only separate room on the premises.

27 (b) Notwithstanding the provisions of subsection (a) of this  
28 section, it does not include a place of business that sells  
29 petroleum products in conjunction with the sale of other retail  
30 products which may include, but are not limited to, tobacco,  
31 alcohol or food products; nor may such place of business  
32 establish a separate room or building which is a part of,  
33 contiguous to, or adjoining the place of business as a restricted  
34 access adult-only facility.

**§29-22B-329. Service technician defined.**

1 “Service technician” means an individual who is licensed  
2 under this article to service, maintain and repair video lottery  
3 terminals that are registered under this article. A licensed  
4 service technician may be a sole proprietor, partner, or an  
5 employee of a person licensed under this article or an employee  
6 of a business not licensed under this article that services,  
7 maintains and repairs video lottery terminals owned or leased  
8 by a permittee through one or more service technicians.

**§29-22B-330. Video lottery defined.**

1 “Video lottery” means a lottery that allows a game to be  
2 played utilizing an electronic computer and an interactive  
3 terminal device, equipped with a video screen and keys, a  
4 keyboard or other equipment allowing input by an individual  
5 player, into which the player inserts coins or currency as  
6 consideration in order for play to be available, and through  
7 which terminal device, the player may receive free games or a  
8 voucher that can be redeemed for a cash or non-cash prize, or  
9 nothing, determined wholly or predominantly by chance.  
10 “Video lottery” does not include a lottery game that merely  
11 utilizes an electronic computer and a video screen to operate a  
12 lottery game and communicate the results of the game and  
13 which does not utilize an interactive electronic terminal device  
14 allowing input by one or more players.

**§29-22B-331. Video gambling machine defined.**

1 (a) "Video gambling machine" means a computerized  
2 device:

3 (1) That is not approved and registered by the commission  
4 under the provisions of this article or used, possessed or  
5 operated pursuant to and under the requirements of the provi-  
6 sions of articles 29-22-1, *et seq.*, 29-22A-1, *et seq.*, 29-25-1, *et*  
7 *seq.*, 47-20-1, *et seq.*, or 47-21-1, *et seq.*, or any reenactment  
8 thereof;

9 (2) That employs a monitor that has a display screen,  
10 software programs, graphics board, graphics card or any other  
11 necessary components that give the monitor graphics capabili-  
12 ties for displaying and manipulating pictures, words, numbers  
13 or symbols;

14 (3) That has a storage medium containing the source  
15 language or executable code of a computer program that cannot  
16 be reasonably demonstrated to have any use other than, through  
17 the display of pictures, words, numbers or symbols, simulating  
18 the play of such games as poker, blackjack, roulette, baccarat,  
19 keno, craps, or any other game of skill or chance of whatever  
20 name or kind;

21 (4) That allows a person, by inserting currency, coins,  
22 tokens or other similar objects into the machine, or by other-  
23 wise making some payment of consideration, to make the  
24 machine available for the person to play;

25 (5) That allows a person playing the machine an opportu-  
26 nity to win (A) cash, (B) play credits, (C) tokens, tickets,  
27 vouchers or other things that can be exchanged for cash or any  
28 other thing of value, or (D) prizes, premiums, merchandise or  
29 any other thing of value, whether by reason of the skill of the

30 player or by the application of the element of chance, or both;  
31 and

32 (6) That can result in a payoff to a winning player automati-  
33 cally from the machine or in any other manner whatsoever.

34 (b) "Video gambling machine" does not include:

35 (1) Pin ball machines;

36 (2) Automatic weighing, measuring, musical, and vending  
37 machines which are designed and constructed to give a uniform  
38 and fair return in value for each coin deposited and in which  
39 there is no element of chance; or

40 (3) Crane machines.

41 (c) A machine described in subsection (a) of this section is  
42 no less a video gambling machine because it is not in working  
43 order or because some mechanical act of manipulation or repair  
44 is required to accomplish its adaptation, conversion or  
45 workability.

**§29-22B-332. Video lottery game defined.**

1 "Video lottery game" means an electronically simulated  
2 game of chance that is approved, owned and controlled under  
3 this article by the commission, which is displayed on the screen  
4 or video monitor of a video lottery terminal and that:

5 (1) Is connected to the commission's central control  
6 computer by an on-line or dial-up communication system;

7 (2) Is initiated by a player's insertion of coins or currency  
8 into a video lottery terminal, which causes game play credits to  
9 be displayed on the video lottery terminal and, with respect to  
10 which, each game play credit entitles a player to choose one or

11 more symbols or numbers or to cause the video lottery terminal  
12 to randomly select symbols or numbers;

13 (3) Allows the player to win additional game play credits  
14 based upon game rules which establish the random selection of  
15 winning combinations of symbols or numbers or both and the  
16 number of free-play credits to be awarded for each winning  
17 combination of symbols or numbers or both;

18 (4) Is based upon computer-generated random selection of  
19 winning combinations based totally or predominantly on  
20 chance;

21 (5) In the case of a video lottery game which allows the  
22 player an option to select replacement symbols or numbers or  
23 additional symbols or numbers after the game is initiated and in  
24 the course of play, either: (A) Signals the player, prior to any  
25 optional selection by the player of randomly generated replace-  
26 ment symbols or numbers, as to which symbols or numbers  
27 should be retained by the player to present the best chance,  
28 based upon probabilities, that the player may select a winning  
29 combination; (B) signals the player, prior to any optional  
30 selection by the player of randomly generated additional  
31 symbols or numbers, as to whether the additional selection  
32 presents the best chance, based upon probabilities, that the  
33 player may select a winning combination; or (C) randomly  
34 generates additional or replacement symbols and numbers for  
35 the player after automatically selecting the symbols and  
36 numbers which should be retained to present the best chance,  
37 based upon probabilities, for a winning combination, so that in  
38 any event, the player is not permitted to benefit from any  
39 personal skill, based upon a knowledge of probabilities, before  
40 deciding which optional numbers or symbols to choose in the  
41 course of video lottery game play;

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

46 (7) Does not use game themes of roulette, dice or baccarat  
47 card games commonly associated with casino gambling:  
48 *Provided*, That games having a video display depicting symbols  
49 that appear to roll on drums to simulate a classic casino slot  
50 machine, game themes of other card games and keno may be  
51 used.

**§29-22B-333. Video lottery terminal defined.**

1 “Video lottery terminal” means a commission-approved  
2 machine or device that is compatible with the lottery commis-  
3 sion’s central computer system, and that is used for the purpose  
4 of playing video lottery games authorized by the lottery  
5 commission by no more than one player at a time.

**§29-22B-334. Wager defined.**

1 “Wager” means a sum of money or thing of value risked on  
2 an uncertain occurrence.

**PART 4. ADMINISTRATION OF LIMITED VIDEO LOTTERY.**

**§29-22B-401. General authority of state lottery commission and  
director; conflicts.**

1 (a) The lottery commission created by section 29-22-4 of  
2 this code is authorized to implement and operate a system of  
3 limited video lottery in accordance with the provisions of this  
4 article and the applicable provisions of article 22 of this  
5 chapter.

6 (b) The state lottery commission and the director of the  
7 commission shall exercise their respective powers and perform  
8 their respective duties and functions as specified in this article.

9 (c) The provisions of article 22 of this chapter apply to this  
10 article, except in the event of conflict or inconsistency between  
11 any of the provisions of this article and the provisions of article  
12 22 of this chapter. In that event, the provisions of this article  
13 shall supersede any conflicting or inconsistent provisions  
14 contained in article 22 of this chapter.

**§29-22B-402. Powers and duties of the state lottery commission.**

1 In addition to any other powers and duties set forth in this  
2 article or article 22 of this chapter, the lottery commission has  
3 the following powers and duties:

4 (1) To propose legislative rules for promulgation by the  
5 Legislature in accordance with the provisions of article 29A-3-  
6 1, *et seq.*, of this code, governing the licensing, conduct, and  
7 operation of limited video lottery that may be necessary to carry  
8 out the purposes of this article. The director shall prepare and  
9 submit to the lottery commission written recommendations  
10 concerning proposed legislative rules for this purpose;

11 (2) To propose other rules for promulgation as provided in  
12 article 29A-3-1, *et seq.*, of this code not inconsistent with this  
13 article which the commission in its discretion believes to be  
14 necessary. Authority to propose rules includes the authority to  
15 propose amendments to rules and to propose repealing rules;

16 (3) Notwithstanding any other provision of this code to the  
17 contrary, proposed legislative rules for this article filed in the  
18 state register by the first day of August, 2001, may be filed as  
19 emergency rules.

20       (4) To conduct hearings upon complaints charging viola-  
21 tions of this article or applicable rules, and to conduct other  
22 hearings as may be required by this article or rules of the lottery  
23 commission;

24       (5) To enter into written agreements with the state police  
25 and local law enforcement agencies for the conduct of identifi-  
26 cation and investigation of applicants, licensees or employees  
27 in accordance with the provisions of this article, including, but  
28 not limited to, (A) performing background investigations and  
29 criminal records checks and (B) investigating possible viola-  
30 tions that may be discovered as a result of an investigatory  
31 process or discovered by the tax commissioner, the alcohol  
32 beverage control commissioner or the lottery commission in the  
33 course of conducting their respective business. Disclosure to the  
34 state police or other law enforcement officials of a possible  
35 violation of this article and material facts related thereto shall  
36 not be deemed to be an unauthorized disclosure of information  
37 under section 11-10-5d of this code. Nothing in this section  
38 prevents or impairs the state police or local law enforcement  
39 agencies from engaging in the activities set forth in this  
40 subdivision on their own initiative;

41       (6) To conduct a continuous study and investigation of  
42 limited video lottery throughout the state (A) to ascertain any  
43 defects in this article or in legislative rules that may conflict  
44 with the purposes of this article, (B) to discover any abuses in  
45 the administration, control and oversight of limited video  
46 lottery or (C) to discover any violation of this article or applica-  
47 ble legislative rules;

48       (7) To formulate and recommend proposed legislation  
49 amending this article or any applicable legislative rule so as to  
50 increase the efficiency and effectiveness of this article;



51       (8) To report immediately to the governor, the speaker of  
52 the house of delegates, the president of the senate, the minority  
53 leaders of both houses, and such other state officers as the  
54 lottery commission deems appropriate concerning any laws  
55 which it determines may require immediate amendment to  
56 prevent abuses and violations of this article or any applicable  
57 rule or to remedy undesirable conditions in connection with the  
58 administration or the operation of limited video lottery;

59       (9) To require such special reports from the director as it  
60 considers necessary;

61       (10) To issue licenses to those involved in the ownership,  
62 participation, or conduct of limited video lottery;

63       (11) To delegate to the director the authority to issue or  
64 deny licenses and renewals under criteria established by the  
65 commission;

66       (12) Upon complaint, or upon its own motion, to levy civil  
67 penalties and to suspend or revoke licenses that the lottery  
68 commission has issued for failure to comply with any applica-  
69 ble provision of this article or rule of the commission;

70       (13) To establish and collect fees upon persons, licenses,  
71 and gaming devices used in, or participating in, limited video  
72 lottery as provided in this article or rule of the commission;

73       (14) To obtain all information from licensees and other  
74 persons and agencies which the lottery commission deems  
75 necessary or desirable in the conduct of its business;

76       (15) To issue subpoenas for the appearance or production  
77 of persons, records, and things in connection with applications  
78 before the lottery commission or in connection with disciplin-  
79 ary or contested cases considered by the lottery commission;

80 (16) To apply for injunctive or declaratory relief to enforce  
81 the provisions of this article and any rules promulgated pursu-  
82 ant to this article;

83 (17) To impose and collect civil penalties as provided for  
84 under this article;

85 (18) To inspect and examine without notice all premises  
86 wherein limited video lottery is conducted or devices or  
87 equipment used in limited video lottery are located, manufac-  
88 tured, sold, or distributed, and to summarily seize, remove, and  
89 impound, without notice or hearing from such premises any  
90 equipment, devices, supplies, books, or records for the purpose  
91 of examination or inspection;

92 (19) To exercise other incidental powers as may be neces-  
93 sary to ensure the safe and orderly regulation of limited gaming  
94 and the secure collection of all revenues, including but not  
95 limited to taxes, fees, civil penalties and other monies due the  
96 commission;

97 (20) To establish internal control procedures for licensees,  
98 including accounting procedures, reporting procedures, and  
99 personnel policies;

100 (21) To establish and collect fees for performing back-  
101 ground checks on all applicants for licenses and on all persons  
102 with whom the commission may agree with or contract with for  
103 the providing of goods or services, as the commission deems  
104 appropriate;

105 (22) To establish and collect fees for performing, or having  
106 performed, tests on equipment and devices to be used in limited  
107 video lottery;

108 (23) To demand, at any time when business is being  
109 conducted, access to and inspection, examination, photocopy-

110 ing, and auditing of all papers, books, and records of applicants  
111 and licensees, on their premises or elsewhere as practicable by  
112 authorized employees or agents of the commission and in the  
113 presence of the licensee or his agent, pertaining to the gross  
114 income produced by any licensed gaming establishment and to  
115 require verification of income, and all other matters affecting  
116 the enforcement of the policies of the lottery commission or any  
117 provision of this article; and to impound or remove all papers,  
118 books, and records of applicants and licensees, without hearing,  
119 for inspection or examination; and

120 (24) To prescribe voluntary alternative methods for the  
121 making, filing, signing, subscribing, verifying, transmitting,  
122 receiving, or storing of returns, writings or other documents.

**§29-22B-403. Powers and duties of the director.**

1 In addition to the duties imposed upon the director else-  
2 where in this article and article 22 of this chapter, the director  
3 shall:

4 (1) Supervise and administer the operation of licensed  
5 limited video lottery in accordance with the provisions of this  
6 article and the rules of the lottery commission;

7 (2) Issue licenses to manufacturers, operators, limited video  
8 lottery retailers and service technicians, after approval by the  
9 lottery commission;

10 (3) Register video lottery terminals and equipment and  
11 issue registration decals;

12 (4) Collect and deposit license and registration fees due  
13 under this article;

14 (5) Require the mandatory posting by limited video lottery  
15 retailers of the rules of play and the odds or house percentage  
16 on each video lottery game;

17 (6) Attend meetings of the lottery commission or appoint a  
18 designee to attend in the director's place;

19 (7) Employ and direct such personnel as may be necessary  
20 to carry out the purposes of this article, but no person shall be  
21 employed who has been convicted of a felony or gam-  
22 bling-related offense;

23 (8) With the approval of the lottery commission, enter into  
24 agreements with any department, agency, or unit of state  
25 government to secure services which the director deems  
26 necessary and to provide for the payment for such services;

27 (9) Employ and compensate such consultants and technical  
28 assistants as may be required and as otherwise permitted by  
29 law;

30 (10) Confer with the lottery commission as necessary or  
31 desirable, with regard to the operation of the division;

32 (11) Make available for inspection by the lottery commis-  
33 sion or any member of the commission, upon request, all books,  
34 records, files, and other information and documents in the  
35 director's office;

36 (12) Advise the lottery commission and recommend to the  
37 commission such rules and other procedures as the director  
38 deems necessary and advisable to improve the operation of  
39 limited video lottery;

40 (13) With the concurrence of the lottery commission or  
41 pursuant to commission requirements and procedures, enter into  
42 contracts for materials, equipment, and supplies;

43       (14) Make a continuous study and investigation of the  
44 operation and the administration of similar laws which may be  
45 in effect in other states or countries; of any literature on video  
46 gaming which from time to time may be published or available;  
47 and of any federal laws which may affect the conduct of limited  
48 video lottery in this state with a view to recommending or  
49 effecting changes that would serve the purposes of this article;

50       (15) Publish as a public document a monthly report that  
51 contains a full and complete statement of the revenue and  
52 expenses for each month from limited video lottery operations;

53       (16) Provide copies of the monthly revenue and expense  
54 statement to the lottery commission, the secretary of the  
55 department of tax and revenue, the governor, the speaker of the  
56 house of delegates, the president of the senate, and the minority  
57 leaders of both houses of the Legislature; and

58       (17) Perform any other acts that the lottery commission  
59 finds are necessary or desirable in order to carry out the  
60 purposes of this article.

**§29-22B-404. Advertising by commission or director prohibited.**

1       Neither the commission nor the director may conduct video  
2 lottery advertising or promotional activities to promote or  
3 advertise limited video lottery authorized by this article.

**PART 5. REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.**

**§29-22B-501. Types of licenses issued for participation in limited video lottery activities.**

1       (a) The lottery commission may issue four types of limited  
2 video lottery licenses, as follows:

3       (1) A manufacturer's license;

- 4 (2) An operator's license;
- 5 (3) A limited video lottery retailer's license; and
- 6 (4) A service technician's license.
- 7 (b) A manufacturer's license is required for all persons who  
8 act as a manufacturer as defined in section 22B-319 of this  
9 article.
- 10 (c) An operator's license is required for all persons who  
11 engage in the business of placing and operating video gaming  
12 machines on the premises of a retailer. A licensed operator and  
13 a licensed limited video lottery retail who hold a permit issued  
14 under part 11 of this article may obtain video lottery terminals  
15 only from a licensed manufacturer.
- 16 (d) A video lottery retailer's license is required for all  
17 persons conducting limited video lottery on their premises.  
18 Each person licensed as a retailer shall have and maintain sole  
19 and exclusive legal possession of the entire premises for which  
20 the retail license is issued.
- 21 (e) Each license issued pursuant to this section expires one  
22 year from the date of its issuance but may be successively  
23 renewed upon the filing and approval of an application for  
24 renewal, except as otherwise provided in this article.

**§29-22B-502. General qualifications for all types of limited video  
lottery licenses.**

- 1 No limited video lottery license or license renewal may be  
2 granted unless the lottery commission has determined that the  
3 applicant satisfies all of the following qualifications:
- 4 (1) The applicant is a person of good character, honesty and  
5 integrity;

6 (2) The applicant is a person whose background, criminal  
7 record, if any, reputation, habits and associations, do not  
8 threaten to (A) compromise the public interest of the citizens of  
9 the state, (B) weaken the effective regulation and control of  
10 video gaming, (C) breach the security and integrity of the  
11 lottery, or (D) introduce corrupt, unfair, or illegal practices,  
12 methods and activities into the operation of video gaming or the  
13 business or financial transactions incidental to the operation of  
14 video gaming;

15 (3) The applicant has not been convicted of any violation of  
16 this article, article 19-23-1, *et seq.*, of this code, articles 22, 22A  
17 or 25 of this chapter, or any felony related to theft, bribery,  
18 gambling or involving moral turpitude in this or in any other  
19 state or foreign country;

20 (4) The applicant has disclosed to the lottery commission  
21 the identity of each person who has control of the applicant, as  
22 control is described in section 22B-507, and those persons  
23 satisfy all qualifications required by this section and any  
24 applicable qualifications required by sections 22B-503 through  
25 22B-506;

26 (5) The applicant has provided a set of fingerprints and has  
27 completed and signed the statement provided for in section  
28 22B-602;

29 (6) The applicant has furnished all information, including  
30 financial data and documents, certifications, consents, waivers,  
31 individual history forms and other materials requested by the  
32 lottery commission for purposes of determining qualifications  
33 for a license.;

**§29-22B-503. Additional qualifications for an applicant for an operator's license.**

1 (a) No operator's license or license renewal may be granted  
2 unless the lottery commission has determined that, in addition  
3 to the general requirements set forth in section 22B-502, the  
4 applicant satisfies all of the following qualifications:

5 (1)(A) If the applicant is an individual, the applicant has  
6 been a citizen of the United States and a resident of this state  
7 for the four year period immediately preceding the application;  
8 or

9 (B) If the applicant is a corporation, partnership or other  
10 business entity, the chief executive officer and the majority of  
11 the officers, directors, members and partners (to the extent each  
12 of these groups exists with respect to a particular business  
13 organization), both in number and percentage of ownership  
14 interest, have been citizens of the United States and residents of  
15 this state for the four year period immediately preceding the  
16 application.

