

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 492**

4 (By Senators Tucker, Barnes, Chafin, Cookman, Edgell, Facemire,  
5 Kirkendoll, McCabe, Stollings, Williams and Kessler (Mr.  
6 President))

7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;  
9 reported March 28, 2013.]  
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12  
13 A BILL to repeal §29-25-7 of the Code of West Virginia, 1931, as  
14 amended; to amend and reenact §29-25-1, §29-25-2, §29-25-3,  
15 §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18,  
16 §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28,  
17 §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-34,  
18 §29-25-35, §29-25-37 and §29-25-38 of said code; and to amend  
19 said code by adding thereto two new sections, designated  
20 §29-25-22b and §29-25-22c, all relating to gaming facilities;  
21 authorizing gaming facilities; permitting a rural resort  
22 community as limited gaming facility; defining terms; creating  
23 the Rural Resort Community Fund and Rural Resort Community  
24 Human Resource Benefit Fund; providing for the regulation and  
25 control of a rural resort community; and repealing the local  
26 option provision of this article.

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

2 That §29-25-7 of the Code of West Virginia, 1931, as amended,  
3 be repealed; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6,  
4 §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20,  
5 §29-25-21, §29-25-24, §29-25-28, §29-25-29, §29-25-30, §29-25-31,  
6 §29-25-32, §29-25-34, §29-25-35, §29-25-37 and §29-25-38 of said  
7 code be amended and reenacted; and that said code be amended by  
8 adding thereto two new sections, designated §29-25-22b and  
9 §29-25-22c, all to read as follows:

10 **ARTICLE 25. AUTHORIZED GAMING FACILITY.**

11 **§29-25-1. Authorization of limited gaming facility; findings;**  
12 **intent.**

13 (a) *Operation of West Virginia Lottery table games.* -  
14 Notwithstanding any provision of law to the contrary, the operation  
15 of West Virginia Lottery games permitted by this article and the  
16 related operation of a gaming facility and ancillary activities is  
17 not unlawful when conducted under the terms specified in this  
18 article and article twenty-two-c of this chapter.

19 (b) *Legislative findings.* - The Legislature finds and declares  
20 that the tourism industry plays a critical role in the economy of  
21 this state and that a substantial state interest exists in  
22 protecting that industry. It further finds and declares that the  
23 authorization of the operation of a gaming facility at no more than  
24 one well-established historic resort hotel and one rural resort  
25 community in this state as provided in this article will serve to

1protect and enhance the tourism industry, and indirectly other  
2segments of the economy of this state, by providing a resort hotel  
3amenity which is becoming increasingly important to many actual and  
4potential resort hotel patrons.

5 The Legislature finds and declares that video lottery  
6operations pursuant to section twenty-eight of this article and the  
7operation of the other West Virginia Lottery table games permitted  
8by this article constitute the operation of lotteries within the  
9purview of section thirty-six, Article VI of the Constitution of  
10West Virginia.

11 (c) *Legislative intent.* - It is the intent of the Legislature  
12in the enactment of this article to promote tourism and year-round  
13employment in this state. It is expressly not the intent of the  
14Legislature to promote gaming. As a consequence, it is the intent  
15of the Legislature to allow limited gaming as authorized by this  
16article and article twenty-two-c of this chapter with all moneys  
17gained from the operation of ~~the~~ a gaming facility, other than those  
18necessary to reimburse reasonable costs of operation, to inure to  
19the benefit of the state. Further, it is the intent of the  
20Legislature that amendments made to this article during the 2009  
21regular session will establish appropriate conformity between the  
22operations of video lottery and West Virginia Lottery table games  
23at ~~the~~ a licensed gaming facility under this article and the  
24operations of video lottery and table games at the pari-mutuel  
25racetracks licensed under articles twenty-two-a and twenty-two-c of  
26this chapter.

1 **§29-25-2. Definitions.**

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

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

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

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

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

19 (e) "Controlling interest" means:

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

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

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

26 (f) "Controlling person" means, with respect to another person,

1 any person directly or indirectly owning or holding a controlling  
2 interest in that other person.

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

5 (h) "Designated gaming area" means one or more specific floor  
6 areas of a licensed gaming facility within which the commission has  
7 authorized operation of video lottery terminals or West Virginia  
8 Lottery table games, or the operation of both video lottery  
9 terminals and West Virginia Lottery table games.

10 (i) "Director" means the Director of the State Lottery  
11 Commission.

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

19 (k) "Fringe benefits" means sickness and accident benefits and  
20 benefits relating to medical and pension coverage.

21 (l) "Gaming devices and supplies" mean gaming tables for all  
22 West Virginia Lottery table games, roulette wheels, wheels of  
23 fortune, video lottery terminals, cards, dice, chips, tokens,  
24 markers or any other mechanical, electronic or other device,  
25 mechanism or equipment or related supplies utilized in the operation  
26 of a West Virginia Lottery table game.

1 (m) "Gaming facility" means a designated area on the premises  
2 of an existing historic resort hotel or a rural resort community in  
3 which West Virginia Lottery table games are conducted by a gaming  
4 licensee.

5 (n) "Gaming licensee" means the licensed operator of a gaming  
6 facility.

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

11 (p) "Gross terminal income", as used in this article and as  
12 used in article twenty-two-a of this chapter, means the total amount  
13 of cash, vouchers or tokens inserted into the video lottery  
14 terminals operated by a licensee, minus promotional credits played,  
15 and minus the total value of coins and tokens won by a player and  
16 game credits which are cleared from the video lottery terminals in  
17 exchange for winning redemption tickets.