17 (2) The applicant has demonstrated the training, education,  
18 business ability and experience necessary to establish, operate  
19 and maintain the business for which the license application is  
20 made;

21 (3) The applicant has secured any necessary financing for  
22 the business for which the license application is made, and the  
23 financing (A) is from a source that meets the qualifications of  
24 this section and (B) is adequate to support the successful  
25 performance of the duties and responsibilities of the licensee.  
26 A licensee shall request commission approval of any change in  
27 financing or leasing arrangements at least thirty days before the  
28 effective date of the change;

29 (4) The applicant has disclosed all financing or refinancing  
30 arrangements for the purchase, lease or other acquisition of  
31 video lottery terminals and associated equipment in the degree  
32 of detail requested by the lottery commission;



33 (5) The applicant has filed with the lottery commission a  
34 copy of any current or proposed agreement between the  
35 applicant and any manufacturer for the sale, lease or other  
36 assignment to the operator of video lottery terminals, the  
37 electronic computer components of the terminals, the random  
38 number generators of the terminals, or the cabinets in which  
39 they are housed; and

40 (6) The applicant does not hold any other license under this  
41 article, article 19-23-1, *et seq.*, of this code, or articles 22, 22A  
42 or 25 of this chapter, except that an applicant may also be  
43 licensed as a service technician.

44 (b)(1) A person or a member of his or her immediate family  
45 who has an ownership interest in a business entity that submits  
46 an application for an operator's license may not (A) submit an  
47 application for another operator's license as an individual, (B)  
48 serve as an officer, director, member or partner of a business  
49 entity that submits an application for another operator's license,  
50 or (C) have an ownership interest in any other business entity  
51 that submits an application for an operator's license.

52 (2) Business entities that have common owners or common  
53 officers, directors, members or partners may not hold more than  
54 one operator's license.

**§29-22B-504. Additional qualifications for an applicant for a  
limited video lottery retailer's license.**

1 No limited video lottery retailer's license or license renewal  
2 may be granted unless the lottery commission has determined  
3 that, in addition to the general requirements set forth in section  
4 22B-502, the applicant satisfies all of the following qualifica-  
5 tions:

6 (1)(A) If the applicant is an individual, the applicant has  
7 been a citizen of the United States and a resident of this state  
8 for the four year period immediately preceding the application;

9 (B) If the applicant is a corporation, partnership or other  
10 business entity, the chief executive officer and the majority of  
11 the officers, directors, members and partners (to the extent each  
12 of these groups exists with respect to a particular business  
13 organization), both in number and percentage of ownership  
14 interest, have been citizens of the United States and residents of  
15 this state for the four year period immediately preceding the  
16 application;

17 (2) The applicant has disclosed to the lottery commission  
18 the identity of each person who has control of the applicant, as  
19 control is described in section 22B-507;

20 (3) The applicant holds either (A) a valid license issued  
21 under article 60-7-1, *et seq.*, of this code to operate a private  
22 club, (B) a valid Class A license issued under article 11-16-1,  
23 *et seq.*, of this code to operate a business where nonintoxicating  
24 beer is sold for consumption on the premises, or (C) both  
25 licenses;

26 (4) The applicant has demonstrated the training, education,  
27 business ability and experience necessary to establish, operate  
28 and maintain the business for which the license application is  
29 made;

30 (5) The applicant has secured any necessary financing for  
31 the business for which the license application is made, and the  
32 financing (A) is from a source that meets the qualifications of  
33 this section and (B) is adequate to support the successful  
34 performance of the duties and responsibilities of the licensee;

35 (6) The applicant has disclosed all financing or refinancing  
36 arrangements for placement on the applicant's premises of

37 video lottery terminals and associated equipment in the degree  
38 of detail requested by the lottery commission;

39 (7) The applicant has filed with the lottery commission a  
40 copy of any current or proposed agreement between the  
41 applicant and a licensed operator for the placement on the  
42 applicant's premises of video lottery terminals;

43 (8) The applicant has filed with the lottery commission a  
44 copy of any current or proposed agreement between the  
45 applicant and a licensed operator or other person for the  
46 servicing and maintenance of video lottery terminals by  
47 licensed service technicians; and

48 (9) The applicant does not hold any other license under this  
49 article, article 19-23-1, *et seq.*, of this code, or articles 22, 22A  
50 or 25 of this chapter, except that an applicant may also be  
51 licensed as a service technician.

**§29-22B-505. Additional qualifications for an applicant for a  
service technician's license.**

1 No service technician's license or license renewal may be  
2 granted unless the lottery commission has determined that, in  
3 addition to the general requirements set forth in section 22B-  
4 502, the applicant has passed a technical competence test  
5 administered or approved by the lottery commission.

**§29-22B-506. Additional qualifications for an applicant for a  
manufacturer's license.**

1 No manufacturer's license or license renewal may be  
2 granted unless the lottery commission has determined that, in  
3 addition to the general requirements set forth in section 22B-  
4 502, the applicant satisfies all of the following qualifications:

5 (1) The applicant has obtained, or can obtain, certification  
6 of compliance under the provisions of part 15 of the federal  
7 communications commission rules for all video lottery termi-  
8 nals placed in this state;

9 (2) The applicant has demonstrated the capacity to manu-  
10 facture terminals and associated equipment for placement in  
11 this state in accordance with the specifications and procedures  
12 set forth in part 9 of this article;

13 (3) The applicant has demonstrated the ability to maintain  
14 and provide an inventory of spare parts so as to assure the  
15 timely repair and continuous operation of licensed video lottery  
16 terminals placed in this state; and

17 (4) The applicant has demonstrated the capacity to timely  
18 deliver video lottery terminals and associated equipment to  
19 licensed operators and licensed limited video lottery retailers  
20 who hold permits issued under part 11 of this article to own or  
21 lease video lottery terminals from licensed manufacturers.

**§29-22B-507. Persons having control of an applicant for a limited  
video lottery license.**

1 The following persons are considered to have control of an  
2 applicant:

3 (1) Each person associated with a corporate applicant,  
4 including any corporate holding company, parent company or  
5 subsidiary company of the applicant, but not including a bank  
6 or other licensed lending institution which holds a mortgage or  
7 other lien acquired in the ordinary course of business, who has  
8 the ability to control the activities of the corporate applicant or  
9 elect a majority of the board of directors of that corporation.

10 (2) Each person associated with a noncorporate applicant  
11 who directly or indirectly holds any beneficial or proprietary

12 interest in the applicant or who the commission determines to  
13 have the ability to control the applicant.

14 (3) Key personnel of an applicant, including any executive,  
15 employee or agent, having the power to exercise significant  
16 influence over decisions concerning any part of the applicant's  
17 business operation.

**§29-22B-508. Commission action on applications.**

1 (a) The commission may not issue any license until after  
2 the background investigations are concluded. This provision  
3 shall not apply to an application for renewal of a license except  
4 to the extent background investigations are required of an  
5 applicant for renewal of a license in legislative rules of the  
6 commission.

7 (b) The commission shall make an affirmative determina-  
8 tion that the applicant is qualified and that the applicable  
9 license fees have been paid prior to issuing any license.

**§29-22B-509. Incomplete application not to be considered.**

1 (a) The lottery commission shall notify the applicant in  
2 writing if an application is incomplete and the notification shall  
3 state the deficiencies in the application.

4 (b) The commission may not consider incomplete applica-  
5 tions. The commission may consider an application when the  
6 applicant has completed and executed all forms and documents  
7 required by the commission and all application fees and costs  
8 have been paid.

**§29-22B-510. Burden of proving qualification for license.**

1 The burden of proving qualification for any limited video  
2 lottery license or for renewal thereof is on the applicant.

**§29-22B-511. Issuance of order refusing to issue or renew license, or suspending or revoking same.**

1 (a) The commission shall notify applicants and licensees in  
2 writing of the denial, suspension or revocation of a license and  
3 the reasons for the denial, suspension or revocation in accor-  
4 dance with the provisions of section 22B-518.

5 (b) An applicant may request a hearing to review a license  
6 denial, suspension or revocation in accordance with part 15 of  
7 this article.

**§29-22B-512. Review of continuing eligibility for license.**

1 The lottery commission shall determine on a continuing  
2 basis the eligibility of licensees to hold a license. Notwithstand-  
3 ing any other provision of this article, each operator and limited  
4 video lottery retailer shall meet the residency requirements in  
5 sections 22B - 503 and 22B - 504 of this article and shall be a  
6 resident of this state during the period in which the licensed  
7 issued for the operator or limited video lottery retailer is in  
8 effect.

**§29-22B-513. Application forms and other documents.**

1 (a) The commission shall determine the forms of applica-  
2 tion to be used.

3 (b) All application, registration and disclosure forms and  
4 other documents submitted to the lottery commission by or on  
5 behalf of the applicant for purposes of determining qualification  
6 for a video lottery license shall be sworn to or affirmed before  
7 an officer qualified to administer oaths.

**§29-22B-514. Failure to reveal material fact; false or misleading material.**

1 (a) An applicant who knowingly fails to reveal any fact that  
2 is material to qualification or who knowingly submits false or  
3 misleading material information is ineligible for a video lottery  
4 license.

5 (b) An applicant who is awarded a license or renewal of a  
6 license shall give the commission written notification of any  
7 material change in the information previously submitted in or  
8 with the application for the license or for renewal thereof,  
9 whichever is the most recent document filed with the commis-  
10 sion, within thirty days after the material change occurs or the  
11 licensee becomes aware of the material change, whichever  
12 event occurs last.

**§29-22B-515. Bonding requirements for operators and limited video lottery retailers who are permittees.**

1 Before any operator or limited video lottery retailer is  
2 issued a permit under part 11 of this article to own or lease  
3 video lottery terminals from a licensed manufacturer, the  
4 permittee shall post a bond or irrevocable letter of credit in a  
5 manner and in an amount established by the commission. The  
6 bond must be issued by a surety company authorized to transact  
7 business in West Virginia and the company must be approved  
8 by the insurance commission of this state as to solvency and  
9 responsibility. A permittee who is a video lottery retailer that  
10 has permits for two or more restricted access adult-only  
11 facilities may post a blanket bond.

**§29-22B-516. Applicant bears the risk of adverse publicity.**

1 Each applicant bears all risks of adverse public notice,  
2 embarrassment, criticism, damages or financial loss which may  
3 result from any disclosure or publication of any material or  
4 information obtained by the lottery commission pursuant to  
5 action on an application. The applicant shall, as a part of its  
6 application, expressly waive any and all claims against the

7 lottery commission, the state of West Virginia and the employ-  
8 ees of either for damages as a result of any background investi-  
9 gation, disclosure or publication relating to an application for  
10 a video lottery license or permit.

**§29-22B- 517. Renewal of licenses.**

1 The commission shall renew video lottery licenses annually  
2 on a date set by the commission, if each person seeking license  
3 renewal submits the applicable renewal fee, completes all  
4 renewal forms provided by the commission, and continues to  
5 meet all qualifications for a license.

**§29-22B- 518. Annual license fees.**

1 (a) The following license fees shall be paid annually by  
2 each licensed operator, manufacturer, service technician or  
3 limited video lottery retailer:

4 (1) Operator: \$10,000;

5 (2) Manufacturer: \$10,000;

6 (3) Service technician: \$100;

7 (4) Limited video lottery retailer: \$500.

8 (b) The applicable fee shall be paid to the commission at  
9 the time the application for a license is submitted to the  
10 commission and upon the annual renewal date each year  
11 thereafter, at which time the license may be renewed.

12 (c) A manufacturer who ceases supplying any additional  
13 video lottery terminals to permittees in this state may continue  
14 to supply repair parts and service for video lottery terminals  
15 previously provided to permittees, if an annual renewal fee of  
16 one thousand dollars is paid and the manufacturer is otherwise  
17 eligible for licensure under this article.



18 (d) License fees collected under this section shall be  
19 deposited in the fund established in section 29-22-18a.

#### **PART 6. BACKGROUND INVESTIGATIONS.**

##### **§29-22B-601. Establishment of procedures for background investigations.**

1 (a) The lottery commission, through a cooperative agree-  
2 ment with the state police, shall establish procedures for  
3 conducting background investigations for the purpose of  
4 determining whether an applicant has been charged with,  
5 indicted for, or convicted of a crime that may have bearing  
6 upon the applicant's fitness to hold a license under this article.

7 (b) A background investigation must include, but not be  
8 limited to, (1) accessing the national criminal history back-  
9 ground check system as defined in section 22B-319 and (2)  
10 reviewing any other readily accessible state or federal criminal  
11 history records that may be pertinent to the background  
12 investigation.

13 (c) The state police shall make a determination whether the  
14 applicant has been convicted of, or is under pending indictment  
15 for, a crime that bears upon the applicant's fitness to hold a  
16 license under this article and shall convey that determination to  
17 the lottery commission.

##### **§29-22B-602. Responsibility of state police in conducting back-ground investigations.**

1 The state police shall establish and maintain an adequate  
2 system for background investigations that:

3 (1) Ensures that timely background investigations are  
4 conducted on applicants for limited video lottery licenses,  
5 current licensees, and other persons required to be investigated

6 by the lottery commission in accordance with the provisions of  
7 this article or by legislative rules promulgated pursuant to this  
8 article;

9 (2) Provides for review and oversight of applicants, current  
10 licensees, and other persons on an ongoing basis;

11 (3) Provides that upon receipt of a background check report  
12 lacking disposition data, further research will be conducted in  
13 whatever state and local recordkeeping systems are available in  
14 order to obtain complete data;

15 (4) Provides for prompt notification to the lottery commis-  
16 sion of the results of background investigations before the  
17 issuance or renewal of any of license; and

18 (5) Clearly defines a standard whereby a person's prior  
19 activities, criminal record, if any, or reputation, habits and  
20 associations are such as to pose a threat to the public interest or  
21 to the effective regulation of limited video lottery, or create or  
22 enhance the dangers of unsuitable, unfair, or illegal practices  
23 and methods and activities in the conduct of gaming, thereby  
24 rendering that person ineligible for licensing.

**§29-22B-603. Guidelines for background investigations.**

1 The lottery commission may not request a background  
2 check of an applicant under section 22B-601 of this article  
3 unless the applicant first provides a set of fingerprints and  
4 completes and signs a statement that:

5 (1) Contains the name, address, and date of birth appearing  
6 on a valid identification document (as defined in section 22B-  
7 312 of this article) of the applicant;

8 (2) Declares that the applicant has not been convicted of a  
9 crime or, if the applicant has been convicted of a crime,

10 contains a description of the crime and the particulars of the  
11 conviction. For the purposes of this section, an applicant has not  
12 been convicted of a crime if he or she was convicted of a non-  
13 moving motor vehicle violation or a speeding violation that  
14 does not arise in connection with a motor vehicle collision;

15 (3) Notifies the applicant that the lottery commission will  
16 request a background check under section 22B-601 of this  
17 article; and

18 (4) Notifies the applicant of the applicant's rights under  
19 section 22B-604 of this article.

**§29-22B-604. Applicant's rights regarding background investigations.**

1 Each applicant who is the subject of a background check is  
2 entitled to a copy of his or her background investigation report,  
3 and has the right to challenge the accuracy and completeness of  
4 any information contained in the report and to obtain a prompt  
5 determination as to the validity of the challenge before a final  
6 determination is made by the lottery commission that would  
7 deny issuance of a license or renewal of a license.

**PART 7. DUTIES AND RESPONSIBILITIES OF LICENSEES.**

**§29-22B-701. General duties of all licensees.**

1 All video lottery license holders shall:

2 (1) Promptly report to the commission any facts or circum-  
3 stances related to video lottery operations that constitute a  
4 violation of state or federal law;

5 (2) Conduct all video lottery activities and functions in a  
6 manner that does not pose a threat to the public health, safety or

7 welfare of the citizens of this state, and which does not ad-  
8 versely affect the security or integrity of the lottery;

9 (3) Hold the commission and this state harmless from and  
10 defend and pay for the defense of any and all claims that may  
11 be asserted against a license holder, this state or the commission  
12 and its employees arising from the license holder's participation  
13 in the video lottery system authorized by this article;

14 (4) Assist the commission in maximizing video lottery  
15 revenues;

16 (5) Maintain all records required by the commission;

17 (6) Upon request by the commission or any designated  
18 agent of the commission, provide the commission access to all  
19 records and the physical premises of the business or businesses  
20 where the license holder's video lottery activities occur, for the  
21 purpose of monitoring or inspecting the license holder's  
22 activities and the video lottery games, video lottery terminals  
23 and associated equipment;

24 (7) Keep current in all payments and obligations to the  
25 commission; and

26 (8) Notify the commission in writing of any proposed  
27 change of ownership or control of the license holder and of all  
28 other transactions or occurrences relevant to license qualifica-  
29 tion, and receive commission approval prior to any change of  
30 ownership or control of a licensed manufacturer, operator or  
31 limited video lottery retailer.

**§29-22B-702. Additional duties of limited video lottery retailers.**

1 In addition to the general duties imposed on all licensees in  
2 section 22B-701, a limited video lottery retailer shall:

3       (1) Attend all commission mandated meetings, seminars  
4 and training sessions concerning operation of video lottery  
5 terminals, the validation and redemption of video lottery  
6 winning tickets and the operation of all ticket validation  
7 terminals and equipment;

8       (2) Maintain all skills necessary for the accurate validation  
9 of video lottery tickets;

10       (3) Supervise video lottery operations and ticket validation  
11 procedures at the applicable location;

12       (4) Permit no person to tamper with or interfere with the  
13 operation of any video lottery terminal;

14       (5) Ensure that telephone lines from the commission's  
15 central control computer to the video lottery terminals located  
16 at the approved location are at all times connected, and prevent  
17 any person from tampering or interfering with the operation of  
18 the telephone lines;

19       (6) Ensure that video lottery terminals are within the sight  
20 and control of designated employees of the limited video lottery  
21 retailer;

22       (7) Ensure that video lottery terminals are placed and  
23 remain placed in the specific locations which have been  
24 approved by the commission. A video lottery terminal in a  
25 restricted access adult-only facility may not be relocated within  
26 the facility without the prior written approval of the commis-  
27 sion;

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

31 (9) Maintain at all times sufficient change and cash in the  
32 denominations accepted by the video lottery terminals;

33 (10) Provide no access by a player to an automated teller  
34 machine (ATM) in the restricted access adult-only facility  
35 where video lottery games are played, accept no credit card or  
36 debit card from a player for the exchange or purchase of video  
37 lottery game credits or for an advance of coins or currency to be  
38 utilized by a player to play video lottery games and extend no  
39 credit, in any manner, to a player so as to enable the player to  
40 play a video lottery game;

41 (11) Pay for all credits won upon presentment of a valid  
42 winning video lottery ticket;

43 (12) Report promptly in writing to the operator and the  
44 commission all video lottery terminal malfunctions and notify  
45 the commission in writing of the failure of an operator or  
46 service technician to provide prompt service and repair of the  
47 terminals and associated equipment;

48 (13) Conduct no video lottery advertising or promotional  
49 activities;

50 (14) Not use the words "video lottery" in the name of the  
51 approved location, or in any directions or advertising visible  
52 from outside the retailer's establishment;

53 (15) Install, post and display prominently within or about  
54 the approved location signs, redemption information and other  
55 promotional material as required by the commission;

56 (16) Permit video lottery to be played only during those  
57 hours established and approved by the commission: *Provided,*  
58 That the limited video lottery retailer shall not permit video  
59 lottery to be played beyond the hour during which liquor may  
60 be served;

61 (17) Contract with no more than one licensed operator for  
62 the placement of video lottery terminals at the licensed location;

63 (18) Maintain insurance covering all losses as the result of  
64 fire, theft or vandalism to video lottery terminals and associated  
65 equipment; and

66 (19) Comply with all applicable provisions of this article  
67 and rules and orders of the commission.