18 (q) "Historic resort hotel" means a resort hotel registered  
19 with the United States Department of the Interior as a national  
20 historic landmark in its National Registry of Historic Places having  
21 not fewer than five hundred guest rooms under common ownership and  
22 having substantial recreational guest amenities in addition to the  
23 gaming facility.

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

26 (s) "Human Resource Benefit Fund" means the special fund in the

1 State Treasury created in section twenty-two-a of this article.

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

4 (u) "License" means a license issued by the commission,  
5 including:

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

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

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

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

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

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

19 (x) "Licensee" means a gaming licensee, a licensed gaming  
20 facility supplier or a licensed gaming facility employee.

21 (y) "Manufacturer" means any person holding a license granted  
22 by the commission to engage in the business of designing, building,  
23 constructing, assembling or manufacturing video lottery terminals,  
24 the electronic computer components of the video lottery terminals,  
25 the random number generator of the video lottery terminals, or the  
26 cabinet in which it is housed, and whose product is intended for

1 sale, lease or other assignment to a licensed gaming facility in  
2 West Virginia and who contracts directly with the licensee for the  
3 sale, lease or other assignment to a licensed gaming facility in  
4 West Virginia.

5 (z) "Net terminal income" means gross terminal income minus an  
6 amount deducted by the commission to reimburse the commission for  
7 its actual cost of administering video lottery at the licensed  
8 gaming facility. No deduction for any or all costs and expenses of  
9 a licensee related to the operation of video lottery games shall be  
10 deducted from gross terminal income.

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

15 (bb) "Premises of an existing historic resort hotel" means the  
16 historic resort hotel, attachments of the historic resort hotel, and  
17 the traditional, immediate grounds of the historic resort hotel.

18 (cc) "Premises of a rural resort community" means the rural  
19 resort community, attachments of the rural resort community and the  
20 immediate grounds of the rural resort community.

21 ~~(cc)~~ (dd) "Promotional credits" means credits given by the  
22 licensed gaming facility or licensed racetrack to players allowing  
23 limited free play of video lottery terminals in total amounts and  
24 under conditions approved in advance by the commission.

25 (ee) "Rural resort community" means;

26 (1) A planned community with no less than one thousand planned



1 home sites occupying no less than one thousand contiguous acres  
2 which includes;

3       (2) A planned community with a hotel or lodge having not fewer  
4 than one hundred fifty guestrooms;

5       (3) A planned development of at least one thousand acres;

6       (4) A planned development with specific amenities for guests  
7 and residents including green spaces, walking, hiking, jogging  
8 trails, swimming pools, lakes or other areas, tennis facilities,  
9 golfing facilities, fitness facilities, private, public and  
10 community meeting space and other recreation activities;

11       (5) A planned development with an overall project cost of no  
12 less than \$80 million at the time of any application toward gaming  
13 license; and

14       (6) A planned development located in a county where there is:

15       (A) An adequate economic base within the county from any source  
16 other than tourism;

17       (B) A population of less than fifteen persons per square mile  
18 in an overall county population of less than ten thousand persons  
19 according to the most recent United States Census at the time of  
20 application; and

21       (C) Access to state and national forest within the county in  
22 which the rural resort community is located.

23       (ff) "Rural Resort Community Fund" means the special fund in  
24 the State Treasury created in section twenty-two-b of this article.

25       (gg) "Rural Resort Community Human Resource Benefit Fund" means  
26 the special fund in the State Treasury created in section

1 twenty-two-c of this article.

2 (hh) "Rural Resort Community Human Resource Benefit Advisory  
3 Board" or "board" means the advisory board created in section  
4 twenty-two-c of this article.

5 ~~(dd)~~ (ii) "Video lottery game", as used in this article and as  
6 used in article twenty-two-a of this chapter, means a  
7 commission-approved, -owned and -controlled electronically simulated  
8 game of chance which is displayed on a video lottery terminal and  
9 which:

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

12 (2) Is initiated by a player's insertion of cash, vouchers or  
13 tokens into a video lottery terminal, which causes game play credits  
14 to be displayed on the video lottery terminal and, with respect to  
15 which, each game play credits entitles a player to choose one or  
16 more symbols or numbers or to cause the video lottery terminal to  
17 randomly select symbols or numbers;

18 (3) Allows the player to win additional game play credits,  
19 coins or tokens based upon game rules which establish the random  
20 selection of winning combinations of symbols or numbers or both and  
21 the number of free play credits, coins or tokens to be awarded for  
22 each winning combination of symbols or numbers or both;

23 (4) Is based upon a computer-generated random selection of  
24 winning combinations based totally or predominantly on chance;

25 (5) In the case of a video lottery game which allows the player  
26 an option to select replacement symbols or numbers or additional

1 symbols or numbers after the game is initiated and in the course of  
2 play, either:

3 (A) Signals the player, prior to any optional selection by the  
4 player of randomly generated replacement symbols or numbers, as to  
5 which symbols or numbers should be retained by the player to present  
6 the best chance, based upon probabilities, that the player may  
7 select a winning combination;

8 (B) Signals the player, prior to any optional selection by the  
9 player of randomly generated additional symbols or numbers, as to  
10 whether such additional selection presents the best chance, based  
11 upon probabilities, that the player may select a winning  
12 combination; or

13 (C) Randomly generates additional or replacement symbols and  
14 numbers for the player after automatically selecting the symbols and  
15 numbers which should be retained to present the best chance, based  
16 upon probabilities, for a winning combination, so that in any event,  
17 the player is not permitted to benefit from any personal skill,  
18 based upon a knowledge of probabilities, before deciding which  
19 optional numbers or symbols to choose in the course of video lottery  
20 game play;

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

25 (7) Does not use the following game themes commonly associated  
26 with casino gambling: Roulette, dice or baccarat card games:

1 *Provided*, That games having a display with symbols which appear to  
2 roll on drums to simulate a classic casino slot machine, game themes  
3 of other card games and keno may be used.