**§29-22B-703. Additional duties of limited video lottery retailers  
who are permittees.**

1 In addition to the general duties imposed on all licensees in  
2 section 22B-701 and the additional duties imposed on all  
3 limited video lottery retailers in section 22B-702, a limited  
4 video lottery retailer who is a permittee shall:

5 (1) Acquire video lottery terminals by purchase, lease or  
6 other assignment only from licensed manufacturers;

7 (2) Acquire no video lottery terminals in excess of the  
8 number he or she is authorized to operate in this state as stated  
9 in the permit issued under part 11 of this article.;

10 (3) Pay for the installation and operation of commission  
11 approved telephone lines to provide direct dial-up or on-line  
12 communication between each video lottery terminal and the  
13 commission's central control computer;

14 (4) Purchase or lease and install computer controller units  
15 and other associated equipment required by the commission for  
16 video lottery terminals owned or leased by the permittee;

17 (5) Ensure that telephone lines from the commission's  
18 central control computer to the video lottery terminals located  
19 at the approved location are at all times connected, and prevent

20 any person from tampering or interfering with the operation of  
21 the telephone lines;

22 (6) Assume financial responsibility for proper and timely  
23 payments of all credits awarded to players in accordance with  
24 legislative rules promulgated by the commission;

25 (7) Enter into contracts with a licensed operator, licensed  
26 manufacturer or other businesses to provide for the maintenance  
27 and repair of video lottery terminals and associated equipment  
28 only by individuals who are licensed service technicians or  
29 employ one or more licensed service technicians, and to provide  
30 for the placement of video lottery terminals pursuant to the  
31 provisions of this article;

32 (8) Promptly notify the commission in writing of any  
33 breaks or tears to any logic unit seals;

34 (9) Assume liability for all amounts due to the commission  
35 in connection with any money lost or stolen from any video  
36 lottery terminal; and

37 (10) Maintain a separate bank account into which the  
38 limited video lottery retailer shall deposit the gross terminal  
39 income from all of the limited video lottery retailer's video  
40 lottery terminals.

**§29-22B-704. Duties of limited video lottery retailer regarding  
payment of credits.**

1 (a) A limited video lottery retailer shall not make payment  
2 for credits awarded on a video lottery terminal unless the ticket  
3 meets the following requirements:

4 (1) The ticket is fully legible and printed on paper approved  
5 by the commission and the ticket contains all information  
6 required by this article;



7 (2) The ticket is not mutilated, altered, unreadable or  
8 tampered with in any manner;

9 (3) The ticket is not counterfeit, in whole or in part; and

10 (4) The ticket is presented by a person authorized to play  
11 video lottery pursuant to this article.

12 (b) Each limited video lottery retailer shall redeem tickets  
13 during the business hours of operation. Credits shall be immedi-  
14 ately paid in cash or by check when a player presents a valid  
15 ticket for payment. No credits may be paid in tokens, chips or  
16 merchandise. The limited video lottery retailer is responsible  
17 for all income tax reporting of prize payments paid to players  
18 above the threshold set by the United States Internal Revenue  
19 Service.

20 (1) A limited video lottery retailer may not redeem tickets  
21 for credits awarded on a video lottery terminal that is not  
22 located on its premises;

23 (2) A ticket must be presented for payment no later than ten  
24 days after the date the ticket is printed. The commission is not  
25 liable for the payment of any video lottery ticket credits.

26 (c) A limited video lottery retailer shall deface all redeemed  
27 tickets in a manner that prevents any subsequent presentment  
28 and payment.

29 (d) The commission is not responsible for any video lottery  
30 terminal malfunction that causes a credit to be wrongfully  
31 awarded or denied to players. The permittee is solely responsi-  
32 ble for any wrongful award or denial of credits.

**§29-22B-705. Additional duties of manufacturers.**

1 In addition to the general duties imposed on all licensees in  
2 section 22B-701 of this article, a manufacturer shall:

3 (1) Manufacture terminals and associated equipment for  
4 placement in this state in accordance with the specifications and  
5 procedures specified in part 9 of this article;

6 (2) Manufacture terminals and associated equipment to  
7 ensure timely delivery to licensed permittees;

8 (3) Maintain and provide an inventory of spare parts to  
9 assure the timely repair and continuous operation of licensed  
10 video lottery terminals intended for placement in this state;

11 (4) Pay no compensation of any kind to any limited video  
12 lottery retailer or give or transfer anything of value to any  
13 limited video lottery retailer, beyond a nominal consideration  
14 of one dollar per year;

15 (5) Provide to licensed permittees technical assistance and  
16 training in the service and repair of video lottery terminals and  
17 associated equipment so as to assure the continuous authorized  
18 operation and play of the video lottery terminals;

19 (6) Obtain certification of compliance under the provisions  
20 of part fifteen of the federal communication commission rules  
21 for all video lottery terminals placed in this state;

22 (7) Comply with all applicable provisions of this article and  
23 rules and orders of the commission; and

24 (8) Sell or lease video lottery terminals or associated  
25 equipment to a permittee who is a limited lottery retailer under  
26 terms and conditions that are no more favorable than the terms  
27 and conditions under which similar terminals or equipment are  
28 generally sold or leased to permittee who are licensed operators.

**§29-22B-706. Additional duties of operators.**

1 In addition to the general duties imposed on all licensees in  
2 section 22B-701 of this article, an operator shall:

3       (1) Acquire video lottery terminals by purchase, lease or  
4 other assignment only from licensed manufacturers;

5       (2) Acquire no video lottery terminals in excess of the  
6 number they are authorized to operate in this state as stated in  
7 the permit issued under part 11 of this article;

8       (3) Contract with limited video lottery retailers for a secure  
9 location for the placement, operation and play of the video  
10 lottery terminals;

11       (4) Pay no compensation of any kind to any limited video  
12 lottery retailer or give or transfer anything of value to any  
13 limited video lottery retailer, that is in addition to the consider-  
14 ation stated in the written agreement between the operator and  
15 the limited video lottery retailer, which may be not less than  
16 forty percent nor more than fifty percent of the amount of net  
17 terminal income received by the operator in connection with the  
18 video lottery terminals at that location;

19       (5) Pay for the installation and operation of commission  
20 approved telephone lines to provide direct dial-up or on-line  
21 communication between each video lottery terminal and the  
22 commission's central control computer;

23       (6) Purchase or lease and install computer controller units  
24 and other associated equipment required by the commission for  
25 video lottery terminals owned or leased by the permittee;

26       (7) Permit no person to tamper with or interfere with the  
27 operation of any video lottery terminal;

28       (8) Ensure that telephone lines from the commission's  
29 central control computer to the video lottery terminals located  
30 at the approved location are at all times connected, and prevent  
31 any person from tampering or interfering with the operation of  
32 the telephone lines;

33 (9) Ensure that video lottery terminals are placed and  
34 remain placed in the specific places within the approved  
35 restricted access adult-only facility that have been approved by  
36 the commission. No video lottery terminal in a restricted access  
37 adult-only facility may be relocated within the restricted access  
38 adult-only facility without the prior written approval of the  
39 commission;

40 (10) Assume financial responsibility for proper and timely  
41 payments by limited video lottery retailers of all credits  
42 awarded to players in accordance with legislative rules promul-  
43 gated by the commission;

44 (11) Enter into contracts with limited video lottery retailers  
45 to provide for the maintenance and repair of video lottery  
46 terminals and associated equipment only by licensed service  
47 technicians, and to provide for the placement of video lottery  
48 terminals pursuant to the provisions of this article;

49 (12) Conduct no video lottery advertising and promotional  
50 activities;

51 (13) Install, post and display prominently within or about  
52 the approved location signs, redemption information and other  
53 material as required by the commission;

54 (14) Maintain general liability insurance coverage for all  
55 video lottery terminals in an amount of at least one million  
56 dollars per claim;

57 (15) Promptly notify the commission in writing of any  
58 breaks or tears to any logic unit seals;

59 (16) Assume liability for all amounts due to the commis-  
60 sion in connection with any money lost or stolen from any  
61 video lottery terminal;

62 (17) Comply with all applicable provisions of this article  
63 and rules and orders of the commission; and

64 (18) Maintain a separate bank account into which the  
65 operator shall deposit the gross terminal income from all of the  
66 operator's video lottery terminals.

**§29-22B-707. Additional duties of service technicians.**

1 In addition to the general duties imposed on all licensees in  
2 section 22B-701 of this article, a service technician shall:

3 (1) Maintain all skills necessary for the timely repair and  
4 service of licensed video lottery terminals and associated  
5 equipment so as to ensure the continued, approved operation of  
6 those terminals;

7 (2) Attend all commission mandated meetings, seminars  
8 and training sessions concerning the repair and maintenance of  
9 licensed video lottery terminals and associated equipment;

10 (3) Promptly notify the commission in writing of any  
11 electronic or mechanical video lottery terminal malfunctions;  
12 and

13 (4) Comply with all applicable provisions of this article and  
14 rules and orders of the commission.

**PART 8. APPROVAL OF VIDEO LOTTERY TERMINALS  
AND ASSOCIATED EQUIPMENT.**

**§29-22B-801. Manufacturer seeking approval of terminal must be  
licensed; prohibition against placement of unap-  
proved terminal.**

1 (a) Only licensed manufacturers may apply to the lottery  
2 commission for approval of a video lottery terminal or associ-  
3 ated equipment.

4 (b) A manufacturer may not sell or lease a video lottery  
5 terminal for placement in a licensed facility in the state unless  
6 the terminal has been approved by the lottery commission.

**§29-22B-802. Testing of video lottery terminals and associated equipment.**

1 (a) The manufacturer shall submit two copies of terminal  
2 illustrations, schematics, block diagrams, circuit analysis,  
3 technical and operation manuals, and any other information  
4 requested by the commission for the purpose of analyzing and  
5 testing the video lottery terminal or associated equipment.

6 (b) The lottery commission may require that the manufac-  
7 turer transport two working models of a video lottery terminal  
8 to the location designated by the lottery commission for testing,  
9 examination and analysis. When this is required:

10 (1) The manufacturer shall pay all costs of testing, exami-  
11 nation, analysis and transportation of the video lottery terminal  
12 models. The testing, examination and analysis of any video  
13 lottery terminal model may require dismantling of the terminal,  
14 and some tests may result in damage or destruction to one or  
15 more electronic components of the terminal model. The lottery  
16 commission may require that the manufacturer provide special-  
17 ized equipment or pay for the services of an independent  
18 technical expert to test the terminal; and

19 (2) The manufacturer shall pay the cost of transportation of  
20 two video lottery terminals to lottery headquarters. The lottery  
21 commission shall conduct an acceptance test to determine  
22 terminal functions and central system compatibility. If the video  
23 lottery terminal fails the commission conducted acceptance test,  
24 the manufacturer shall make all modifications required by the  
25 commission.

**§29-22B-803. Reporting of testing results.**

1 After each test has been completed, the commission shall  
2 provide the terminal manufacturer with a report containing  
3 findings, conclusions and pass/fail results. The report may  
4 contain recommendations for video lottery terminal modifica-  
5 tion to bring the terminal into compliance with the provisions  
6 of this article.

#### **PART 9. VIDEO LOTTERY HARDWARE AND SOFTWARE.**

##### **§29-22B-901. Hardware specifications.**

1 Video lottery terminals licensed for placement in this state  
2 must meet the hardware specifications set forth in this part 9.

##### **§29-22B-902. Control of electrical power.**

1 (a) A surge protector shall be installed on the electrical  
2 power supply line to each video lottery terminal. A battery or  
3 equivalent power back-up for the electronic meters shall be  
4 capable of maintaining accuracy of all accounting records and  
5 terminal status reports for a period of ninety days after power  
6 is disconnected from the terminal. The power back-up device  
7 shall be located within the locked logic board compartment of  
8 the video lottery terminal.

9 (b) An on/off switch that controls the electrical current used  
10 in the operation of the terminal shall be located in an accessible  
11 place within the interior of the video lottery terminal.

12 (c) The operation of each video lottery terminal may not be  
13 adversely affected by any static discharge or other electromag-  
14 netic interference.

##### **§29-22B-903. Coin or bill acceptors.**

1 (a) A minimum of one electronic or mechanical coin  
2 acceptor or other means by which to accurately and efficiently

3 establish credits must be installed on each video lottery  
4 terminal. Each video lottery terminal may also contain bill  
5 acceptors for one or more of the following: One-dollar bills,  
6 five-dollar bills, ten-dollar bills and twenty-dollar bills.

7 (b) The lottery commission shall approve all coin and bill  
8 acceptors prior to use on any video lottery terminal in this state.

9 (c) A video lottery terminal shall not allow more than two  
10 dollars to be wagered on a single game.

**§29-22B-904. Security; access to the interior of video lottery  
terminals.**

1 (a) Access to the interior of video lottery terminals shall be  
2 controlled through a series of locks and seals.

3 (b) The main logic boards and all erasable programmable  
4 read-only memory chips (EPROMS) are considered to be  
5 owned by the lottery commission and shall be located in a  
6 separate locked and sealed area within the video lottery  
7 terminal.

8 (c) The cash compartment shall be located in a separate  
9 locked area within or attached to the video lottery terminal.

10 (d) No hardware switches, jumpers, wire posts or any other  
11 means of manipulation may be installed which alter the pay  
12 tables or payout percentages in the operation of a game.  
13 Hardware switches on a video lottery terminal intended to  
14 control the terminal's graphic routines, speed of play, sound  
15 and other purely cosmetic features may not be used without the  
16 written approval of the commission.

17 (e) All video lottery terminals shall have a security system  
18 which will temporarily disable the gaming function of the  
19 terminal while opened.



**§29-22B-905. Printing mechanism.**

1 Each video lottery terminal must contain a single printing  
2 mechanism capable of printing an original ticket and retaining  
3 an exact legible copy within the video lottery terminal, or other  
4 means of capturing and retaining an electronic copy of the  
5 ticket data as approved by the lottery commission. The follow-  
6 ing information must be recorded on the ticket when credits  
7 accrued on a video lottery terminal are redeemed for cash:

8 (1) The number of credits accrued;

9 (2) The value of the credits in dollars and cents displayed  
10 in both numeric and written form;

11 (3) The time of day and date;

12 (4) The validation number; and

13 (5) Any other information required by the commission.

**§29-22B-906. Identification plate.**

1 A permanently installed and affixed identification plate  
2 shall appear on the exterior of each video lottery terminal and  
3 the following information shall be on the plate:

4 (1) The manufacturer of the video lottery terminal;

5 (2) The serial number of the terminal; and

6 (3) The model number of the terminal.

**§29-22B-907. Display of information on terminal face or screen.**

1 All information required by this section must be displayed  
2 under glass or another transparent substance.

3 (1) The rules of play for each game shall be displayed on  
4 the video lottery terminal face or screen. The commission may  
5 reject any rules of play that are incomplete, confusing, mislead-  
6 ing or inconsistent with game rules approved by the commis-  
7 sion.

8 (2) For each video lottery game, there shall be a display  
9 detailing the credits awarded for the occurrence of each  
10 possible winning combination of numbers or symbols.

11 (3) No stickers or other removable devices shall be placed  
12 on the video lottery terminal screen or face without the prior  
13 written approval of the commission.

14 (4) A label prominently displaying information on how to  
15 locate and contact persons or organizations available for help,  
16 assistance or treatment for persons who may have a gambling  
17 addiction, together with the telephone number "1-800-GAM-  
18 BLER."

**§29-22B-908. Communication with central computer system.**

1 Communication equipment and devices shall be installed to  
2 enable each video lottery terminal to communicate with the  
3 lottery commission's central computer system. The commission  
4 shall provide to licensed manufacturers, or applicants applying  
5 for a manufacturer's license, the protocol documentation data  
6 necessary to enable the respective manufacturer's video lottery  
7 terminals to communicate with the commission's central  
8 computer for transmitting auditing program information and for  
9 activation and disabling of video lottery terminals.

**§29-22B-909. Random number generator required.**

1 Each video lottery terminal shall have a random number  
2 generator to determine randomly the occurrence of each  
3 specific symbol or number used in video lottery games. A

4 selection process is random if it meets the following statistical  
5 criteria:

6 (1) *Chi square test.* — Each symbol or number shall satisfy  
7 the ninety-nine percent confidence limit using the standard  
8 chi-square statistical analysis of the difference between the  
9 expected result and the observed result;

10 (2) *Runs test.* — Each symbol or number may not produce  
11 a significant statistic with regard to producing patterns of  
12 occurrences. Each symbol or number is random if it meets the  
13 ninety-nine percent confidence level with regard to the “runs  
14 test” for the existence of recurring patterns within a set of data;

15 (3) *Correlation test.* — Each pair of symbols or numbers is  
16 random if it meets the ninety-nine percent confidence level  
17 using standard correlation analysis to determine whether each  
18 symbol or number is independently chosen without regard to  
19 another symbol or number within a single game play; and

20 (4) *Serial correlation test.* — Each symbol or number is  
21 random if it meets the ninety-nine percent confidence level  
22 using standard serial correlation analysis to determine whether  
23 each symbol or number is independently chosen without  
24 reference to the same symbol or number in a previous game.

**§29-22B-910. Payout standards.**

1 Each video lottery terminal shall meet the following  
2 maximum and minimum theoretical percentage payout during  
3 the expected lifetime of the terminal:

4 (1) Video lottery games shall pay out no less than eighty  
5 percent and no more than ninety-five percent of the amount  
6 wagered. The theoretical payout percentage shall be determined  
7 using standard methods of probability theory;

8       (2) Manufacturers shall file a request and receive written  
9 approval from the commission prior to manufacturing for  
10 placement in this state video lottery games programmed for a  
11 payout greater than ninety-two percent of the amount wagered.  
12 Commission approval shall be obtained prior to applying for  
13 testing of the high payout terminals; and

14       (3) Each game shall have a probability greater than one in  
15 seventeen million of obtaining the maximum payout for each  
16 play.

**§29-22B-911. Continuation of current game after malfunction.**

1       Each video lottery terminal shall be capable of continuing  
2 the current game with all current game features after a video  
3 lottery terminal malfunction is cleared. If a video lottery  
4 terminal is rendered totally inoperable during game play, the  
5 limited video lottery retailer shall return the current wager and  
6 all credits appearing on the video lottery terminal screen prior  
7 to the malfunction to the player.

**§29-22B-912. Electronic accounting required.**

1       (a) Each video lottery terminal shall at all times maintain  
2 electronic accounting regardless of whether the terminal is  
3 being supplied with electrical power. Each meter shall be  
4 capable of maintaining a total of no less than eight digits in  
5 length for each type of data required. The electronic meters  
6 shall record the following information:

7       (1) The number of coins inserted by players or the coin  
8 equivalent if a bill acceptor is being used;

9       (2) The number of credits wagered;

10       (3) The number of credits won;

- 11 (4) The number of credits paid out by a printed ticket;
- 12 (5) The number of times the logic area was accessed;
- 13 (6) The number of times the cash door was accessed;
- 14 (7) The number of credits wagered in the current game;
- 15 (8) The number of credits won in the last complete video  
16 lottery game; and
- 17 (9) The number of cumulative credits representing money  
18 inserted by a player and credits for video lottery games won but  
19 not collected.
- 20 (b) No video lottery terminal may have any mechanism that  
21 would allow the electronic accounting meters to clear automati-  
22 cally. Electronic accounting meters may not be cleared without  
23 the prior approval of the commission. Both before and after any  
24 electronic accounting meter is cleared, the limited video lottery  
25 retailer shall record all meter readings in the presence of a  
26 commission employee.

**PART 10. CONDITIONS FOR SALE OR LEASE OF  
VIDEO LOTTERY TERMINALS.**

**§29-22B-1001. Manufacturer must be licensed.**

1 A manufacturer of video lottery terminals may not sell or  
2 lease video lottery terminals to any person for use in this state  
3 unless the manufacturer possesses a current manufacturer's  
4 license issued by the lottery commission as provided in this  
5 article.

**§29-22B-1002. Manufacturers may sell or lease only to permittees.**

1 A licensed manufacturer of video lottery terminals may  
2 only sell or lease video lottery terminals for use in this state to

3 a person who possesses at the time of delivery a valid permit to  
4 own or lease one or more video lottery terminals and a valid  
5 operator's license or a valid limited video lottery retailer's  
6 license issued by the lottery commission as provided in this  
7 article.

**§29-22B-1003. Terminals must be approved.**

1 A licensed manufacturer may not sell or lease a video  
2 lottery terminal for placement by a permittee in this state unless  
3 the terminal has been approved by the lottery commission as  
4 provided in this article.

**§29-22B-1004. Purchase or lease by permittees.**

1 Only permittees may purchase or lease video lottery  
2 terminals from a licensed manufacturer.

**PART 11. ALLOCATION AND DISTRIBUTION OF  
VIDEO LOTTERY TERMINALS.**

**§29-22B-1101. Limitation on number and location of video lottery  
terminals.**

1 (a) The lottery commission may not authorize the place-  
2 ment of more than nine thousand video lottery terminals in  
3 restricted access adult-only facilities in this state.

4 (b) No person may directly or indirectly operate more than  
5 seven and one-half percent of the number of video lottery  
6 terminals authorized in this section, which shall be located only  
7 in restricted access adult-only facilities.

8 (c) No licensed limited video lottery retailer may be  
9 authorized to have on the premises for which the license was  
10 issued more than five video lottery terminals except that a  
11 fraternal society or veteran's organization that is (A) a fraternal

12 beneficiary society that is exempt from federal income tax  
13 under section 501(c)(8) of the Internal Revenue Code of 1986,  
14 as amended, (B) a domestic fraternal society that is exempt  
15 from federal income tax under section 501(c)(10), or (C) a  
16 veterans' organization that is exempt from federal income tax  
17 under section 501(c)(19) of the Internal Revenue Code may be  
18 authorized to have on the premises for which the license was  
19 issued not more than ten video lottery terminals.

**§29-22B-1102. Permits to operate video lottery terminals; expiration date; annual fee to be paid by May 1st.**

1 (a) The lottery commission shall establish forms for an  
2 operator's permit to own or lease and operate video lottery  
3 terminals and a permit for a limited video lottery retailer that  
4 allows the holder to own or lease video lottery terminals from  
5 a licensed manufacturer. The number of video lottery terminals  
6 that a person may own or lease or have on a limited video  
7 lottery retailer premises shall be stated in the license or permit  
8 issued by the commission as provided in this article.

9 (b) Permits shall be issued by the commission for a period  
10 of ten years, except that all permits expire on the thirtieth day  
11 of June, 2011, unless they are sooner surrendered, modified,  
12 suspended or revoked as provided in this article: *Provided*, That  
13 the annual fee imposed by this part for each video lottery  
14 terminal authorized in the permit shall be paid on or before the  
15 first day of May each year.

**§29-22B-1103. Permit fee.**

1 For the privilege of holding a permit that authorizes the  
2 licensee to own or lease video lottery terminals from a licensed  
3 manufacturer, the person shall pay an annual fee of one  
4 thousand dollars per video lottery terminal for which the permit  
5 is issued. This fee shall initially be paid at the time the permit  
6 is issued for the number of video lottery terminals a person is

7 authorized to own or lease without going through the bid  
8 process. Thereafter, this fee shall be due and payable each first  
9 day of May while the person holds the permit and the amount  
10 of the fee shall be determined by the number of video lottery  
11 terminals the person is permitted to own or lease video lottery  
12 terminals from a licensed manufacturer.

**§29-22B-1104. Reservation of authority to have video lottery  
terminals on or before August 1, 2001.**

1 (a) On or before the first day of August, 2001, every person  
2 who held on the first day of January, 2001, a private club  
3 license issued as provided in article 60-7-1 *et seq.* of this code,  
4 or a class "A" nonintoxicating beer license issued as provided  
5 in article 11-16-1 *et seq.* of this code, and wants to offer video  
6 lottery terminals, as defined in this article, for the enjoyment of  
7 the licensee's customers after the effective date of this article  
8 shall file an application to be licensed as a limited video lottery  
9 retailer under this article.

10 (b) The applications described in subsection (a) of this  
11 section shall be in the form prescribed by the lottery commis-  
12 sion, be signed by the applicant or a person authorized to sign  
13 an application filed for a person who is not an individual, and  
14 provide all of the information requested by the lottery commis-  
15 sion. The commission shall not consider any application that is  
16 incomplete in any material respect and the incomplete applica-  
17 tion shall be returned to the applicant for completion and  
18 refiling. An incomplete application submitted for a limited  
19 video lottery retailer's license shall be returned to the applicant  
20 for completion and refiling by the first day of August, 2001.

21 (c)(1) An application filed on or before the first day of  
22 August, 2001 for a limited video lottery retailer's license shall  
23 state the number of video lottery terminals to be located on the  
24 premise of the applicant and state whether the applicant will



25 own or lease the video lottery terminals or obtain them from an  
26 operator.

27 (2) The number of video lottery terminals a limited video  
28 lottery retail licensee is authorized to have on its premises shall  
29 be stated in the limited video lottery retailer's license issued to  
30 the licensee. The number of video lottery terminals a limited  
31 video lottery retailer is authorized to own or lease from a  
32 manufacturer shall be stated in the permit issued to the licensee.  
33 Once the permit is issued, the permittee may purchase or lease  
34 the number of video lottery terminals authorized in the permit.  
35 A limited video lottery retailer who elects to obtain video  
36 lottery terminals from an operator may contract with an  
37 operator for the number of video lottery terminals stated in the  
38 license.

39 (d) Authorization to have a video lottery terminal on the  
40 premises of a video lottery retailer expires on the thirtieth day  
41 of June, 2011, and every ten years thereafter unless during the  
42 fiscal year of the state ending the thirtieth day of June, 2011,  
43 and each ten years thereafter, the video lottery retailer files an  
44 application as provided in this section for the next ensuing ten  
45 year period.

**§29-22B-1105. Determination of authorizations to be issued  
without bid and number of authorizations to be  
bid.**

1 (a) When the applications provided for in section 22B-1104  
2 of this part are received by the commission on or before the  
3 first day of August, 2001, the commission shall reserve for each  
4 applicant authorizations to have no more than two video lottery  
5 terminals on the premises for which the private club license  
6 issued under article 60-7-1 et seq., of this code, or a class "A"  
7 nonintoxicating beer license was issued prior to the first day of  
8 January, 2001, except that a fraternal society or veteran's

9 organization that is (A) a fraternal beneficiary society that is  
10 exempt from federal income tax under section 501(c)(8) of the  
11 Internal Revenue Code of 1986, as amended, (B) a domestic  
12 fraternal society that is exempt from federal income tax under  
13 section 501(c)(10), or (C) a veterans' organization that is  
14 exempt from federal income tax under section 501(c)(19) of the  
15 Internal Revenue Code may be authorized to have on the  
16 premises for which the license was issued not more than seven  
17 video lottery terminals.

18 (b) The commission shall then determine the total number  
19 of authorizations to have video lottery terminals reserved under  
20 subsection (a) of this section and subtract that number from the  
21 total number of video lottery terminals authorized for the state  
22 in section 22B-1101 of this part. This establishes the number of  
23 authorizations available for bid as provided in section 22B-  
24 1106.

25 (c) If an application for a limited video lottery retailer's  
26 license is received after the first day of August, 2001, whether  
27 from an applicant who on the first day of January, 2001, held a  
28 private club license issued under article 60-7-1, *et seq.*, of this  
29 code or a class "A" nonintoxicating beer license issued under  
30 article 11-16-1, *et seq.*, of this code, or from an applicant who  
31 is issued a private club license or a class "A" nonintoxicating  
32 beer license after the first day of January, 2001, no authoriza-  
33 tion to have video lottery terminals may be reserved for that  
34 applicant under this section. The applicant may contract with a  
35 licensed operator to furnish video lottery terminals or may  
36 submit a bid for authorization to own video lottery terminals as  
37 provided in section 22B-1106 of this part.

38 (d) As used in this section the term "received" means  
39 physically received in the office of the state lottery by 4:30 p.m.  
40 on the first day of August, 2001.

**§29-22B-1106. Allocation of permits to own or lease video lottery terminals by sealed bid.**

1 (a) Any video lottery terminals not authorized by the  
2 commission under section 1105 of this article shall be allocated  
3 under the provisions of this section by sealed competitive bid.

4 (b) Bids for permits to own or lease video lottery terminals  
5 shall be governed by the provisions of this part 11.

6 (c) A permit to own or lease one or more video lottery  
7 terminals, as defined in this article, may only be issued to a  
8 person who is licensed as an operator or a limited video lottery  
9 retailer under this article.

10 (d) All permits issued under this section shall be based on  
11 sealed competitive bids in accordance with the provisions of  
12 this section.

13 (e) The commission may set a single uniform minimum bid  
14 for each video lottery terminal for which bids are sought. Each  
15 time before the first publication of a legal notice soliciting bids,  
16 the commission may set a new minimum bid.

**§29-22B-1107. Bidding process.**

1 (a) Bids for issuance of permits shall be obtained by public  
2 notice published as a Class II-0 legal advertisement in compli-  
3 ance with the provisions of article 59-3-1, et seq of this code;

4 (b) The second publication of the notice shall appear more  
5 than sixty days next preceding the final day for submitting bids;

6 (c) Each bid shall indicate the number of video lottery  
7 terminals for which the permit is sought. The bid shall state the  
8 amount bid for each video lottery terminal for which the permit  
9 is sought;

10 (d) No bid may be altered or withdrawn after the appointed  
11 hour for the opening of the bids;

12 (e) Subject to the provisions of subsection (f) of this  
13 section, permits shall be awarded to the persons submitting the  
14 highest per terminal bids, except that no person may be  
15 authorized to directly or indirectly own or lease more than  
16 seven and one-half percent of the total number of video lottery  
17 terminals authorized in section 22B-1101 of this article. If a  
18 high bidder already holds a permit issued under this section, the  
19 bid shall be awarded to that bidder, but only to the extent the  
20 total number of video lottery terminals the operator or limited  
21 video lottery retailer is authorized to directly or indirectly own  
22 or lease does not exceed seven and one-half percent of the  
23 number of video lottery terminals authorized for the entire state  
24 specified in section 22B-1101 of this article;

25 (f) No bid shall be considered unless the bond required by  
26 section 22B-1109 of this article accompanies the bid or was  
27 submitted to the state treasurer before the time designated for  
28 opening of the bid;

29 (g) No bid shall be considered unless the amount of the bid  
30 equals or exceeds the minimum bid amount for a video lottery  
31 terminal specified by the commission;

32 (h) All bids for a permit may be rejected by the commission  
33 if the commission determines that the bids are inadequate. In  
34 this event, the director shall begin anew the bidding process for  
35 the permits;

36 (i) Whenever there are two or more bids of the same dollar  
37 amount and the number of authorizations for which the bids  
38 were submitted exceeds the number of authorizations still  
39 available to fill the bids, the director shall award the permit  
40 based upon the drawing of lots among the bidders.

41 (j) A person submitting a bid under this article shall deliver  
42 one copy to the director of purchasing, West Virginia depart-  
43 ment of administration and deliver a second or duplicate copy  
44 to the state auditor. Both copies must be received at the  
45 respective offices prior to the specified date and time of the bid  
46 opening;

47 (k) The failure to deliver or the nonreceipt of these bid  
48 forms at either of these offices prior to the appointed date and  
49 hour are grounds for rejection of the bids. In the event of any  
50 deviation between the copies submitted to the purchasing  
51 division and the state auditor, the bids as to which there is a  
52 deviation shall be rejected;

53 (l) After the award of a permit, the director of the lottery  
54 shall indicate upon the successful bid that it was the successful  
55 bid and the number of video lottery terminals for which a  
56 permit is awarded to the bidder. This shall be the number of  
57 video lottery terminals for which the bid was submitted, or the  
58 remaining number of video lottery terminals to be awarded  
59 when the number of video lottery terminals remaining is less  
60 than the number of terminals for which the bid was submitted.  
61 Thereafter, a copy of the bid and the bidder's application for an  
62 operator's license or a limited video lottery retailer license shall  
63 be maintained as a public record at the commissions' offices  
64 and shall be open to public inspection during its normal  
65 business hours. These documents may not be destroyed without  
66 the prior written consent of the legislative auditor;

67 (m) Prior to issuing a permit to a successful bidder, the bid  
68 price for the number of video lottery terminals authorized in the  
69 permit plus the amount of the operator's annual license fee or  
70 the limited video lottery retailer's annual license fee for the first  
71 license year, as specified in section 518 of this article, shall be  
72 paid to the commission by money order, certified check or  
73 cashier's check. If the operator's annual license fee or the

74 limited video lottery retailer's license fee was paid for the  
75 current license year before the due date of the bid amount, the  
76 license fee shall not be collected a second time for the same  
77 license year. The amount paid shall be deposited into the fund  
78 established in section eighteen-a, article twenty-two of this  
79 chapter;

80 (n) All permits shall be signed by the director of the lottery  
81 in the name of the state;

82 (o) If the successful bidder fails to pay to the commission  
83 the bid price and the operator's annual license fee or the limited  
84 video lottery retailer's license fee for the first license year, at  
85 the time specified by the commission, the bond provided for in  
86 section 1109 of this article shall be forfeited and the bidder  
87 shall not be issued the permit;

88 (p) In the event of a default, as provided in subsection (h)  
89 of this section, the commission shall then issue the permit to the  
90 next highest bidder for video lottery terminals, or reject all  
91 remaining bids and start anew the bidding procedure for the  
92 remaining number of video lottery terminals;

93 (q) If after a permit is awarded, an operator or limited video  
94 lottery retailer surrenders the permit, in whole or in part, or the  
95 permit is revoked or canceled by operation of law, the commis-  
96 sion may seek bids for video lottery terminals for which  
97 authorization was surrendered or revoked, subject to the  
98 limitations and requirements of this article; and

99 (r) During the fiscal year of the state ending the thirtieth  
100 day of June, 2011, the commission shall seek bids for the ten-  
101 year period beginning the first day of July, 2011 and ending the  
102 thirtieth day of June, 2021.

**§29-22B-1108. Preference for current permit holders.**

1 (a) When seeking bids for the ten-year period beginning the  
2 first day of July, 2011 and ending the thirtieth day of June,  
3 2021, and for each subsequent ten-year period, the commission  
4 shall, in determining the amount a current holder of a permit  
5 issued under section 1106 of this article shall pay for authoriza-  
6 tion to place additional video lottery terminals in this state,  
7 afford the bidder an additional preference, if the bidder submit-  
8 ted at least the minimum bid amount prescribed by the commis-  
9 sion, the amount of which shall be determined as provided in  
10 subsection (b) of this section.

11 (b) The preference allowed by this section shall be com-  
12 puted by adding five percent of the bid price submitted by the  
13 current permit holder to the amount of the bid submitted by that  
14 holder.

15 (c) Where the commission determines that it has not issued  
16 permits for the number of video lottery terminals allowed to be  
17 placed in this state, as provided in section 1101 of this article,  
18 the commission shall allow current permit holders to bid on the  
19 remaining video lottery terminals before opening up the bidding  
20 to other persons. If the highest bid meets or exceeds the  
21 minimum bid, the commission shall determine whether, at the  
22 time of the bid, the bidder held a permit for the period ending  
23 the thirtieth day of June, 2011, or for any ten-year period  
24 thereafter, on the thirtieth day of June preceding the expiration  
25 of the permit. If the current permit holder submitted a bid that  
26 was not less than the minimum bid, the commission shall notify  
27 the bidder that upon paying the amount of the highest bid, that  
28 the permit for the ten-year period beginning the first day of  
29 July, 2011, or for any ten-year period thereafter, shall be issued  
30 to the current permit holder. If, within the time determined by  
31 the commissioner, the current permit holder pays the amount to  
32 the commission and complies with all other requirements  
33 imposed by the provisions of this article for the issuance of the  
34 permit, the permit for the ten-year period beginning the first day

35 of July, 2011, or for any ten-year period thereafter, shall be  
36 issued to the current permit holder.

**§29-22B-1109. Bid bond required.**

1 (a) Each person submitting a bid under section 22B-1107 of  
2 this article shall furnish to the commission a bond at the time of  
3 bidding, which shall guarantee the payment of one hundred  
4 percent of the price bid for the permit sought by the bidder.

5 (b) The bond required by this section shall be furnished in  
6 cash or negotiable securities or shall be a surety bond issued by  
7 a surety company authorized to do business with the state or an  
8 irrevocable letter of credit issued by a financial institution  
9 acceptable to the commission.

10 (c) If the bid bond is furnished in cash or negotiable  
11 securities, the principal shall be deposited without restriction in  
12 the state treasurer's office and credited to the commission, but  
13 any income shall inure to the benefit of the bidder.

14 (d) The bond shall be returned to the bidder following the  
15 bidding if the bidder is not a successful bidder for authorization  
16 to place video lottery terminals in this state, as provided in this  
17 article.

18 (e) If the bidder is a successful bidder, the bid bond shall be  
19 released after the permit is issued, as provided in section 1106  
20 of this article.

21 (f) If a successful bidder defaults in paying the amount due  
22 by the date specified by the commission, as provided in section  
23 1106 of this article, the bid bond shall be forfeited to the state.

24 (g) If the defaulting bidder was successful only in part  
25 because the bid submitted was for authorization to place more  
26 video lottery terminals than were awarded to the bidder, the



27 amount of the bid bond shall be prorated and the portion of the  
28 bid bond attributable to video lottery terminals not awarded to  
29 the defaulting bidder shall be returned to the bidder and the rest  
30 shall be forfeited to the state.

**§29-22B-1110. Operator permit.**

1 (a) An operator who holds a permit issued under this  
2 section may operate the number of video lottery terminals  
3 specified in the permit.

4 (b) The number of video lottery terminals authorized in the  
5 permit shall be the sum of the number of authorizations for  
6 which the operator is the successful bidder under this section  
7 plus the number of authorizations reserved under section 22B-  
8 1104 of this article for video lottery retailers that elect to obtain  
9 video lottery terminals from the operator. If after the permit is  
10 issued, the operator enters into additional contracts with limited  
11 video lottery retailers with authorizations issued under section  
12 22B-1104 or obtains additional authorizations through the  
13 bidding process, the operator shall apply to the commission for  
14 a supplemental permit to operate the number of video lottery  
15 terminals set forth in the application. Attached to the applica-  
16 tion shall be a true copy of all contracts the applicant has  
17 entered into with persons who hold a limited video lottery  
18 retailer's license issued under this article for placement of video  
19 lottery terminals in the premises of the limited video lottery  
20 retailer for whom authorizations were reserved under section  
21 22B-1104 of this article and a true copy of the certificate of  
22 reservation issued by the commission to that video lottery  
23 retailer.

24 (c) The contract between the operator and the limited video  
25 lottery retailer shall be in writing and be signed by the parties,  
26 or their duly authorized representative when the party is a  
27 person who is not an individual.

**§29-22B-1111. Reduction of video lottery terminals authorized in a retailer's license.**

1        If after a limited video lottery license is issued or a permit  
2 is issued, a retailer surrenders the license in whole or in part, or  
3 the license is modified, revoked or canceled by operation of  
4 law, the lottery commission shall then allocate authorizations  
5 to operate those video lottery terminals through the bid process  
6 described in section 1107 of this part 11, subject to the limita-  
7 tions and requirements of this article.