4 ~~(ee)~~ (jj) "Wager" means a sum of money or thing of value risked  
5 on an uncertain occurrence.

6 ~~(ff)~~ (kk) "West Virginia Lottery table game" means any game  
7 played with cards, dice or any mechanical, electromechanical or  
8 electronic device or machine for money, credit or any representative  
9 of value, including, but not limited to, baccarat, blackjack, poker,  
10 craps, roulette, wheel of fortune or any variation of these games  
11 similar in design or operation and expressly authorized by rule of  
12 the commission, including multiplayer electronic table games,  
13 machines and devices, but excluding video lottery, punchboards,  
14 faro, numbers tickets, push cards, jar tickets, pull tabs or similar  
15 games.

16 **§29-25-3. Commission duties and powers.**

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

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

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

24 (3) Approve, modify or reject minimum internal control  
25 standards proposed by the licensee gaming facility for a West  
26 Virginia Lottery table game, including the maintenance of financial

1 books and records;

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

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

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

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

14 (8) Issue all licenses;

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

17 (i) Receive, accept and pay the specified percentage of taxes  
18 collected under sections twenty and twenty-one of this article into  
19 the Historic Resort Hotel Fund or the Rural Resort Community Fund;  
20 and

21 (ii) Receive, accept and pay the specified percentage of taxes  
22 collected under sections twenty and twenty-one of this article into  
23 the Human Resource Benefit Fund or the Rural Resort Community Human  
24 Resource Benefit Fund;

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

26 (11) Keep a public record of all commission actions and

1 proceedings; and

2 (12) File a written annual report to the Governor, the  
3 President of the Senate and the Speaker of the House of Delegates  
4 on or before January 30 of each year and any additional reports as  
5 the Governor or Legislature may request.

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

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

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

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

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

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

19 **§29-25-5. Rules.**

20 The commission shall propose for promulgation legislative rules  
21 in accordance with the provisions of article three, chapter  
22 twenty-nine-a of this code as are necessary to provide for  
23 implementation and enforcement of the provisions of this article.  
24 Any legislative rules proposed by the commission before September  
25 1, ~~2009~~ 2013, may be by emergency rule.

26 **§29-25-6. Law enforcement.**

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

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

12 (c) Notwithstanding any provision of this code to the contrary,  
13 the West Virginia State Police shall have exclusive jurisdiction  
14 over felony offenses committed on the grounds of ~~the~~ a gaming  
15 facility.

16 **§29-25-9. License to operate a gaming facility.**

17 (a) ~~*Single license.*~~ *Two Licenses.* - The commission may issue  
18 only one license to operate a gaming facility ~~if the one license~~  
19 ~~limitation in the preceding sentence is found to be unconstitutional~~  
20 ~~in a final, nonappealable order by a court of competent~~  
21 ~~jurisdiction, the commission shall have no authority to issue any~~  
22 ~~license under this article and, in such event, the provisions of~~  
23 ~~this article shall not be severable and any license issued under the~~  
24 ~~provisions of this article prior thereto shall be void. The~~  
25 ~~Legislature intends that no more than one license to operate one~~  
26 ~~gaming facility in this state shall be authorized in any event. at~~

1 the historic resort hotel and one license to operate a gaming  
2 facility at the rural resort community.

3 (b) *Applicant qualifications.* - The applicant shall be the  
4 actual operator of the gaming facility to be located on the premises  
5 of an existing historic resort hotel or a rural resort community.  
6 The applicant may be the owner of the existing historic resort hotel  
7 or a rural resort community or a person that leases well-defined  
8 spaces on the premises of the historic resort hotel or a rural  
9 resort community in order to operate a gaming facility as defined  
10 by this article. ~~The resort hotel shall be located within the~~  
11 ~~jurisdiction of a county approving the operation of a gaming~~  
12 ~~facility in accordance with section seven of this article.~~ The  
13 applicant shall meet the qualifications and requirements set forth  
14 in this article and rules adopted by the commission. In determining  
15 whether to grant a license to operate a gaming facility to an  
16 applicant, the commission shall consider:

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

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

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

25 (4) The plan submitted by the applicant regarding employment  
26 levels and the extent to which the submitted plan demonstrates an



1 ability on the part of the applicant to create at least one hundred  
2 full-time equivalent jobs with a salary and benefit package  
3 commensurate with existing employees at the historic resort hotel  
4 or rural resort community.

5 (c) *Floor plan submission requirement.* - Prior to commencing  
6 the operation of any West Virginia Lottery table game in a  
7 designated gaming area, ~~the~~ a gaming facility licensee shall submit  
8 to the commission for its approval a detailed floor plan depicting  
9 the location of the designated gaming area in which West Virginia  
10 Lottery table game gaming equipment will be located and its proposed  
11 arrangement of the West Virginia Lottery table game gaming  
12 equipment. If the floor plans for the designated gaming area  
13 preserve the historic integrity of the historic resort hotel or  
14 rural resort community where the licensed gaming facility is  
15 located, then any floor plan submission that satisfies the  
16 requirements of the rules promulgated by the commission shall be  
17 considered approved by the commission unless a gaming facility is  
18 notified in writing to the contrary within one month of filing a  
19 detailed floor plan.