**§29-22B-1112. Reduction of gambling.**

1        Each limited video lottery retailer shall conspicuously post  
2 in the restricted access adult-only facility and disseminate the  
3 telephone numbers of state approved providers of problem  
4 gambling information, treatment and referral support services  
5 and further conspicuously post the following: "CAUTION  
6 Gambling and playing this machine can be hazardous to your  
7 health, your finances, and your future."

**§29-22B-1113. Operation of authorized video lottery terminals; forfeiture of authorization for failure to operate.**

1        (a) A person who holds a permit or license to operate video  
2 lottery terminals shall place the video lottery terminals autho-  
3 rized by the license or permit in operation within six months  
4 after receiving the license or permit in which the terminals are  
5 first authorized. After January 1, 2002, a person who holds a  
6 permit or license to operate video lottery terminals shall place  
7 the video lottery terminals authorized by the license or permit  
8 in operation within ninety days after receiving the license or  
9 permit.

10       (b) After a video lottery terminal is connected to the  
11 commission's central site system of monitoring lottery termi-  
12 nals, the terminal may not be off-line for more than five

13 consecutive days, unless the terminal is off-line due to fire,  
14 flood, or other act beyond the control of the operator. If the  
15 terminal is off-line due to fire, flood, or other act beyond the  
16 control of the operator, the terminal shall be reconnected to the  
17 commission's central site by the date ordered by the commis-  
18 sion. The commission shall propose a legislative rule for  
19 promulgation in accordance with the provisions of article 29A-  
20 3-1, *et seq.*, of this code, defining the term "other act beyond  
21 the control of the operator" and providing for application of this  
22 subsection (b).

23 (c) Except as otherwise provided in this section, authoriza-  
24 tion to operate a video lottery terminal that is not connected to  
25 the commission's central site system of monitoring lottery  
26 terminals shall be forfeited to the commission on the first day  
27 after expiration of the applicable period specified in this  
28 subsection (a) or (b) of this section.

## PART 12. PLACEMENT AND TRANSPORTATION OF VIDEO LOTTERY TERMINALS.

### §29-22B-1201. Placement of video lottery terminals.

1 (a) Video lottery terminals allowed by this article may be  
2 placed only in licensed limited video lottery locations approved  
3 by the commission.

4 (b) All video lottery terminals in approved locations shall  
5 be physically located as follows:

6 (1) The video lottery terminals shall be continuously  
7 monitored through the use of a closed circuit television system  
8 capable of identifying players and terminal faces and of  
9 recording activity for a continuous twenty-four hour period. All  
10 video tapes or other recording medium approved in writing by  
11 the commission shall be retained for a period of at least sixty  
12 days and be available for viewing by an authorized representa-

13 tive of the commission or the commissioner of alcohol beverage  
14 control. The cost of monitoring shall be paid by the limited  
15 video lottery retailer;

16 (2) Access to video lottery terminal locations shall be  
17 restricted to persons legally entitled by age to play video lottery  
18 games;

19 (3) The permittee shall submit for commission approval a  
20 floor plan of the area or areas where video lottery terminals are  
21 to be operated showing terminal locations and security camera  
22 mount location; and

23 (4) No video lottery terminal or video lottery camera may  
24 be relocated without prior written approval from the commis-  
25 sion.

26 (c) Personnel of the limited video lottery retailer shall be  
27 present during all hours of operation at each video lottery  
28 terminal location. These personnel shall make periodic inspec-  
29 tions of the restricted access adult-only facility in order to  
30 provide for the safe and approved operation of the video lottery  
31 terminals and the safety and well-being of the players.

32 (d) Security personnel of the commission and investigators  
33 of the alcohol beverage control commissioner shall have  
34 unrestricted access to video lottery terminal locations.

35 (e) Notwithstanding any other provision of this article to the  
36 contrary, the commission may not approve the placement of a  
37 video lottery terminal in a state park.

**§29-22B-1202. No limited video lottery retailer license for pre-  
mises within 150 feet of another licensed pre-  
mises; no two license retailer locations within a  
common structure.**

1 (a) A limited video lottery retailer license may not be  
2 granted for operation of video lottery terminals on a premises  
3 if, at the time of application for the license, the applicant's  
4 premises are within one hundred fifty feet of, or has an external  
5 structural connection not amounting to a common internal wall  
6 to, a premises that already has a license for video lottery  
7 terminals.

8 (1) A measurement of the distance between two premises  
9 must be taken between the nearest exterior wall of each  
10 premises.

11 (2) When determining common ownership, the commission  
12 shall consider direct as well as indirect ownership.

13 (b) A premises for which a private club license to dispense  
14 alcoholic liquors, under provisions of article seven, chapter  
15 sixty of this code, or a Class A nonintoxicating beer license,  
16 under the provisions of article sixteen, chapter eleven of this  
17 code, was granted, was applied for, or the transfer of which was  
18 validly contracted for prior to the first day of January, two  
19 thousand one, is not subject to subsection (a) and (c) of this  
20 section.

21 (c) No more than one restricted access adult-only facility  
22 shall hold a limited video lottery retailer license to offer video  
23 lottery terminals in any single structure under one roof.

**§29-22B-1203. Registration decals.**

1 (a) Each video lottery terminal placed in operation in this  
2 state shall have a commission registration decal permanently  
3 affixed, with a video lottery terminal registration control  
4 number placed on the video lottery terminal.

5 (b) No person other than authorized commission personnel  
6 shall affix or remove a registration control number. The

7 affixing of the commission decal on a video lottery terminal  
8 evidences that the terminal has been registered, inspected, and  
9 approved for operation in this state.

10 (c) No terminal shall be transported out of this state until  
11 authorized commission personnel have removed the commis-  
12 sion registration control number, except when the transportation  
13 of the terminal both begins and ends in this state.

**§29-22B-1204. Installation of approved lottery terminals.**

1 (a) The video lottery terminal manufacturer and licensed  
2 permittee are jointly responsible for the assembly and installa-  
3 tion of all video lottery terminals and associated equipment.

4 (b) The manufacturer and licensed permittee may not  
5 change the assembly or operational functions of a terminal  
6 licensed for placement in West Virginia unless a request for  
7 modification of an existing video terminal prototype is ap-  
8 proved in writing by the commission.

9 (c) The request for modification shall contain a detailed  
10 description of the type of change, the reasons for the change  
11 and technical documentation of the change.

12 (d) Each video lottery terminal approved for placement at  
13 a licensed location shall conform to the exact specifications of  
14 the video lottery terminal prototype tested and approved by the  
15 commission.

16 (e) If any video lottery terminal or any video lottery  
17 terminal modification which has not been approved by the  
18 commission is supplied by a manufacturer and operated by a  
19 licensed permittee, the video lottery terminal shall be prima  
20 facie determined to be contraband. The commission or any law-  
21 enforcement officer having jurisdiction shall seize and destroy

22 all of the licensed permittee's and manufacturer's noncomply-  
23 ing video lottery terminals, as provided in part 18 of this article.

24 (f) In addition, the commission shall suspend the licenses  
25 of the licensed permittee and the licensed manufacturer for the  
26 period of time the commission considers to be appropriate  
27 under the circumstances and may impose a civil penalty, as  
28 provided in part 16 of this article.

**§29-22B-1205. Transportation from manufacturer and registra-  
tion of video lottery terminals.**

1 (a) A manufacturer transporting or arranging for the  
2 transportation of one or more video lottery terminals into this  
3 state shall, prior to shipment, provide the commission with the  
4 following information on forms prescribed by the commission:

5 (1) The full name and address of the person shipping the  
6 video lottery terminals;

7 (2) The method of shipment and the name of the carrier;

8 (3) The full name and address of the permittee to which the  
9 video lottery terminals are being sent and the destination of the  
10 terminals if different from the address of the permittee;

11 (4) The number of video lottery terminals in the shipment;

12 (5) The serial number of each video lottery terminal in the  
13 shipment;

14 (6) The model number and description of each video lottery  
15 terminal in the shipment; and

16 (7) The expected arrival date of the video lottery terminals  
17 at their respective destination within this state.

18 (b) A permittee that purchases or leases a video lottery  
19 terminal shall, upon receipt of the terminal, provide the  
20 commission with the following information on forms prescribed  
21 by the commission:

22 (1) The full name and address of the limited video lottery  
23 retailer who will receive the video lottery terminal;

24 (2) The full name and address of the manufacturer from  
25 whom the video lottery terminal was received;

26 (3) The serial number of each video lottery terminal  
27 received;

28 (4) The model number and description of each video lottery  
29 terminal received;

30 (5) The date and time of video lottery terminal arrival; and

31 (6) The expected date and time of video lottery terminal  
32 installation.

33 (c) If a video lottery terminal is not placed in operation, the  
34 permittee shall notify the commission in writing of the location  
35 where the terminal is stored.

**§29-22B-1206. Any other transportation of video lottery terminals.**

1 (a) Any person who transports a video lottery terminal from  
2 one location to another in this state, other than for repair or  
3 servicing purposes, shall notify the commission in writing prior  
4 to the transportation of the terminal and provide the following  
5 information on forms required by the commission:

6 (1) The full name and address of the person or entity  
7 transporting the video lottery terminal;



8           (2) The reason for transporting the video lottery terminal;

9           (3) The full name and address of the person or entity to  
10 whom the terminal is being sent and the destination of the video  
11 lottery terminal if it is different from the address;

12          (4) The serial and model number of the video lottery  
13 terminal;

14          (5) The video lottery terminal license number, if affixed;

15          (6) The manufacturer of the video lottery terminal; and

16          (7) The expected date and time of video lottery terminal  
17 installation or reinstallation.

18          (b) Any person shipping video lottery terminals to a  
19 destination outside of this state shall, prior to the shipment,  
20 provide the commission with the following information on  
21 forms prescribed by the commission:

22          (1) The full name and address of the person shipping the  
23 video lottery terminals;

24          (2) The method of shipment and the name of the carrier;

25          (3) The full name and address of the person to whom the  
26 video lottery terminals are being sent and the destination of the  
27 video lottery terminals if different from the address;

28          (4) The serial number of each video lottery terminal being  
29 shipped;

30          (5) The model number and description of the video lottery  
31 terminal being shipped;

32          (6) The video lottery terminal control number, if affixed;

33 (7) The manufacturer of the video lottery terminal being  
34 shipped; and

35 (8) The expected date and time of the shipment.

**PART 13. MAINTENANCE AND REPAIR OF  
VIDEO LOTTERY TERMINALS.**

**§29-22B-1301. Maintenance of video lottery terminals.**

1 (a) No video lottery terminal may be placed in operation in  
2 this state until the manufacturer provides training in the service  
3 and repair of each approved video lottery terminal model and  
4 service technicians complete the training.

5 (b) Manufacturers shall submit to the commission the  
6 following information on each training program conducted:

7 (1) An outline of the training curriculum;

8 (2) A list of the instructors and their qualifications;

9 (3) Instructional materials; and

10 (4) The time, dates and location of the training programs.

11 (c) Manufacturers shall notify all licensed permittees who  
12 have purchased or leased that manufacturer's video lottery  
13 terminals of all scheduled training programs.

14 (d) The manufacturers shall schedule training programs at  
15 convenient locations within this state to facilitate attendance by  
16 service technicians.

17 (e) Manufacturers shall inform licensed permittees of any  
18 new developments in the service and repair of video lottery  
19 terminals and provide appropriate subsequent training pro-  
20 grams.

21 (f) The manufacturers shall issue a training certificate to  
22 each person upon successful completion of a video lottery  
23 training program.

24 (g) The certificate shall include the name of the person who  
25 completed the training program and the date and the location of  
26 the training program.

27 (h) A person who successfully completes training is eligible  
28 for a service technician's license.

29 (i) No person may conduct maintenance (other than  
30 clearing paper ticket jams or clearing coin and bill acceptor  
31 jams) on any video lottery terminal or associated equipment  
32 unless the commission has issued a service technician license  
33 to that person.

34 (j) Each manufacturer shall file with the commission the  
35 following information within two weeks after the completion of  
36 a training program:

37 (1) The name of each person who attended and completed  
38 the training program;

39 (2) The name of the manufacturer offering the course;

40 (3) The manufacturer's video lottery terminal models on  
41 which training for service and repair was provided;

42 (4) The date and location of the training program; and

43 (5) Copies of all certificates of completion.

**§29-22B-1302. Maintenance log.**

1 A written maintenance log shall be kept within the main  
2 cabinet access area in each video lottery terminal. Every person,  
3 including lottery personnel, who gains entry into any internal

4 space of a video lottery terminal shall sign the log, record the  
5 time and date of entry, record the mechanical meter readings  
6 and list the areas inspected or repaired. The maintenance log  
7 forms shall be retained by permittees for a period of three years  
8 from the date of the last entry. The maintenance logs shall be  
9 available upon request for inspection by the commission.

**§29-22B-1303. Master keys.**

1 Permittees shall provide the commission with a master key  
2 for access into the main cabinet door of each video lottery  
3 terminal placed in operation. The commission shall provide a  
4 logic box seal. The seal shall be affixed by commission  
5 personnel to prevent unauthorized access to the video lottery  
6 terminal logic unit.

**§29-22B-1304. Repairs to logic board or circuitry.**

1 (a) No repairs to, or replacement of, the logic board or  
2 circuitry within the logic area shall occur unless authorized  
3 commission personnel are present and observe the repairs or  
4 replacement.

5 (b) The logic area seal shall not be broken by anyone other  
6 than authorized commission personnel.

7 (c) Each service technician shall submit a written report to  
8 the commission within twenty-four hours after the repairs or  
9 replacement are completed and the report shall include the  
10 serial number of any replacement board and the new logic area  
11 seal number.

12 (d) The commission shall test the software EPROMS on the  
13 logic board of each video lottery terminal prior to sealing the  
14 logic area.

15 (e) License holders shall promptly notify the commission  
16 in writing of any discovered damage, tears or breaks in the logic  
17 area seal. This written notification shall be delivered electroni-  
18 cally or by telephone facsimile machine whenever possible.  
19 Upon receipt of that notice, the commission shall disable the  
20 video lottery terminal. The video lottery terminal shall remain  
21 disabled until completion by the commission of an investigation  
22 of the seal damage.

**PART 14. NET TERMINAL INCOME AND  
DISTRIBUTION OF REVENUES.**

**§29-22B-1401. Accounting for the state's share of gross terminal  
income.**

1 (a) The gross terminal income from all operating video  
2 lottery terminals of a permittee shall be calculated periodically  
3 by the commission.

4 (b) Each licensed permittee shall maintain in its bank  
5 account an amount equal to or greater than the lottery commis-  
6 sion's share of the gross terminal income from its operation of  
7 video lottery machines, to be electronically transferred by the  
8 lottery commission on dates established by the commission.

9 (c) Upon a permittee's failure to maintain the bank account  
10 balance required in subsection (b) of this section, the commis-  
11 sion may disable all of a permittee's video lottery terminals  
12 until full payment of all amounts due is made.

13 (d) Interest shall accrue on any unpaid balance due the  
14 commission at the rates charged for state income tax delin-  
15 quency under chapter eleven of this code. The interest shall  
16 begin to accrue on the date payment is due to the commission  
17 and shall continue to accrue until the amount due, including  
18 applicable interest, is paid. Payments shall be applied first to

19 interest and then to the balance of the amount due the commis-  
20 sion.

**§29-22B-1402. Resolution of discrepancies.**

1 (a) The commission's central control computer shall keep  
2 accurate records of all income generated by each video lottery  
3 terminal. The commission shall prepare and send to the  
4 permittee a statement by mail, facsimile or internet e-mail  
5 reflecting the gross terminal income generated by the licensee's  
6 video lottery terminals. Each permittee shall report to the  
7 commission any discrepancies between the commission's  
8 statement and each terminal's mechanical and electronic meter  
9 readings.

10 (b) The permittee is solely responsible for resolving income  
11 discrepancies between actual money collected and the amount  
12 shown on the accounting meters or on the commission's billing  
13 statement.

14 (c) The licensed operator is solely responsible for paying  
15 the negotiated share of net terminal income, to each limited  
16 video lottery retailer to whom it has supplied video lottery  
17 terminals under the provisions of this article.

18 (d) Each limited video lottery retailer's periodic distribution  
19 from the appropriate operator shall be paid by check or by  
20 electronic funds transfer to the limited video lottery retailer's  
21 designated bank account.

22 (e) Until an accounting discrepancy is resolved in favor of  
23 the permittee, the commission may make no credit adjustments.

24 (f) For any video lottery terminal reflecting a discrepancy,  
25 the permittee shall submit to the commission the maintenance  
26 log which includes current mechanical meter readings and the

27 audit ticket which contains electronic meter readings generated  
28 by the terminal's software.

29 (g) If the meter readings and the commission's records  
30 cannot be reconciled, final disposition of the matter shall be  
31 determined by the commission.

32 (h) Any accounting discrepancies that cannot be otherwise  
33 resolved shall be resolved in favor of the commission.

**§29-22B-1403. Payover of state's share of gross terminal income.**

1 (a) The commission shall periodically transfer from each  
2 permittee's bank account described in subsection 22B-1401(b)  
3 of this article, the state's share of gross terminal income as  
4 calculated under section 22B-1408 of this article.

5 (b) The permittee shall remit payment by mail and submit  
6 the report required by subsection (c) of this section if the  
7 electronic transfer of funds is not operational or the commission  
8 notifies the permittee that remittance by this method is required.

9 (c) If the remittance is by mail, the permittee shall report an  
10 amount equal to the total amount of cash inserted into each  
11 video lottery terminal operated by a licensee, minus the total  
12 value of game credits which are cleared from the video lottery  
13 terminal in exchange for winning redemption tickets, and remit  
14 the state's share of the amount generated from its terminals  
15 during the reporting period. The remittance shall be sealed in a  
16 properly addressed and stamped envelope and deposited in the  
17 United States mail no later than noon on the day when the  
18 payment would otherwise be completed through electronic  
19 funds transfer.

20 (d) A permittee may, upon request, receive additional  
21 reports of play transactions for their respective video lottery  
22 terminals and other marketing information not considered

23 confidential by the commission. The commission may charge  
24 a reasonable fee for the cost of producing and mailing any  
25 report other than the billing statements.

**§29-22B-1404. Permittees to furnish bank authorizations.**

1 (a) Each permittee shall furnish to the commission all  
2 information and bank authorizations required to facilitate the  
3 timely transfer of moneys to the commission and from the  
4 commission to each permittee.

5 (b) Each permittee shall provide the commission thirty  
6 days' advance notice of any proposed account changes in order  
7 to assure the uninterrupted electronic transfer of funds.

**§29-22B-1405. State's share of gross terminal income held in trust.**

1 The amount of gross terminal income required to be paid  
2 over to the commission, shall be deemed to be moneys held in  
3 trust for the state of West Virginia while in the possession or  
4 constructive possession of any operator or limited video lottery  
5 retailer and until the state's share of gross terminal income is  
6 paid over to the commission.

**§29-22B-1406. Examination of permittee books and records.**

1 The commission has the right to examine all accounts, bank  
2 accounts, financial statements and records in a permittee's  
3 possession, under its control or in which it has an interest and  
4 the licensed permittee shall authorize all third parties in  
5 possession or in control of the accounts or records to allow  
6 examination of any of those accounts or records by the commis-  
7 sion.

**§29-22B-1407. Civil penalty for failure to pay over state's share of gross terminal income.**



1 (a) Any person required by law or contract to collect,  
2 truthfully account for, and pay over any of the state's share of  
3 gross terminal income who willfully fails to truthfully account  
4 for and pay over the net terminal income, or willfully attempts  
5 in any manner to evade or defeat any payment thereof, shall, in  
6 addition to other penalties provided by law, be liable for  
7 payment of a civil money penalty equal to the total amount of  
8 the state's share of gross terminal income not paid over to the  
9 commission.