20 (d) *Management service contracts.* -

21 (1) *Approval.* - A gaming facility may not enter into any  
22 management service contract that would permit any person other than  
23 the licensee to act as the commission's agent in operating West  
24 Virginia Lottery table game unless the management service contract:  
25 (A) Is with a person licensed under this article to provide  
26 management services; (B) is in writing; and (C) the contract has

1 been approved by the commission.

2       (2) *Material change.* - A licensed gaming facility shall submit  
3 any material change in a management service contract previously  
4 approved by the commission to the commission for its approval or  
5 rejection before the material change may take effect.

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

9       (4) *Other commission approvals and licenses.* - The duties and  
10 responsibility of a management services provider under a management  
11 services contract may not be assigned, delegated, subcontracted or  
12 transferred to a third party to perform without the prior approval  
13 of the commission. Third parties shall be licensed under this  
14 article before providing service. The commission shall license and  
15 require the display of West Virginia Lottery game logos on  
16 appropriate game surfaces and other gaming items and locations as  
17 the commission considers appropriate.

18       (e) *License application requirements.* - An applicant for a  
19 license to operate a gaming facility shall:

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

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

25       (B) Subject to the provisions of subsection (g) of this section  
26 with respect to publicly-traded corporations, the identity of all

1 stockholders or other persons having a financial interest in either  
2 the applicant or any controlling person of the applicant and the  
3 identity of each director or executive officer of the applicant and  
4 of any controlling person of the applicant;

5 (C) The identity of the historic resort hotel or rural resort  
6 community at which the gaming facility is to be located, including  
7 identification of the county in which the historic resort hotel or  
8 rural resort community is located; and

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

12 (2) Pay to the commission a nonrefundable application fee for  
13 deposit into the Community-Based Service Fund created in section  
14 twenty-seven, article twenty-two-c of this chapter in the amount of  
15 \$65,000.

16 (f) *Privately held corporations.* - In the event that an  
17 applicant or any controlling person of an applicant is a privately  
18 held corporation, then the commission may not grant a license until  
19 the commission determines that each person who has control of the  
20 applicant also meets all of the qualifications the applicant must  
21 meet to hold the license for which application is made. The  
22 following persons are considered to have control of an applicant:

23 (1) Each person associated with a corporate applicant,  
24 including any corporate holding company, parent company or  
25 subsidiary company of the applicant, but not including a bank or  
26 other licensed lending institution which holds a mortgage or other

1 lien acquired in the ordinary course of business, who has the  
2 ability to control the activities of the corporate applicant or  
3 elect a majority of the board of directors of that corporation;

4 (2) Each person associated with a noncorporate applicant who  
5 directly or indirectly holds any beneficial or proprietary interest  
6 in the applicant or who the commission determines to have the  
7 ability to control the applicant; and

8 (3) Key personnel of an applicant, including any executive,  
9 employee or agent, having the power to exercise significant  
10 influence over decisions concerning any part of the applicant's  
11 business operation.

12 (g) *Publicly traded corporations.* - In the event that an  
13 applicant or any controlling person of an applicant is a publicly  
14 traded corporation, then information otherwise required to be  
15 furnished by an applicant with respect to stockholders, directors  
16 and executive officers of the publicly traded corporation shall be  
17 limited to information concerning only those executive officers of  
18 the publicly traded corporation whose ongoing and regular  
19 responsibilities relate or are expected to relate directly to the  
20 operation or oversight of ~~the~~ a gaming facility. "Publicly traded  
21 corporation" as used herein means any corporation or other legal  
22 entity, except a natural person, which has one or more classes of  
23 securities registered pursuant to Section twelve of the Securities  
24 Exchange Act of 1934, as amended (15 U. S. C. §78), or is an issuer  
25 subject to Section fifteen-d of said act.

26 (h) *Gaming facility qualifications.* - An applicant for a

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

7 (i) *Surety bond requirement.* - ~~The~~ A licensed gaming facility  
8 shall execute a surety bond to be given to the state to guarantee  
9 the licensee faithfully makes all payments in accordance with the  
10 provisions of this article and rules promulgated by the commission.  
11 The surety bond shall be:

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

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

16 (3) With a surety approved by the commission who is licensed  
17 to write surety insurance in this state. The bond shall remain in  
18 effect during the term of the license and may not be canceled by a  
19 surety on less than thirty days' notice in writing to the  
20 commission. The total and aggregate liability of the surety on the  
21 bond is limited to the amount specified in the bond.

22 (j) *Authorization of license.* - A license to operate a gaming  
23 facility authorizes the licensee to engage in the business of  
24 operating a gaming facility while the license is effective. A  
25 license to operate a gaming facility is not transferable or  
26 assignable and cannot be sold or pledged as collateral.

1 (k) *Audits.* - A licensed gaming facility operator shall submit  
2 to the commission an annual audit, by a certified public accountant  
3 who is, or whose firm is, licensed in the State of West Virginia,  
4 or by a nationally recognized accounting firm, of the financial  
5 transactions and condition of the licensee's total operations. The  
6 audit shall be in accordance with generally accepted auditing  
7 principles.

8 (l) *Annual license renewal fee.* - For the second year that it  
9 is licensed, ~~the~~ a licensed gaming facility shall pay to the  
10 commission a license renewal fee of \$250,000. For the third year  
11 that it is licensed, ~~the~~ a licensed gaming facility shall pay to the  
12 commission a license renewal fee of \$500,000. For every year after  
13 the third year that it is licensed, ~~the~~ a licensed gaming facility  
14 shall pay to the commission a license renewal fee that is calculated  
15 by determining the annual average gross receipts of the West  
16 Virginia pari-mutuel racetracks with table games licenses for the  
17 last full fiscal year of adjusted gross receipts available, and  
18 dividing that number into the licensed gaming facility operator's  
19 adjusted gross receipts for the same full fiscal year of adjusted  
20 gross receipts to obtain a percentage, and by multiplying the  
21 resulting percentage by \$2,500,000: *Provided,* That the amount  
22 required to be paid by the licensed gaming facility shall be not  
23 less than \$500,000, nor more than \$2,500,000.

24 (m) ~~The~~ A licensed gaming facility shall provide to the  
25 commission, at no cost to the commission, suitable office space at  
26 the gaming facility to perform the duties required of it by the

1provisions of this article.

2 **§29-25-12. License to be employed by operator of gaming facility.**

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

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

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

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

19 (2) Submit fingerprints for a national criminal records check  
20 by the Criminal Identification Bureau of the West Virginia State  
21 Police and the Federal Bureau of Investigation. The fingerprints  
22 shall be furnished by all persons required to be named in the  
23 application and shall be accompanied by a signed authorization for  
24 the release of information by the Criminal Investigation Bureau and  
25 the Federal Bureau of Investigation. The commission may require any  
26 applicant seeking the renewal of a license or permit to furnish

1 fingerprints for a national criminal records check by the Criminal  
2 Identification Bureau of the West Virginia State Police and the  
3 Federal Bureau of Investigation; and

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

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

12 (e) Annual license renewal fee. - Each licensed employee shall  
13 pay to the commission an annual license renewal fee set by the  
14 commission, which renewal fee may vary based on the capacity  
15 designated with respect to the licensee but in no event to exceed  
16 \$100. The fee may be paid on behalf of the licensed employee by the  
17 employer.

18 **§29-25-15. Expiration date and renewal of gaming license.**

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

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

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

26 (2) The date by which the commission must receive the renewal



1 application for the renewal to be issued and mailed before the  
2 existing license expires; and

3 (3) The amount of the renewal fee.

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

6 (1) Otherwise is entitled to be licensed;

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

8 (A) The sum of \$25,000 for a license to operate a gaming  
9 facility;

10 (B) The sum of \$5,000 for a license to supply a gaming  
11 facility; and

12 (C) As set by the commission by rule in the case of a license  
13 to be employed by an operator of a gaming facility, not to exceed  
14 \$300, which renewal fee may be paid on behalf of the licensee by the  
15 employer; and

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

20 (4) Submits to the commission evidence satisfactory to the  
21 commission of the gaming facility operator's compliance with the  
22 plan described in subdivision (4), subsection (b), section nine of  
23 this article to create at least one hundred full-time equivalent  
24 positions with a salary and benefit package commensurate with  
25 existing employees at the historic resort hotel or rural resort  
26 community. Notwithstanding any provision of subsection (d) of this

1 section, the failure to substantially comply with the plan, as  
2 determined by the commission, may constitute grounds for the denial  
3 of the renewal of the license.

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

6 **§29-25-18. Inspection and seizure.**

7 As a condition of licensure, to inspect or investigate for  
8 criminal violations of this article or violations of the rule  
9 promulgated by the commission, the commission agents and the West  
10 Virginia State Police may each, without notice and without warrant:

11 (1) Inspect and examine all premises of ~~the~~ a gaming facility  
12 with West Virginia Lottery table games, gaming devices, the premises  
13 where gaming equipment is manufactured, sold, distributed or  
14 serviced or any premises in which any records of the activities are  
15 prepared or maintained;

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

19 (3) Seize summarily and remove from the premises and impound  
20 any gaming equipment for the purposes of examination, inspection or  
21 testing;

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

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

1 equipment or West Virginia Lottery table game operations; and

2 (6) Inspect the person, and the person's personal effects  
3 present on the grounds of a licensed gaming facility with West  
4 Virginia Lottery table games, of any holder of a license issued  
5 pursuant to this article while that person is present on the grounds  
6 of a licensed gaming facility having West Virginia Lottery table  
7 games.

8 **§29-25-19. Consent to presence of law-enforcement officers;**  
9 **wagering limits; operations and services; posting**  
10 **of betting limits.**

11 (a) *Consent to presence of law-enforcement officers.* - Any  
12 individual entering ~~the~~ a gaming facility shall be advised by the  
13 posting of a notice or other suitable means of the possible presence  
14 of state, county or municipal law-enforcement officers and by  
15 entering ~~the~~ a gaming facility impliedly consents to the presence  
16 of the law-enforcement officers.

17 (b) *Commission discretion in gaming operations.* - Video lottery  
18 terminals operated at ~~the~~ a gaming facility may allow minimum and  
19 maximum wagers on a single game the amounts determined by the  
20 license in the exercise of its business judgment subject to the  
21 approval of the commission.

22 (1) Subject to the approval of the commission, ~~the~~ a gaming  
23 facility licensee shall, with respect to West Virginia Lottery table  
24 games, establish the following:

25 (A) Maximum and minimum wagers;

1 (B) Advertising and promotional activities;

2 (C) Hours of operation;

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

4 (2) The commission may consider multiple factors, including,  
5 but not limited to, industry standards, outside competition and any  
6 other factors as determined by the commission to be relevant in its  
7 decision to approve ~~the~~ a gaming facility's determination of those  
8 items listed in subdivision (1) of this subsection.