10 (b)(1) No penalty may be imposed under subsection (a)  
11 unless the director notifies the person in writing, delivered in  
12 person or by mail sent to the last known address of the operator  
13 or limited video lottery retailer, that he or she is subject to an  
14 assessment of this penalty.

15 (2) The mailing of the notice described in subdivision (1)  
16 (or, in the case of notice delivered in person, the delivery) shall  
17 precede any notice and demand for payment of any penalty  
18 under subsection (a) of this section, by at least sixty days.

19 (3) If a notice described in subdivision (1) of this subsec-  
20 tion (b) with respect to any penalty is mailed or delivered in  
21 person before the expiration of the three-year period for the  
22 assessment of the penalty (determined without regard to this  
23 subdivision), the three-year period provided for the assessment  
24 of a penalty shall not expire before the later of:

25 (A) The date ninety days after the date on which such  
26 notice was mailed, or delivered in person, or

27 (B) If there is a timely protest of the proposed assessment,  
28 the date thirty days after the director makes a final administra-  
29 tive determination with respect to the protest.

30 (4) The requirement that preliminary notice be given shall  
31 not apply if the director finds that the collection of the penalty  
32 is in jeopardy.

33 (c) This penalty may be collected by civil action instituted  
34 within three years after the date the state's share of gross  
35 terminal income not paid over to the commission should have  
36 been paid over to the commission, except as provided in  
37 subsection (b) of this section.

38 (d) If more than one person is liable for the penalty under  
39 subsection (a) with respect to any payment of the state's share  
40 of gross terminal income, each person who paid the penalty  
41 shall be entitled to recover from other persons who are liable  
42 for the penalty an amount equal to the excess of the amount  
43 paid by the person over that person's proportionate share of the  
44 penalty. Any claim for such a recovery may be made only in a  
45 proceeding which is separate from, and is not joined or consoli-  
46 dated with, an action for collection of such penalty brought by  
47 the state of West Virginia.

48 (e) No penalty shall be imposed by subsection (a) on any  
49 unpaid, volunteer member of any board of trustees or directors  
50 of an organization exempt from tax under section 501 of the  
51 Internal Revenue Code of 1986, as amended, if such member:

52 (1) Is solely serving in an honorary capacity;

53 (2) Does not participate in the day-to-day or financial  
54 operations of the organization; and

55 (3) Does not have actual knowledge of the failure on which  
56 the penalty is imposed.

57 This subsection (e) shall not apply if it results in no person  
58 being liable for the penalty imposed by subsection (a) of this  
59 section.

**§29-22B-1408. Distribution of state's share of gross terminal income.**

1 (a) The state's share of gross terminal income is calculated  
2 as follows:

3 (1) The commission shall deposit two percent of gross  
4 terminal income into the state lottery fund for the commission's  
5 costs and expenses incurred in administering this article. From  
6 this amount, not less than one hundred fifty thousand dollars  
7 nor more than one million dollars per fiscal year, as determined  
8 by the commission each year, shall be transferred to the  
9 compulsive gambling treatment fund created in section 29-22A-  
10 19 of this chapter. In the event that the percentage allotted  
11 under this subsection for the commission's costs and expenses  
12 incurred in administering this article generates a surplus, the  
13 surplus shall be allowed to accumulate to an amount not to  
14 exceed two hundred fifty thousand dollars. On a monthly basis,  
15 the director shall report to the joint committee on government  
16 and finance of the Legislature any surplus in excess of two  
17 hundred fifty thousand dollars and remit to the state treasurer  
18 the entire amount of those surplus funds in excess of two  
19 hundred fifty thousand dollars to be deposited in the fund  
20 established in section 29-22-18a of this chapter.

21 (2) Gross profits are determined by deducting the percent-  
22 age described in subdivision (1) of this subsection, from gross  
23 terminal income.

24 (3) The commission shall receive thirty percent of gross  
25 profits as defined in subdivision (2) of this subsection except as  
26 otherwise provided in this subdivision. On the first day of June,  
27 2002, the commission shall calculate the aggregate average  
28 daily gross terminal income for all operating video lottery  
29 terminal during the preceding three month period. Thereafter,  
30 the commission shall make the calculation on the first day of

31 the month preceding the months of October, January, April and  
32 July of each year. So long as the aggregate average gross  
33 terminal income per day for the operating video lottery termi-  
34 nals does not exceed sixty dollars, the commission's share of  
35 gross profits shall continue to be thirty percent for the succeed-  
36 ing quarter of the year beginning the first day of July. Begin-  
37 ning on the first day of July, 2002 and the first days of October,  
38 January, April and July in 2002 and thereafter, if the commis-  
39 sion's calculation of aggregate average daily gross terminal  
40 income per video lottery terminal yields an amount greater than  
41 sixty dollars, one of the following schedules apply: If the  
42 amount is greater than sixty dollars per day but not greater than  
43 eighty dollars per day, the commission's share of gross profits  
44 for the ensuing quarter beginning the first day of the quarter of  
45 the year described in this subdivision shall be thirty-four  
46 percent; if the amount is greater than eighty dollars per day but  
47 not greater than one hundred dollars per day, the commission's  
48 share of gross profits for the ensuing quarter beginning the first  
49 day of the quarter of the year described in this subdivision shall  
50 be thirty-eight percent; if the amount is greater than one  
51 hundred dollars per day but not greater than one hundred twenty  
52 dollars per day, the commission's share of gross profits for the  
53 ensuing quarter beginning the first day of the quarter of the year  
54 described in this subdivision shall be forty-two percent; if the  
55 amount is greater than one hundred twenty dollars per day but  
56 not greater than one hundred forty dollars per day, the commis-  
57 sion's share of gross profits for the ensuing quarter beginning  
58 the first day of the quarter of the year described in this subdivi-  
59 sion shall be forty-six percent; if the amount is greater than one  
60 hundred forty dollars per day, the commission's share of gross  
61 profits for the ensuing quarter beginning the first day of the  
62 quarter of the year described in this subdivision shall be fifty  
63 percent. This amount shall be known as net terminal income.

64 (b) Net terminal income shall be distributed by the commis-  
65 sion as follows:

66 (1)(A) Beginning the first day of July, 2002, a county and  
67 the incorporated municipalities within that county shall receive  
68 two percent of the net terminal income generated by limited  
69 video lottery terminals located within the county;

70 (B) From this two percent of net terminal income, each  
71 municipality shall receive a share that bears the same propor-  
72 tion to the total two percent of net terminal income as the  
73 population of the municipality bears to the total population of  
74 the county as determined by the most recent decennial United  
75 States census of population, and the county shall receive the  
76 remaining portion of the two percent of net terminal income;  
77 and

78 (2) Any remaining funds shall be deposited into the state  
79 excess lottery revenue fund established in section eighteen-a,  
80 article twenty-two of this chapter.

81 (c) The licensed operators and limited video lottery retailers  
82 shall receive the balance of gross terminal income remaining  
83 after deduction of the state's share as calculated pursuant to this  
84 section.

#### **PART 15. APPEAL OF ORDER OF THE COMMISSION.**

##### **§29-22B-1501. Appeal of order.**

1 (a) Any applicant or license holder adversely affected by an  
2 order issued under this article has the right to a hearing on the  
3 order before the commission or a person designated as hearing  
4 examiner, if a petition in writing requesting a hearing is served  
5 upon the commission within ten days following the receipt of  
6 the order by the applicant, or license holder.

7 (b) A petition for hearing shall be served on the commis-  
8 sion by delivery in person at the primary office of the commis-

9 sion or by certified mail. By procedural rule, the commission  
10 may allow other methods of service.

11 (c) The service of a petition for hearing upon the commis-  
12 sion shall not operate to suspend the execution of any suspen-  
13 sion or revocation of a video lottery license or any other order  
14 of the commission with respect to which a hearing is being  
15 demanded.

16 (d) The commission shall set a date for any hearing  
17 demanded and notify the person demanding the hearing not  
18 later than ten days before the hearing date of the date, time and  
19 place of the hearing. The hearing shall be held within thirty  
20 days after receipt of the petition.

**§29-22B-1502. Contents of petition for hearing; security.**

1 (a) A petition for a hearing shall be in writing and shall  
2 include an original and one copy. The petition shall contain the  
3 following:

4 (1) A clear and concise statement of each error which the  
5 petitioner alleges to have been committed by the commission in  
6 refusing to issue a license, or suspending or revoking a license,  
7 with each assignment of error being shown in separately  
8 numbered paragraphs;

9 (2) A clear and concise statement of fact upon which the  
10 petitioner relies as sustaining each assignment of error;

11 (3) A prayer setting forth the relief sought;

12 (4) The signature of the petitioner; and

13 (5) Verification by the petitioner.

14 (b) The person demanding a hearing shall give security for  
15 the cost of the hearing in the amount of three hundred dollars in

16 the form of a certified check, cashier's check or money order,  
17 which shall accompany the petition demanding a hearing.

**§29-22B-1503. Hearing procedures.**

1 (a) Hearings held under this article shall be subject to the  
2 provisions of article 29A-5-1, *et seq.*, of this code except to the  
3 extent otherwise provided in this article. In case of any conflict,  
4 the provisions of this article shall control.

5 (b) In all hearings held under this article, oral and documen-  
6 tary evidence may be required through the use of subpoenas and  
7 subpoenas duces tecum. The subpoenas or subpoenas duces  
8 tecum may be issued by either the commission or its duly  
9 appointed hearing examiner, and the following provisions shall  
10 govern and control:

11 (1) Every subpoena or subpoena duces tecum shall be  
12 served at least five days before the return date thereof, either by  
13 personal service made by any person eighteen years of age or  
14 older, or by registered or certified mail, but a return acknowl-  
15 edgment signed by the person to whom the subpoena or  
16 subpoena duces tecum is directed is required to prove service  
17 by registered or certified mail;

18 (2) All subpoenas and subpoenas duces tecum shall be  
19 issued in the name of the commission. Service of subpoenas  
20 and subpoenas duces tecum issued at the insistence of the  
21 commission is the responsibility of the commission, but any  
22 party requesting issuance is responsible for service. Any person  
23 who serves any subpoena or subpoena duces tecum is entitled  
24 to the same fee as sheriffs who serve witness subpoenas for the  
25 circuit courts of this state, and fees for the attendance and travel  
26 of witnesses shall be the same as for witnesses before the circuit  
27 courts of this state;

28       (3) All fees shall be paid by the commission if the subpoena  
29 or subpoena duces tecum is issued, without the request of an  
30 interested party, at the insistence of the commission;

31       (4) All fees related to any subpoenas or subpoena duces  
32 tecum issued at the insistence of an interested party shall be  
33 paid by the interested party;

34       (5) All requests by an interested party for a subpoena and  
35 subpoena duces tecum shall be in writing and shall contain a  
36 statement acknowledging that the requesting party agrees to pay  
37 the fees; and

38       (6) Any person receiving a subpoena or subpoena duces  
39 tecum issued under this section shall honor the subpoena or  
40 subpoena duces tecum as though it were issued by a circuit  
41 court of this state, and shall appear as a witness or produce such  
42 books, records or papers in response to the subpoena or  
43 subpoena duces tecum. In case of disobedience or neglect of  
44 any subpoena or subpoena duces tecum served on any person or  
45 the refusal of any witness to testify to any matter regarding  
46 which he or she may be lawfully interrogated, the circuit court  
47 of the county in which the hearing is being held, or the judge  
48 thereof in vacation, shall, upon application by the commission,  
49 compel obedience by contempt proceedings as in the case of  
50 disobedience of the requirements of a subpoena or subpoena  
51 duces tecum issued from the circuit court or a refusal to testify  
52 in the circuit court.

53       (c) Hearings may not be delayed by a motion for continu-  
54 ance made less than seven days before the date set for the  
55 hearing.

56       (d) The commission may designate a hearing examiner to  
57 conduct the hearing.



58 (e) The petitioner may appear individually, or by legal  
59 counsel.

60 (f) The petitioner, or his or her duly authorized representa-  
61 tive, may, with the approval of the commission, waive the right  
62 to a hearing and agree to submit the case for decision upon the  
63 petition and record, with or without a written brief. The waivers  
64 and agreements shall be in writing or upon the record.

65 (g) The petitioner shall be given an opportunity for argu-  
66 ment within the time limits fixed by the commission following  
67 submission of evidence. The commission, upon request of the  
68 petitioner, shall accept briefs in addition to or in lieu of  
69 argument. Briefs shall be filed within ten days after the hearing  
70 date.

71 (h) The commission may admit any relevant evidence,  
72 except that it shall observe the rules of privilege recognized by  
73 law. A finding is to be supported by the kind of evidence  
74 commonly relied upon by reasonably prudent men in the  
75 conduct of their affairs, whether or not the evidence would be  
76 admissible before a jury. The commission may exclude any  
77 evidence which is irrelevant, unduly repetitious, or lacking in  
78 substantial probative effect.

79 (i) A record shall be made of all hearings held pursuant to  
80 this article. Testimony may be recorded electronically or by a  
81 court reporter.

82 (j) After the conclusion of the hearing and within ten days  
83 of receipt of the transcript of the hearing, and receipt of any  
84 briefs, the person designated by the commission as hearing  
85 examiner shall prepare a recommended decision, supported by  
86 findings of fact and conclusions of law, affirming, modifying or  
87 vacating the earlier order of the commission. Thereafter, the  
88 commission, within ten days of receipt of the recommended  
89 decision, shall either accept or reject the recommended deci-

90 sion, and if it accepts the decision, it shall cause the director to  
91 sign and acknowledge the decision as its own, after having  
92 reviewed the transcript and all exhibits attached and affixed to  
93 the decision; if the commission rejects the decision, it shall  
94 within ten days of receipt of the recommended decision prepare  
95 a decision setting forth its own findings of fact and conclusions  
96 of law. In either event, the decision is final unless vacated or  
97 modified upon judicial review of the decision. A copy of the  
98 decision shall be served upon each party to the hearing and their  
99 attorney of record, if any, in person or by registered or certified  
100 mail.

**§29-22B-1504. Judicial review.**

1 The applicant or license holder who filed the petition for  
2 administrative review may appeal the decision of the commis-  
3 sion issued under section 22B-1503 to the circuit court of  
4 Kanawha County, West Virginia, if the petition for appeal is  
5 filed no later than thirty days after the date upon which the  
6 petitioner receives written notice of the final decision of the  
7 commission.

**PART 16. CIVIL PENALTIES.**

**§29-22B-1601. Imposition of civil penalties by the commission.**

1 The commission may impose the civil penalties provided  
2 for in this part 16. These civil penalties may be imposed in  
3 conjunction with one or more other civil penalties provided in  
4 this part 16 and in conjunction with a license suspension or  
5 revocation or other administrative action taken against a  
6 licensee, or as a result of an action or inaction by a licensee for  
7 which the commission is also seeking criminal prosecution.

**§29-22B-1602. Civil penalties applicable to limited video lottery  
retailers.**

1 (a) For allowing persons under age twenty-one years to play  
2 video lottery games, the limited video lottery retailer shall be  
3 fined:

4 (1) Two hundred dollars for a first violation;

5 (2) One thousand dollars for a second violation; and

6 (3) Five thousand dollars for a third violation.

7 For each subsequent violation, the fine imposed by the  
8 commission shall increase by five thousand dollars.

9 (b) For allowing persons under age twenty-one years to be  
10 present at a video lottery terminal or in the immediate area  
11 where video lottery terminals are present, the limited video  
12 lottery retailer may be fined:

13 (1) One hundred dollars for a first violation;

14 (2) Two hundred dollars for a second violation; and

15 (3) Three hundred dollars for a third violation.

16 For each subsequent violation, the fine imposed by the  
17 commission shall increase by one hundred dollars.

18 (c) For allowing a person or persons to tamper in any way  
19 with, or disconnect, any data line or feature that allows the  
20 state's central control computer to communicate with each  
21 video lottery terminal in the premises, the limited video lottery  
22 retailer may be fined:

23 (1) One thousand dollars for a first violation;

24 (2) Five thousand dollars for a second violation; and

25 (3) Ten thousand dollars for a third violation.

26 For each subsequent violation, the fine imposed by the  
27 commission shall increase by ten thousand dollars.

28 (d) For entering the logic area of a video lottery terminal or  
29 allowing an unauthorized person or persons to enter the logic  
30 area of a video lottery terminal, or tampering in any way with  
31 the lottery security seal, any EPROM or other chip or memory  
32 device installed in the logic area, whether or not any tampering  
33 would alter any characteristic of the video lottery terminal, the  
34 limited video lottery retailer may be fined:

35 (1) One thousand dollars for a first violation;

36 (2) Five thousand dollars for a second violation; and

37 (3) Ten thousand dollars for a third violation.

38 For each subsequent violation, the fine imposed by the  
39 commission shall increase by ten thousand dollars.

40 (e) For failure to aim or focus a closed circuit television  
41 camera on all video lottery terminals in the premises or for  
42 failure to record all video lottery terminals during the hours of  
43 operation of the limited access adults-only facility, the limited  
44 video lottery retailer shall be fined:

45 (1) One hundred dollars for a first violation;

46 (2) One thousand dollars for a second violation; and

47 (3) Five thousand dollars for a third violation.

48 For each subsequent violation, the fine imposed by the  
49 commission shall increase by five thousand dollars.

50 (f) For violating the provisions of subdivision (10), subdivi-  
51 sion (13) or subdivision (14) of section 29-22B-702 of this  
52 article, the limited video lottery retailer shall be fined:

- 53 (1) One hundred dollars for a first violation;
- 54 (2) One thousand dollars for a second violation;
- 55 (3) Five thousand dollars for a third violation.

56 For each subsequent violation the fine imposed by the  
57 commission shall increase by an additional five thousand  
58 dollars.

**§29-22B-1603. Civil penalties applicable to service technicians.**

1 (a) For entering the logic area of any video lottery terminal  
2 at any time when a representative of the West Virginia Lottery  
3 Commission is not present and observing the process, the  
4 service technician shall be fined:

- 5 (1) One hundred dollars for a first violation;
- 6 (2) One thousand dollars for a second violation; and
- 7 (3) Three thousand dollars for a third violation.

8 (b) For each subsequent violation, the fine imposed by the  
9 commission shall increase by one thousand dollars. If two or  
10 more service technicians participate in violation of this section,  
11 each service technician shall be fined according to this sched-  
12 ule.

**§29-22B-1604. Civil penalties applicable to permittees.**

1 (a) For employing or contracting with persons, other than  
2 service technicians licensed by the commission, to repair video  
3 lottery terminals, the permittee shall be fined:

- 4 (1) One thousand dollars for a first violation;
- 5 (2) Five thousand dollars for a second violation; and

6 (3) Ten thousand dollars for a third violation.

7 For each subsequent violation, the fine imposed by the  
8 commission shall increase by ten thousand dollars.

9 (b) For acquiring, or installing in licensed premises, any  
10 video lottery terminal that has not been manufactured and  
11 supplied by a licensed manufacturer, that has not also been  
12 tested and approved by the commission's independent testing  
13 laboratory, and that has not been approved for use in this state  
14 by the commission, the permittee shall be fined:

15 (1) Five thousand dollars for a first violation;

16 (2) Ten thousand dollars for a second violation.

17 (c) For each subsequent violation, the fine imposed by the  
18 commission shall increase by ten thousand dollars.

**§29-22B-1605. Civil penalties applicable to manufacturers.**

1 (a) For shipping a video lottery terminal into this state to a  
2 person who does not have a permit issued by the commission  
3 under this article, the manufacturer shall be fined:

4 (1) One thousand dollars for a first violation;

5 (2) Five thousand dollars for a second violation; and

6 (3) Ten thousand dollars for a third violation.