9 (c) *Setting of operations.* - Notwithstanding anything to the  
10 contrary contained elsewhere in this chapter, the commission may  
11 establish the following parameters for commission regulated lottery  
12 games of any kind which is played at a licensed gaming facility:

13 (1) Minimum and maximum payout percentages;

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

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

19 (d) *Posting of betting limits.* - A gaming facility shall  
20 conspicuously post a sign at each West Virginia Lottery table game  
21 indicating the permissible minimum and maximum wagers pertaining at  
22 that table. A gaming facility licensee may not require any wager  
23 to be greater than the stated minimum or less than the stated  
24 maximum. However, any wager actually made by a patron and not  
25 rejected by a gaming facility licensee prior to the commencement of  
26 play shall be treated as a valid wager.

1 **§29-25-20. Accounting and reporting of gross terminal income;**  
2 **distribution.**

3 (a) The A licensed gaming facility shall submit thirty-six  
4 percent of the gross terminal income from video lottery games at the  
5 licensed gaming facility to the commission through electronic funds  
6 transfer to be deposited:

7 (1) If the licensed gaming facility is located in the historic  
8 resort hotel, into the Historic Resort Hotel Fund created in section  
9 twenty-two of this article; or

10 (2) If the licensed gaming facility is located in a rural  
11 resort community, into the Rural Resort Community Fund created in  
12 section twenty-two-b of this article.

13 (b) The licensed gaming facility shall also submit seventeen  
14 percent of the gross terminal income from video lottery games at the  
15 licensed gaming facility to the commission through electronic funds  
16 transfer to be deposited:

17 (1) If the licensed gaming facility is located in the historic  
18 resort hotel, into the Human Resource Benefit Fund created in  
19 section twenty-two-a of this article; or

20 (2) If the licensed gaming facility is located in a rural  
21 resort community, into the Rural Resort Community Fund created in  
22 section twenty-two-b of this article.

23 (c) Each of these The submissions required by this section  
24 shall be made to the commission weekly. The gaming licensee shall  
25 furnish to the commission all information and bank authorizations  
26 required to facilitate the timely transfer of moneys to the

1 commission. The gaming licensee shall provide the commission thirty  
2 days' advance notice of any proposed account changes in order to  
3 assure the uninterrupted electronic transfer of funds.

4 **§29-25-21. Taxes on games other than video lottery games.**

5 (a) *Imposition and rate of limited gaming profits tax.* - There  
6 is hereby levied and shall be collected a privilege tax against a  
7 gaming license in an amount to be determined by the application of  
8 the rate against adjusted gross receipts of the licensed gaming  
9 facility. The rate of tax is thirty-five percent. Of that  
10 thirty-five percent:

11 (1) If the licensed gaming facility is located in a historic  
12 resort hotel, thirty percent shall be directly deposited by the  
13 commission into the Historic Resort Hotel Fund created in section  
14 twenty-two of this article and the remaining five percent shall be  
15 directly deposited by the commission into the Human Resource Benefit  
16 Fund created in section twenty-two-a of this article; or

17 (2) If the licensed gaming facility is located in a rural  
18 resort community, thirty percent shall be directly deposited by the  
19 commission into the Rural Resort Community Fund created in section  
20 twenty-two-b of this article and the remaining five percent shall  
21 be directly deposited by the commission into the Rural Resort  
22 Community Fund created in section twenty-two-b of this article. ~~For~~  
23 ~~purposes of calculating the amount of tax due under this section,~~  
24 ~~the licensee shall use the accrual method of accounting. This tax~~  
25 ~~is in addition to all other taxes and fees imposed: *Provided, That*~~  
26 ~~the consumers sales and service tax imposed pursuant to article~~

1 ~~fifteen, chapter eleven of this code may not apply to the proceeds~~  
2 ~~from any wagering with respect to a West Virginia Lottery table game~~  
3 ~~pursuant to this article.~~

4 (b) *Computation and payment of tax.* - For purposes of  
5 calculating the amount of tax due under this section, the licensee  
6 shall use the accrual method of accounting. This tax is in addition  
7 to all other taxes and fees imposed: *Provided, That the consumers*  
8 sales and service tax imposed pursuant to article fifteen, chapter  
9 eleven of this code may not apply to the proceeds from any wagering  
10 with respect to a West Virginia Lottery table game pursuant to this  
11 article. The taxes levied under the provisions of this section are  
12 due and payable to the commission in weekly installments on or  
13 before the Wednesday of each week. The taxpayer shall, on or before  
14 the Wednesday of each week, make out and submit by electronic  
15 communication to the commission a return for the preceding week, in  
16 the form prescribed by the commission, showing: (1) The total gross  
17 receipts from the gaming facility for that month and the adjusted  
18 gross receipts; (2) the amount of tax for which the taxpayer is  
19 liable; and (3) any further information necessary in the computation  
20 and collection of the tax which the Tax Commissioner or the  
21 commission may require. Payment of the amount of tax due shall  
22 accompany the return. All payments made pursuant to this section  
23 shall be deposited in accordance with sections twenty-two, ~~and~~  
24 twenty-two-a, *twenty-two-b* and *twenty-two-c* of this article.  
25 Payments due to the commission under this section and payments due  
26 to the commission under section twenty of this article shall be sent

1 simultaneously.

2       (c) *Negative adjusted gross receipts.* - When adjusted gross  
3 receipts for a week is a negative number because the winnings paid  
4 to patrons wagering on ~~the~~ a gaming facility's West Virginia Lottery  
5 table games exceeds the gaming facility's gross receipts from the  
6 purchase of table game tokens, chips or electronic media by patrons,  
7 the commission shall allow the licensee to, pursuant to rules of the  
8 commission, carry over the negative amount of adjusted gross  
9 receipts to returns filed for subsequent weeks. The negative amount  
10 of adjusted gross receipts may not be carried back to an earlier  
11 week and the commission is not required to refund any tax received  
12 by the commission, except when the licensee surrenders its license  
13 to act as agent of the commission in operating West Virginia Lottery  
14 table game under this article and the licensee's last return filed  
15 under this section shows negative adjusted gross receipts. In that  
16 case, the commission shall multiply the amount of negative adjusted  
17 gross receipts by the applicable rate of tax and pay the amount to  
18 the licensee, in accordance with rules of the commission.

19       (d) *Prohibition on credits.* - Notwithstanding any other  
20 provision of this code to the contrary, no credits may be allowed  
21 against any tax imposed on any taxpayer by this code for an  
22 investment in gaming devices and supplies, for an investment in real  
23 property which would be directly utilized for the operation of a  
24 gaming facility or for any jobs created at a gaming facility.  
25 Notwithstanding any other provision of this code to the contrary,  
26 the tax imposed by this section may not be added to federal taxable



1 income in determining West Virginia taxable income of a taxpayer for  
2 purposes of article twenty-four, chapter eleven of this code.

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

4 (1) With the exception of the ad valorem property tax collected  
5 under chapter eleven-a of this code, the tax imposed by this section  
6 is in lieu of all other state taxes and fees imposed on the  
7 operation of, or the proceeds from operation of West Virginia  
8 Lottery table games, except as otherwise provided in this section.  
9 The consumers sales and service tax imposed pursuant to article  
10 fifteen, chapter eleven of this code shall not apply to the  
11 licensee's gross receipts from any wagering on a West Virginia  
12 Lottery table game pursuant to this article or to the licensee's  
13 purchasing of gaming equipment, supplies or services directly used  
14 in operation of a West Virginia Lottery table games authorized by  
15 this article. These purchases are also exempt from the use tax  
16 imposed by article fifteen-a, chapter eleven of this code.

17 (2) With the exception of the ad valorem property tax collected  
18 under chapter eleven-a of this code, the tax imposed by this section  
19 is in lieu of all local taxes and fees levied on or imposed with  
20 respect to the privilege of offering a West Virginia Lottery table  
21 game to the public, including, but not limited to, the municipal  
22 business and occupation taxes and amusement taxes authorized by  
23 article thirteen, chapter eight of this code and the municipal sales  
24 and service tax and use tax authorized by article thirteen-c of said  
25 chapter.

26 **§29-25-22b. Rural Resort Community Fund; allocation of adjusted**

1                   **gross receipts; disposition of license fees.**

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

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

21          (c) A Rural Resort Community Modernization Fund is hereby  
22 created within the Rural Resort Community Fund. For all fiscal years  
23 beginning on or after July 1, 2013, the commission shall deduct two  
24 and one-half percent from gross terminal income received by the  
25 commission under section twenty of this article for the fiscal year  
26 and deposit these amounts into a separate facility modernization

1 account maintained within the Rural Resort Community Modernization  
2 Fund for each rural resort community. For each dollar expended by  
3 a rural resort community for video lottery or table gaming facility  
4 modernization improvements at the rural resort community, having a  
5 useful life of three or more years and placed in service after July  
6 1, 2013, the rural resort community shall receive \$1 in recoupment  
7 from its facility modernization account. For purposes of this  
8 section, the term "video lottery or table gaming facility  
9 modernization improvements" include acquisition of computer hardware  
10 and software, communications and Internet access equipment, security  
11 and surveillance equipment, video lottery terminals and other  
12 electronic equipment or other equipment designed to modernize the  
13 facility.

14 (d) The balance of the Rural Resort Community Fund shall become  
15 net income and shall be divided as follows:

16 (1) Sixty-four percent of the Rural Resort Community Fund net  
17 income shall be paid into the General Revenue Fund to be  
18 appropriated by the Legislature;

19 (2) Nineteen percent of the Rural Resort Community Fund net  
20 income shall be paid into the State Debt Reduction Fund established  
21 in section twenty-seven, article twenty-two-c of this chapter to be  
22 appropriated by the Legislature;

23 (3) The Tourism Promotion Fund established in section twelve,  
24 article two, chapter five-b of this code shall receive three percent  
25 of the Rural Resort Community Fund net income;

26 (4) The county where the gaming facility is located shall

1 receive four percent of the Rural Resort Community Fund net income;

2       (5) The municipality where the gaming facility is located or  
3 the municipality closest to the gaming facility by paved road access  
4 as of the effective date of the reenactment of this section by the  
5 2013 regular session of the Legislature shall receive two and  
6 one-half percent of the Rural Resort Community Fund net income;

7       (6) The municipalities within the county where the gaming  
8 facility is located, except for the municipality receiving funds  
9 under subdivision (5) of this subsection, shall receive equal shares  
10 of two and one-half percent of the Rural Resort Community Fund net  
11 income, if no other municipality is located within the county where  
12 the gaming facility is located as of the effective date of the  
13 reenactment of this section by the 2013 regular session of the  
14 Legislature then the equal shares shall be received by the county's  
15 board of education;

16       (7) Each county commission in the state that is not eligible  
17 to receive a distribution under subdivision (4) of this subsection  
18 shall receive equal shares of two and one-half percent of the Rural  
19 Resort Community Fund net income: *Provided*, That funds transferred  
20 to the county commission under this subdivision shall be used only  
21 to pay regional jail expenses and the costs of infrastructure  
22 improvements and other capital improvements; and

23       (8) The governing body of each municipality in the state that  
24 is not eligible to receive a distribution under subdivisions (5) and  
25 (6) of this subsection shall receive equal shares of two and  
26 one-half percent of the Rural Resort Community Fund net income:

1 *Provided*, That funds transferred to municipalities under this  
2 subdivision shall be used only to pay for debt reduction in  
3 municipal police and fire pension funds and the costs of  
4 infrastructure improvements and other capital improvements.