7 (b) For each subsequent violation, the fine imposed by the  
8 commission shall increase by ten thousand dollars.

9 (c) For shipping a video lottery terminal into this state that  
10 is not identical to a video lottery terminal make and model  
11 approved by the commission, including the electronic computer  
12 components, the random number generator, the coin acceptor,

13 the bill acceptor, and the cabinet in which the video lottery  
14 terminal is housed, the manufacturer shall be fined:

15 (1) One thousand dollars for a first violation;

16 (2) Five thousand dollars for a second violation; and

17 (3) Ten thousand dollars for a third violation.

18 (d) For each subsequent violation, the fine imposed by the  
19 commission shall increase by ten thousand dollars.

**§29-22B-1606. Civil penalties for failure of licensees to perform duties.**

1 A person who fails to perform any of the duties or obliga-  
2 tions created and imposed upon them by the provisions of this  
3 article or legislative rule of the commission is subject to a civil  
4 penalty as may be determined by the commission in an amount  
5 not to exceed ten thousand dollars.

**§29-22B-1607. Civil action to collect penalty.**

1 (a) The commission may collect any money penalty  
2 imposed pursuant to this article by instituting civil action in any  
3 court of this state having jurisdiction over the named defendant.

4 (b) Collection shall be barred unless the civil action is  
5 commenced within six years after the later of (1) the date on  
6 which the prohibited conduct establishing the cause of action  
7 occurred, or (2) the date on which the commission first knew or  
8 should reasonably have known the prohibited conduct had  
9 occurred.

**PART 17. CRIMINAL OFFENSES.**

**§29-22B-1701. Financial interest of director, etc.; receiving re-  
ward from interested party; criminal penalty;  
application of bribery statute.**

1       (a) Neither the director of the commission, nor any member  
2 or employee of the commission, may be financially interested,  
3 or have any beneficial personal interest, direct or indirect, in  
4 any person furnishing video lottery terminals or video lottery  
5 games, or in any person who is a bidder for video lottery  
6 terminals, or who is a holder of a license issued under this  
7 article.

8       (b) Neither the director of the commission, nor any member  
9 or employee of the commission, may accept or receive, directly  
10 or indirectly, from any person known by the director, commis-  
11 sion member or employee of the commission to be interested in  
12 any bid, contract or licensee under this article, by rebate, gift or  
13 otherwise, any money or other thing of value whatsoever, or  
14 any promise, obligation or contract for future reward, or  
15 compensation.

16       (c) A person who violates this section shall be guilty of a  
17 misdemeanor and, upon conviction thereof, shall be confined in  
18 jail not less than three months nor more than one year, or fined  
19 not less than fifty nor more than one thousand dollars, or both,  
20 in the discretion of the court: *Provided*, That any person who  
21 violates any of the provisions of subsection (b) of this section  
22 under circumstances constituting the crime of bribery under the  
23 provisions of section 61-5A-3 of this code, shall, upon convic-  
24 tion of bribery, be punished as provided in article 61-5A-1, *et*  
25 *seq.*, of this code.

**§29-22B-1702. Criminal penalties for unlawful inducement.**

1       (a) Any person who gives another person any thing of value  
2 to induce the other to refrain from bidding for a video lottery  
3 permit is guilty of a misdemeanor and, upon conviction, shall  
4 be fined not more than ten thousand dollars and, in addition,  
5 shall be subject to a civil penalty payable to the commission of  
6 five hundred thousand dollars.



7 (b) Any person who gives a person any thing of value to  
8 induce the other to refrain from placing a video lottery terminal  
9 at a restricted access adult-only facility is guilty of a misde-  
10 meanor and, upon conviction, shall be fined not more than ten  
11 thousand dollars and, in addition, shall be subject to a civil  
12 penalty payable to the commission of five hundred thousand  
13 dollars.

**§29-22B-1703. Criminal penalty for unauthorized game on autho-  
rized video lottery terminal.**

1 (a) A licensee who places a video lottery game on a video  
2 lottery terminal that is allowed under this article without  
3 authority of the commission to do so is guilty of a misdemeanor  
4 and, upon conviction thereof, shall for a first conviction be  
5 confined in a county or regional jail for a term of not more than  
6 one year, and fined not more than five thousand dollars, except  
7 that, in the case of a person other than an individual, the amount  
8 of the fine imposed may be not more than twenty-five thousand  
9 dollars.

10 (b) A second and each subsequent offense under this  
11 section shall be a felony and, upon conviction thereof, the  
12 person shall be confined in a state correctional facility for a  
13 term of not less than one year nor more than three years and  
14 fined not less than five thousand dollars nor more than ten  
15 thousand dollars, except that in the case of a person other than  
16 an individual, the fine may not be less than twenty-five thou-  
17 sand dollars nor more than fifty thousand dollars.

**§29-22B-1704. Criminal penalty for unauthorized video lottery  
terminal.**

1 (a) A licensee who places a video gambling machine into  
2 play is guilty of a misdemeanor and, upon conviction thereof,  
3 shall for a first conviction be confined in a county or regional  
4 jail for a term of not more than one year, and fined not less than

5 five thousand dollars nor more than ten thousand dollars, except  
6 that, in the case of a person other than an individual, the fine  
7 may not be less than twenty thousand dollars nor more than  
8 thirty thousand dollars.

9 (b) A second and each subsequent offense under this  
10 section shall be a felony and, upon conviction thereof, the  
11 person shall be confined in a state correctional facility for a  
12 term of not less than one year nor more than three years and  
13 fined not less than ten thousand dollars nor more than twenty  
14 thousand dollars, except that in the case of a person other than  
15 an individual, the fine may not be less than twenty-five thou-  
16 sand dollars nor more than fifty thousand dollars.

**§29-22B-1705. Criminal penalty for possession of video gambling  
machine.**

1 (a) After December 31, 2001, any person who has a video  
2 gambling machine in their actual or constructive possession in  
3 this state is guilty of a felony and, upon conviction thereof,  
4 shall for a first conviction be confined in a state correctional  
5 facility for a term of not less than one year nor more than three  
6 years, and fined not less than fifty thousand dollars nor more  
7 than one hundred thousand dollars, for each video gambling  
8 machine in the person's actual or constructive possession in this  
9 state, except that, in the case of a person other than an individ-  
10 ual, the fine may not be less than one hundred thousand dollars  
11 nor more than five hundred thousand dollars for each video  
12 gambling machine in the person's actual or constructive  
13 possession in this state.

14 (b) For any second or subsequent conviction under this  
15 section the person shall be confined in a state correctional  
16 facility for a term of not less than two years nor more than five  
17 years, and fined not less than one hundred thousand dollars nor  
18 more than five hundred thousand dollars, for each video

19 gambling machine in their actual or constructive possession in  
20 this state, except that, in the case of a person other than an  
21 individual, the fine may not be less than five hundred thousand  
22 dollars nor more than one million dollars for each video  
23 gambling machine in the person's actual or constructive  
24 possession in this state.

**§29-22B-1706. Criminal penalty for expired operator or limited video lottery retailer's license.**

1 (a) A person who operates, carries on or exposes for play a  
2 video lottery game or video lottery terminal after the person's  
3 license has expired and prior to the actual renewal of the license  
4 is guilty of a misdemeanor and, upon conviction thereof, shall  
5 for a first conviction be confined in a county or regional jail for  
6 not more than one year or fined not less than one thousand  
7 dollars nor more than five thousand dollars, except that, in the  
8 case of a person other than an individual, the amount of the fine  
9 imposed may not be less than ten thousand dollars nor more  
10 than twenty-five thousand dollars.

11 (b) A second and each subsequent offense under this  
12 section shall be a felony and, upon conviction thereof, the  
13 person shall be confined in a state correctional facility for a  
14 term of not less than one year nor more than three years and  
15 fined not less than ten thousand dollars nor more than twenty  
16 thousand dollars, except that in the case of a person other than  
17 an individual, the fine may not be less than twenty-five thou-  
18 sand dollars nor more than fifty thousand dollars.

**§29-22B-1707. Criminal penalty for possession of altered or nonconforming video lottery terminal, device or related material.**

1 (a) A person who possesses any video lottery terminal that  
2 is not a video gambling machine or possesses any other device,  
3 equipment or material which the person knows has been

4 manufactured, distributed, sold, tampered with or serviced in  
5 violation of the provisions of this article is guilty of a misde-  
6 meanor and, upon conviction thereof, shall for a first conviction  
7 be confined in a county or regional jail not more than one year  
8 and fined not less than one thousand dollars nor more than five  
9 thousand dollars, except that, in the case of a person other than  
10 an individual, the amount of the fine imposed may be not less  
11 than five thousand dollars nor more than twenty-five thousand  
12 dollars.

13 (b) A second and each subsequent offense under this  
14 section shall be a felony and, upon conviction thereof, the  
15 person shall be confined in a state correctional facility for a  
16 term of not less than one year nor more than three years and  
17 fined not less than five thousand dollars nor more than  
18 twenty-five thousand dollars, except that in the case of a person  
19 other than an individual, the fine may not be less than fifty  
20 thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1708. Criminal penalty for tampered game, terminal,  
device or other equipment.**

1 (a) A person who knowingly conducts, carries on, operates  
2 or exposes for play, or allows to be conducted, carried on,  
3 operated or exposed for play, any video lottery game, video  
4 lottery terminal or other device, equipment or material which  
5 has in any manner been tampered with or placed in a condition  
6 or operated in a manner the result of which tends to deceive the  
7 public or tends to alter the normal random selection of charac-  
8 teristics or the normal chance of the video lottery game which  
9 could determine or alter the result of the game is guilty of a  
10 misdemeanor and, upon conviction thereof, shall for a first  
11 conviction be confined in a county or regional jail not more  
12 than one year and fined not less than one thousand dollars nor  
13 more than five thousand dollars, except that, in the case of a  
14 person other than an individual, the amount of the fine imposed

15 may be not less than twenty-five thousand dollars nor more than  
16 fifty thousand dollars.

17 (b) A second and each subsequent offense under this  
18 section shall be a felony and, upon conviction thereof, the  
19 person shall be confined in a state correctional facility for a  
20 term of not less than one year nor more than three years and  
21 fined not less than five thousand dollars nor more than  
22 twenty-five thousand dollars, except that in the case of a person  
23 other than an individual, the fine may be not less than fifty  
24 thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1709. Criminal penalty for deceptive practices.**

1 (a) A person who knowingly conducts, carries on, operates  
2 or exposes for play, or allows to be conducted, carried on,  
3 operated or exposed for play, any video lottery game, video  
4 lottery terminal, data line connection with the central control  
5 computer, or other device, equipment or material which has in  
6 any manner been tampered with or placed in a condition or  
7 operated in a manner the result of which tends to deceive the  
8 state lottery commission or tends to alter the accurate recording  
9 of credits played and credits won by the commission's central  
10 control computer, or the central control computer's ability to  
11 disable and cause not to operate any or all video lottery  
12 terminals of a licensed limited video lottery retailer, for the first  
13 offense is guilty of a misdemeanor and, upon conviction  
14 thereof, shall be confined in a county or regional jail not more  
15 than one year and fined not more than five thousand dollars,  
16 except that, in the case of a person other than an individual, the  
17 amount of the fine imposed may be not more than fifty thou-  
18 sand dollars.

19 (b) A second and each subsequent offense under this  
20 section shall be a felony and, upon conviction thereof, the  
21 person shall be confined in a state correctional facility for at

22 least one year but not more than five years, and fined not less  
23 than one thousand dollars nor more than five thousand dollars,  
24 except that when the person is not an individual, the amount of  
25 the fine imposed may be not less than five thousand dollars nor  
26 more than fifty thousand dollars.

**§29-22B-1710. Employment of unlicensed person who is required to be licensed.**

1 (a) A person who employs or continues to employ an  
2 individual not issued a license under the provisions of this  
3 article in a position with duties which would require a license  
4 under the provisions of this article is guilty of a misdemeanor  
5 and, upon conviction thereof, shall for a first offense be  
6 confined in a county or regional jail for not more than one year  
7 and fined not more than five thousand dollars, except that, in  
8 the case of a person other than an individual, the amount of the  
9 fine imposed may be not more than twenty-five thousand  
10 dollars.

11 (b) A second and each subsequent offense under this  
12 section shall be a felony and, upon conviction thereof, the  
13 person shall be confined in a state correctional facility for a  
14 term of not less than one year nor more than three years, and  
15 fined not less than five thousand dollars nor more than  
16 twenty-five thousand dollars, except that, in the case of a person  
17 other than an individual, the fine may not be less than fifty  
18 thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1711. Criminal penalty for unlicensed person to work in a position for which license is required.**

1 (a) An individual who is required by this article to obtain a  
2 license from the commission to work as a limited video lottery  
3 retailer or service technician but who works as a limited video  
4 lottery retailer or service technician without obtaining the  
5 requisite license, as provided for in this article, or is employed

6 in a position with duties which would require a license under  
7 the provisions of this article is guilty of a misdemeanor and,  
8 upon conviction thereof, shall be confined in a county or  
9 regional jail not more than one year and fined not more than ten  
10 thousand dollars.

11 (b) A second and each subsequent offense under this  
12 section shall be a misdemeanor and, upon conviction thereof,  
13 the person shall be confined in a county or regional jail for a  
14 term not to exceed one year and fined not less than five  
15 thousand dollars nor more than twenty thousand dollars.

**§29-22B-1712. Criminal penalty for use of device that gives  
player an unauthorized advantage.**

1 (a) A person who, while a video lottery game is being  
2 played, uses, or assists another person in the use of, an elec-  
3 tronic, electrical or mechanical device which is designed,  
4 constructed or programmed specifically for use in obtaining an  
5 advantage at playing any video lottery game is guilty of a  
6 felony and, upon conviction thereof, shall for a first offense be  
7 confined in a state correctional facility for at least one year but  
8 not more than five years, or shall be fined not less than one  
9 thousand dollars nor more than five thousand dollars, or both.

10 (b) A second and each subsequent offense under this  
11 section shall be a felony and, upon conviction thereof, the  
12 person shall be confined in a state correctional facility for a  
13 term of not less than one year nor more than three years, and  
14 fined not less than five thousand dollars nor more than  
15 twenty-five thousand dollars, except that, in the case of a person  
16 other than an individual, the fine may be not less than fifty  
17 thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1713. Criminal penalty for violation of rules of play.**

1       A person who knowingly violates a provision of this article  
2 or the rules of play or game rules of a video lottery game, and  
3 who profits thereby in an amount equal to one thousand dollars  
4 or more, is guilty of a felony and, upon conviction thereof, shall  
5 be imprisoned in the state correctional facility not less than one  
6 nor more than ten years or, in the discretion of the court, be  
7 confined in jail for not more than one year and be fined not less  
8 than two thousand dollars nor more than five thousand dollars.  
9 If the person profits thereby in an amount less than one thou-  
10 sand dollars, that person is guilty of a misdemeanor and, upon  
11 conviction thereof, shall be confined in a county or regional jail  
12 for a term not to exceed one year or fined an amount not less  
13 than one thousand dollars nor more than two thousand five  
14 hundred dollars, or both.

**§29-22B-1714. Criminal penalty for corrupt combinations, collu-  
sions or conspiracies prohibited.**

1       It shall be unlawful for any person to corruptly combine,  
2 collude or conspire with one or more other persons with respect  
3 to the purchasing or leasing of video lottery terminals or  
4 associated equipment, or the provisions of services, or the  
5 bidding of authorizations to own or lease video lottery termi-  
6 nals. Any person who violates any provision of this section  
7 shall be guilty of a felony, and, upon conviction thereof, shall  
8 be confined in a state correctional facility for a term of not less  
9 than one year nor more than five years, and be fined not less  
10 than ten thousand dollars nor more than twenty-five thousand  
11 dollars.

**PART 18. SEIZURE AND DESTRUCTION OF  
CONTRABAND; FORFEITURES.**

**§29-22B-1801. Video gambling machines declared contraband.**

1       Effective January 1, 2002, and thereafter, video gambling  
2 machines are per se illegal gambling devices which may be



3 seized and destroyed as illegal contraband by any  
4 law-enforcement agency having jurisdiction over the political  
5 subdivision in which the device is found, and the owner or  
6 owners of the device have no right to compensation for the  
7 seizure and destruction of any video gambling machine.

**§29-22B-1802. Legislative findings regarding seizure and sale of  
video gambling machines and other property.**

1 The Legislature hereby finds and declares that the seizure  
2 and sale of items under the provisions of this part 18 is not  
3 contemplated to be a forfeiture as the same is used in article 12,  
4 section 5 of the West Virginia Constitution and, to the extent  
5 that a seizure and sale may be found to be such a forfeiture, the  
6 Legislature hereby finds and declares that the proceeds from a  
7 seizure and sale under this article is not part of net proceeds as  
8 the same is contemplated by such article 12, section 5 of the  
9 West Virginia Constitution.

**§29-22B-1803. Items subject to forfeiture.**

1 (a) The following items are subject to forfeiture:

2 (1) Any video gambling machine present in this state after  
3 January 1, 2002;

4 (2) All property found with the video gambling machine  
5 that in any way facilitates its operation for any purpose;

6 (3) Any video lottery terminal registered under this article  
7 that is found on the premises where a video gambling machine  
8 is found;

9 (4) All conveyances, including aircraft, vehicles or vessels,  
10 which are used, have been used, or are intended for use, to  
11 transport, or in any manner to facilitate the transportation, sale,

12 receipt, possession or concealment of a video gambling  
13 machine, except as follows:

14 (A) No conveyance used by any person as a common  
15 carrier in the transaction of business as a common carrier shall  
16 be forfeited under this section unless it appears that the person  
17 owning such conveyance is a consenting party or privy to a  
18 violation of this article;

19 (B) No conveyance shall be forfeited under the provisions  
20 of this article if the person owning the conveyance establishes  
21 that he or she neither knew, nor had reason to know, that the  
22 conveyance was being employed or was likely to be employed  
23 in a violation of this article; and

24 (C) No bona fide security interest or other valid lien in any  
25 conveyance shall be forfeited under the provisions of this  
26 article, unless the state proves by a preponderance of the  
27 evidence that the holder of such security interest or lien either  
28 knew, or had reason to know, that such conveyance was being  
29 used or was likely to be used in a violation of this article.

30 (5) All books, records and materials, including microfilm,  
31 tapes and data which are used, or have been used, or are  
32 intended for use with a gray gambling device;

33 (6) All moneys, negotiable instruments, securities or other  
34 things of value furnished or intended to be furnished in viola-  
35 tion of this article by any person in exchange for a gray  
36 gambling device or in exchange for playing or operating a gray  
37 gambling device, all proceeds traceable to such an exchange,  
38 and all moneys, negotiable instruments and securities used, or  
39 which have been used, or which are intended to be used to  
40 facilitate any violation of this article: *Provided*, That no  
41 property may be forfeited under this subdivision, to the extent  
42 of the interest of an owner, by reason of any act or omission

43 established by that owner to have been committed or omitted  
44 without his knowledge or consent; and

45 (7) All real property, including any right, title and interest  
46 in any lot or tract of land, and any appurtenances or improve-  
47 ments, which are used, or have been used, or are intended to be  
48 used, in any manner or part, to commit, or to facilitate the  
49 commission of a violation of this article punishable by more  
50 than one year imprisonment: *Provided*, That no property may  
51 be forfeited under this subdivision, to the extent of an interest  
52 of an owner, by reason of any act or omission established by  
53 that owner to have been committed or omitted without his  
54 knowledge or consent.

55 (b) The requirements of this section pertaining to the  
56 removal of seized property are not mandatory in the case of real  
57 property and the appurtenances thereto.

58 (c) Property subject to forfeiture under this section may be  
59 seized by any person granted law-enforcement powers (herein-  
60 after referred to as the "appropriate person" in section 22B-  
61 1804).

**§29-22B-1804. Procedure for seizure of forfeitable property.**

1 (a) Seizure of property made subject to forfeiture by the  
2 provisions of sections 22B-1802 and 22B-1803 may be made  
3 upon process issued by any court of record having jurisdiction  
4 over the property.

5 (b) Notwithstanding the provisions of subsection (a) of this  
6 section, seizure of property subject to forfeiture by the provi-  
7 sions of this article may be made without process if:

8 (1) The seizure is incident to a lawful arrest or pursuant to  
9 a search under a search warrant or an inspection warrant;

10       (2) The property subject to seizure has been the subject of  
11 a prior judgment in favor of the state in a forfeiture proceeding  
12 based upon this section; or

13       (3) The appropriate person has probable cause to believe  
14 that the property was used or intended for use in violation of  
15 this article.

16       (c) In the event of seizure pursuant to subsection (b) of this  
17 section, forfeiture proceedings shall be instituted within ninety  
18 days of the seizure thereof.

19       (d) Property taken or detained under this section shall not  
20 be subject to replevin, but is deemed to be in the custody of the  
21 appropriate person, subject only to the orders and decrees of the  
22 court having jurisdiction over the forfeiture proceedings. When  
23 property is seized under this article, the appropriate person  
24 may:

25       (1) Place the property under seal;

26       (2) Remove the property to a place designated by him or  
27 her;

28       (3) Require the appropriate law-enforcement agency to take  
29 custody of the property and remove it to an appropriate location  
30 for disposition in accordance with law; or

31       (4) In the case of seized moneys, securities or other  
32 negotiable instruments, place the assets in any interest-bearing  
33 depository insured by an agency of the federal government.

34       The requirements of this subsection (d), pertaining to the  
35 removal of seized property, are not mandatory in the case of  
36 real property and appurtenances thereto.

**§29-22B-1805. Procedures for forfeiture.**

1 (a) The following procedures for forfeiture shall be  
2 followed:

3 (1) Any proceeding wherein the state seeks forfeiture of  
4 property subject to forfeiture under this section shall be a civil  
5 proceeding. A petition for forfeiture may be filed on behalf of  
6 the state and any law-enforcement agency making a seizure  
7 under this article by the prosecuting attorney of a county, or  
8 duly appointed special prosecutor;

9 (2) A petition for forfeiture may be filed and proceedings  
10 held thereon in the circuit court of the county wherein the  
11 seizure was made or the circuit court of the county wherein any  
12 owner of the property subject to forfeiture may reside;

13 (3) Any civil trial stemming from a petition for forfeiture  
14 brought under this part 18 at the demand of either party shall be  
15 by jury;

16 (4) A petition for forfeiture of the seized property shall be  
17 filed within ninety days after the seizure of the property in  
18 question. The petition shall be verified by oath or affirmation of  
19 a law-enforcement officer representing the law-enforcement  
20 agency responsible for the seizure or the prosecuting attorney  
21 and shall contain the following:

22 (A) A description of the property seized;

23 (B) A statement as to who is responsible for the seizure;

24 (C) A statement of the time and place of seizure;

25 (D) The identity of the owner or owners of the property, if  
26 known;

27 (E) The identity of the person or persons in possession of  
28 the property at the time seized, if known;

29 (F) A statement of facts upon which probable cause for  
30 belief that the seized property is subject to forfeiture pursuant  
31 to the provisions of this article is based;

32 (G) The identity of all persons or corporations having a  
33 perfected security interest or lien in the subject property, as well  
34 as the identity of all persons or corporations known to the  
35 affiant who may be holding a possessory or statutory lien  
36 against such property; and

37 (H) A prayer for an order directing forfeiture of the seized  
38 property to the state, and vesting ownership of such property in  
39 the state.

40 (b) At the time of filing or as soon as practicable thereafter,  
41 a copy of the petition for forfeiture shall be served upon the  
42 owner or owners of the seized property, as well as all holders of  
43 a perfected security interest or lien or of a possessory or  
44 statutory lien in the same class, if known. Should diligent  
45 efforts fail to disclose the lawful owner or owners of the seized  
46 property, a copy of the petition for forfeiture shall be served  
47 upon any person who was in possession or alleged to be in  
48 possession of the property at the time of seizure, where such  
49 person's identity is known. The above service shall be made  
50 pursuant to the provisions of the West Virginia Rules of Civil  
51 Procedure. Any copy of the petition for forfeiture so served  
52 shall include a notice substantially as follows:

53 "To any claimant to the within described property: You  
54 have the right to file an answer to this petition setting forth your  
55 title in, and right to possession of, the property within thirty  
56 days from the service hereof. If you fail to file an answer, a  
57 final order forfeiting the property to the state will be entered,  
58 and such order is not subject to appeal."

59 If no owner or possessors, lienholders or holders of a  
60 security interest be found, then such service may be made by  
61 Class II legal publication in accordance with the provisions of  
62 article 59-3-1, *et seq.*, of this code, and the publication area  
63 shall be the county wherein such property was located at the  
64 time of seizure and the county wherein the petition for forfei-  
65 ture is filed.

66 (c) In addition to the requirements of subsection (b) of this  
67 section, the prosecuting attorney or law-enforcement officer  
68 upon whose oath or affirmation the petition for forfeiture is  
69 based, shall be responsible for the publication of a further  
70 notice. Such further notice that a petition for forfeiture has been  
71 filed shall be published by Class II legal advertisement in  
72 accordance with article 59-3-1, *et seq.*, of this code. The  
73 publication area shall be the county wherein the property was  
74 seized and the county wherein the petition for forfeiture is filed.  
75 The notice shall advise any claimant to the property of their  
76 right to file a claim on or before the date set forth in the notice,  
77 which date shall not be less than thirty days from the date of the  
78 first publication. The notice shall specify that any claim must  
79 clearly state the identity of the claimant and an address where  
80 legal process can be served upon that person. In addition, such  
81 notice shall contain the following information:

82 (1) A description of the property seized;

83 (2) A statement as to who is responsible for the seizure;

84 (3) A statement of the time and place of seizure;

85 (4) The identity of the owner or owners of the property, if  
86 known;

87 (5) The identity of the person or persons in possession of  
88 the property at the time of seizure, if known; and

89       (6) A statement that prayer for an order directing forfeiture  
90 of the seized property to the state, and vesting ownership of  
91 such property in the state, shall be requested of the court.

92       (d) If no answer or claim is filed within thirty days of the  
93 date of service of the petition pursuant to subsection (b) of this  
94 section, or within thirty days of the first publication pursuant to  
95 subsection (b) of this section, the court shall enter an order  
96 forfeiting the seized property to the state. If any claim to the  
97 seized property is timely filed, a time and place shall be set for  
98 a hearing upon such claim. The claimant or claimants shall be  
99 given notice of such hearing not less than ten days prior to the  
100 date set for the hearing.

101       (e) At the hearing upon the claim or claims, the state shall  
102 have the burden of proving by a preponderance of the evidence  
103 that the seized property is subject to forfeiture pursuant to the  
104 provisions of this part 18.

105       (f) Any order forfeiting property to the state and entered  
106 pursuant to this section perfects the state's right, title and  
107 interest in the forfeited property and relates back to the date of  
108 seizure: *Provided*, That in any proceeding under this article the  
109 circuit court shall in its final order make specific findings with  
110 respect to whether or not probable cause to seize such property  
111 existed at the time of such seizure.

112       (g) During the pendency of a forfeiture proceeding, it is  
113 unlawful for any property owner or holder of a bona fide  
114 security interest or other valid lien-holder to transfer or attempt  
115 to transfer any ownership interest or security interest in seized  
116 property with the intent to defeat the purpose of this article, and  
117 the court wherein the petition for forfeiture is filed may enjoin  
118 a property owner or holder of a security interest or other  
119 lien-holder from making such a transfer should one come to its  
120 attention. Any such transfer, that is made in violation of the



121 provisions of this subsection, shall have no effect upon an order  
122 of the court forfeiting seized property to the state if a notice of  
123 lis pendens is filed prior to the recording of the instrument of  
124 transfer.

125 (h) The court may void any transfer of property made  
126 before or after a forfeiture proceeding has been commenced,  
127 which is subject to forfeiture, if the transfer was not to a bona  
128 fide purchaser without notice for value.

129 (i) An appeal of a decision of the circuit court concerning  
130 a forfeiture proceeding brought pursuant to this part 18 must be  
131 filed within one hundred twenty days of the date of entry of the  
132 final appealable order. The appellant shall be required to give  
133 notice of intent to appeal within thirty days of the entry of such  
134 appealable order.

**§29-22B-1806. Disposition of forfeited moneys, securities or other  
negotiable instruments.**

1 (a) Whenever moneys, securities or other negotiable  
2 instruments are forfeited under the provisions of this part 18,  
3 such proceeds shall be distributed as follows:

4 (1) Ten percent of the proceeds shall be tendered to the  
5 office of the prosecuting attorney which initiated the forfeiture  
6 proceeding; and

7 (2) The balance shall be deposited in a special  
8 law-enforcement investigation fund. The fund may be placed in  
9 any interest-bearing depository insured by an agency of the  
10 federal government. The fund shall be administered by the chief  
11 of the law-enforcement agency that seized the forfeited prop-  
12 erty.

13 (b) No funds shall be expended from the special  
14 law-enforcement investigation fund except as follows:

15 (1) In the case of the funds belonging to the West Virginia  
16 state police, the funds shall only be expended at the direction of  
17 the superintendent and in accordance with the provisions of  
18 section 5A-2-15 and subsection 12-2-2(j) of this code;

19 (2) In the case of funds belonging to the office of either the  
20 sheriff or prosecuting attorney of any county in which the  
21 special fund has been created, the funds therein may only be  
22 expended in the manner provided in sections 7-5-4 and 5 of this  
23 code; and

24 (3) In the case of funds belonging to the police department  
25 of any municipality in which the special fund has been created,  
26 the funds therein may only be expended in the manner provided  
27 in section 8-13-22 of this code.

**§29-22B-1807. Disposition of other forfeited property; distribu-  
tion of proceeds.**

1 (a) When property other than that referred to in section  
2 22B-1806 of this part is forfeited under this section, the circuit  
3 court ordering the forfeiture, upon application by the prosecut-  
4 ing attorney or the chief of the law-enforcement agency that  
5 seized said forfeited property, may direct that:

6 (1) Title to the forfeited property be vested in the  
7 law-enforcement agency so petitioning; or

8 (2) The law-enforcement agency responsible for the seizure  
9 retain the property for official use; or

10 (3) The forfeited property shall be offered at public auction  
11 to the highest bidder for cash. Notice of such public auction  
12 shall be published as a Class III legal advertisement in accor-  
13 dance with article 59-3-1, *et seq.*, of this code. The publication  
14 area shall be the county where the public auction will be held.

15 (b) When a law-enforcement agency receives property  
16 pursuant to this section, the court may, upon request of the  
17 prosecuting attorney initiating the forfeiture proceeding, require  
18 the law-enforcement agency to pay unto the office of said  
19 prosecuting attorney a sum not to exceed ten percent of the  
20 value of the property received to compensate said office for  
21 actual costs and expenses incurred.

22 (c) The proceeds of every public sale conducted pursuant to  
23 this section shall be paid and applied as follows: First, to the  
24 balance due on any security interest preserved by the court;  
25 second, to the costs incurred in the storage, maintenance and  
26 security of the property; third, to the costs incurred in selling  
27 the property.

28 (d) Any proceeds of a public sale remaining after distribu-  
29 tion pursuant to this section shall be distributed as follows:

30 (1) Ten percent of such proceeds shall be tendered to the  
31 office of the prosecuting attorney who initiated the forfeiture  
32 proceeding; and

33 (2) The balance shall be deposited in a special  
34 law-enforcement investigation fund. Such fund shall be  
35 administered by the chief of the law-enforcement agency that  
36 seized the forfeited property sold and shall take the form of an  
37 interest-bearing account with any interest earned to be com-  
38 pounded to the fund. Any funds deposited in the special  
39 law-enforcement investigative fund pursuant to this article shall  
40 be expended only to defray the costs of protracted or complex  
41 investigations, to provide additional technical equipment or  
42 expertise, to provide matching funds to obtain federal grants or  
43 for such other law-enforcement purposes as the chief of the  
44 law-enforcement agency may deem appropriate; however, these  
45 funds may not be utilized for regular operating needs.

46 (e) If more than one law-enforcement agency was substan-  
47 tially involved in effecting the seizure and forfeiture of prop-  
48 erty, the court wherein the petition for forfeiture was filed shall  
49 equitably distribute the forfeited property among the  
50 law-enforcement agencies. In the event of a public sale of such  
51 property pursuant to subsection (a) of this section, the court  
52 shall equitably distribute any proceeds remaining after distribu-  
53 tion pursuant to subsection (c) and subdivision (1), subsection  
54 (d) of this section, among such law-enforcement agencies for  
55 deposit into their individual special law-enforcement investiga-  
56 tive fund. Equitable distribution shall be based upon the overall  
57 contribution of the individual law-enforcement agency to the  
58 investigation which led to the seizure.

59 (f) Upon the sale of any forfeited property for which title or  
60 registration is required by law, the state shall issue a title or  
61 registration certificate to any bona fide purchaser at a public  
62 sale of the property conducted pursuant to this section. Upon  
63 the request of the law-enforcement agency receiving, pursuant  
64 to the order of the court, or electing to retain, pursuant to this  
65 section, any forfeited property for which title or registration is  
66 required by law, the state shall issue a title or registration  
67 certificate to the appropriate governmental body.

68 (g) Any funds expended pursuant to the provisions of this  
69 section, shall only be expended in the manner provided in  
70 subsection 60A-7-705(b), of this code.

71 (h) Every prosecuting attorney or law-enforcement agency  
72 receiving forfeited property or proceeds from the sale of  
73 forfeited property pursuant to this part 18 shall submit an  
74 annual report to the body which has budgetary authority over  
75 such agency. Such report shall specify the type and approximate  
76 value of all forfeited property and the amount of proceeds from  
77 the sale of forfeited property received in the preceding year. No

78 county or municipality may use anticipated receipts of forfeited  
79 property in their budgetary process.

80 (i) In lieu of the sale of any forfeited property subject to a  
81 bona fide security interest preserved by an order of the court,  
82 the law-enforcement agency receiving the forfeited property  
83 may pay the balance due on any security interest preserved by  
84 the court from funds budgeted to the office or department or  
85 from the special fund and retain possession of the forfeited  
86 property for official use pursuant to this section.

87 (j) In every case where property is forfeited, disposition of  
88 the forfeited property, in accordance with this part 18, shall be  
89 made within six months of the date upon which the court of  
90 jurisdiction orders forfeiture. Should the office or agency  
91 receiving the property fail either to place the property in official  
92 use or dispose of the property in accordance with law, the court  
93 of jurisdiction shall cause disposition of the property to be  
94 made with any proceeds therefrom to be awarded to the state.

95 (k) No disposition shall occur until all applicable periods  
96 for filing a notice of intent to appeal has expired and no party  
97 in interest shall have filed such notice. The filing of the notice  
98 of intent to appeal shall stay any such disposition until the  
99 appeal has been finally adjudicated or until the appeal period of  
100 one hundred eighty days has expired without an appeal having  
101 actually been taken or filed, unless a valid extension of the  
102 appeal has been granted by the circuit court under the provi-  
103 sions of section 58-4-7 of this code.

104 (l) The special law-enforcement investigative funds of each  
105 law-enforcement agency may be placed in an interest-bearing  
106 depository insured by the federal government.

#### **PART 19. MISCELLANEOUS PROVISIONS.**

##### **§29-22B-1901. Effect of this article on certain taxes.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, effective the first day of July, 2002, persons who hold  
3 a current operator's license or a current limited video lottery  
4 retailer's license issued under this article shall be exempt from  
5 paying the taxes imposed by articles 11-15-1, *et seq.*, and  
6 11-15A-1, *et seq.*, of this code on their purchases of video  
7 lottery terminals and video lottery games.

8 (b) Notwithstanding any provision of this code to the  
9 contrary, effective the first day of July, 2002, the consideration  
10 paid by a patron of a restricted access adult-only facility to play  
11 of video lottery games shall be exempt from the tax imposed by  
12 article 11-15-1, *et seq.*, of this code.

13 (c) Notwithstanding the provisions of section 8-13-4 of this  
14 code to the contrary, effective the first day of July, 2002,  
15 municipalities may not impose the license fees imposed by this  
16 article on manufacturers, operators, limited video lottery  
17 retailers and service technicians. Municipalities may continue  
18 to impose any other license fees they are allowed to impose  
19 under this code.

20 (d) Notwithstanding any provision of this code to the  
21 contrary, effective the first day of July, 2002, municipalities  
22 may not impose the municipal business and occupation taxes  
23 imposed pursuant to section 8-13-5 of this code, or an amuse-  
24 ment tax imposed pursuant to section 8-13-6 of this code on the  
25 income of an permittee of video lottery terminals from income  
26 derived directly from activities conducted pursuant to the  
27 provisions of this article.

28 (e) Notwithstanding any provision of this code to the  
29 contrary, effective the first day of July, 2002, municipalities  
30 may not impose the municipal business and occupation taxes  
31 imposed pursuant to section 8-13-5 of this code on payments a  
32 limited video lottery retailer receives from an operator of video

33 lottery terminals for activities conducted pursuant to the  
34 provisions of this article.

**§29-22B-1902. Preemption of state laws or local regulation.**

1 (a) No state or local law or regulation providing any  
2 penalty, disability, restriction, regulation or prohibition for the  
3 manufacture, transportation, storage, distribution, advertising,  
4 possession or sale of any lottery video lottery terminal, games  
5 or materials or for the operation of any lottery shall apply to  
6 operations by the lottery commission or persons licensed  
7 pursuant to this article or operations or activities that are  
8 authorized in this article.

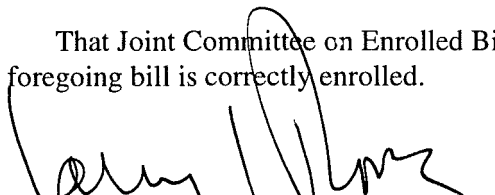
9 (b) The provisions of this article preempt all regulations,  
10 rules, ordinances and laws of any county or municipality in  
11 conflict herewith: *Provided*, That nothing herein shall invalidate  
12 any zoning law, or Sunday closing law under article 61-10-1, *et*  
13 *seq.*, of this code.

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

**§29-22B-1903. Timing of implementation.**

1 The Legislature finds and declares that the success of this  
2 state's implementation of video lottery operations under this  
3 article requires that the operations be phased in over a manage-  
4 able transition period designed to allow careful regulation and  
5 control of the implementation of operations under this article  
6 and also to allow persons possessing devices that are declared  
7 by this article to be contraband gambling devices a reasonable  
8 opportunity to remove any existing devices from this state.

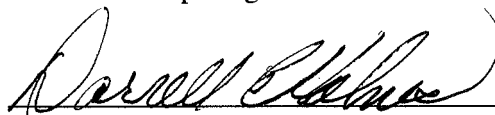
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

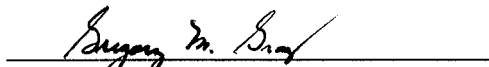
  
Chairman Senate Committee

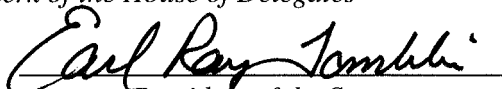
  
Chairman House Committee

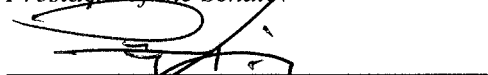
Originating in the House.

In effect from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 7  
day of May 2001.

  
Governor



PRESENTED TO THE

GOVERNOR

Date 5/4/01

Time 9:35 am