5 (e) Notwithstanding any provision of this article to the  
6 contrary, all limited gaming facility license fees and license  
7 renewal fees received by the commission pursuant to section nine of  
8 this article shall be deposited into the community-based service  
9 fund created in section twenty-seven, article twenty-two-c of this  
10 chapter.

11 (f) With the exception of the license fees and license renewal  
12 fees received by the commission pursuant to section nine of this  
13 article, all revenues received from licensees and license applicants  
14 under this article shall be retained by the commission as  
15 reimbursement for the licensing process.

16 **§29-25-22c. Rural Resort Community Human Resource Benefit Fund.**

17 (a) There is hereby created a special fund in the State  
18 Treasury which shall be designated and known as the Rural Resort  
19 Community Human Resource Benefit Fund. Seventeen percent of the  
20 gross terminal income received by the commission under section  
21 twenty of this article and five percent of the adjusted gross  
22 receipts received by the commission under section twenty-one of this  
23 article shall be deposited with the State Treasurer and placed in  
24 the Rural Resort Community Human Resource Benefit Fund. The fund  
25 shall be an interest-bearing account with interest to be credited  
26 to and deposited in the Rural Resort Community Human Resource

1 Benefit Fund.

2 (b) For each dollar expended by a rural resort community for  
3 fringe benefits for the employees of the rural resort community, the  
4 commission shall transfer to the rural resort community \$1 of  
5 recoupment from the Rural Resort Community Human Resource Benefit  
6 Fund: *Provided*, That the rural resort community is not entitled to  
7 recoupment for money spent on fringe benefits beyond the amount of  
8 money available to be expended from the Rural Resort Community Human  
9 Resource Benefit Fund at the time the request for recoupment is made  
10 by the rural resort community.

11 (c) The commission shall have full rights and powers to audit  
12 the spending of money from the Human Resource Benefit Fund to ensure  
13 that the money is being used in the manner prescribed under this  
14 section. The commission shall have the power and authority to audit  
15 as frequently as it sees fit, so long as it conducts at least two  
16 audits each fiscal year.

17 (d) There is hereby created the Rural Resort Community Human  
18 Resource Benefit Advisory Board, which shall meet every six months  
19 to verify the commission's audit.

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

22 (A) One member shall be a representative of the collective  
23 bargaining unit that represents a majority of the employees of the  
24 rural resort community or if no collective bargaining unit has been  
25 established then the employees of the rural resort community shall  
26 elect a representative who will represent the majority of the

1 employees;

2 (B) One member shall be a representative of the rural resort  
3 community; and

4 (C) Three members shall be employees of the commission.

5 (2) The members shall be appointed or elected by the entity or  
6 persons that they represent. Establishment of terms for members  
7 shall be determined by the entity or persons that they represent,  
8 if the entity or persons choose to set terms.

9 (3) A majority of members constitutes a quorum for the  
10 transaction of business.

11 (4) The board shall meet every six months at the headquarters  
12 of the commission. Upon its own motion or upon the request of the  
13 commission, it may hold meetings in addition to the required  
14 meetings. The commission shall pay the travel expenses of members  
15 of the board who are not employed by the commission.

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

17 (6) The board shall operate in an advisory capacity. Its  
18 functions include, but are not limited to, reviewing and verifying  
19 financial audits of the Rural Resort Community Human Resource  
20 Benefit Fund conducted by the commission and its employees and  
21 reviewing source documents associated with disbursements from the  
22 Rural Resort Community Human Resource Benefit Fund.

23 (7) Within thirty days of any board meeting, the board shall  
24 report to the commission its findings and any recommendations it may  
25 have. The report to the commission shall be made at a commission  
26 meeting that is open to the public.

1 (e) In the event that an audit conducted by the commission, or  
2 suggested changes to the audit submitted by the board and adopted  
3 by the commission, reveals that the rural resort community has acted  
4 improperly or negligently in its claim for money from the Rural  
5 Resort Community Human Resource Benefit Fund, the commission may  
6 impose a civil penalty against the rural resort community of up to  
7 one hundred percent of the improperly claimed amount. Any civil  
8 penalty imposed on the rural resort community by the commission  
9 under this subsection shall be deposited by the commission into the  
10 Rural Resort Community Fund.

11 **§29-25-24. Individual gaming restrictions.**

12 (a) An individual may enter a designated gaming area or remain  
13 in a designated gaming area only if the individual meets the  
14 qualifications in subdivisions (1) through (5) of this subsection.

15 (1) ~~Is~~ If the designated gaming area is located within the  
16 historic resort hotel, then the individual must be either:

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

19 (B) A person who is a not a registered overnight guest, but is  
20 a registered participant at a convention or event being held at the  
21 historic resort hotel: *Provided*, That this paragraph does not apply  
22 on any calendar day when less than four hundred guest rooms are  
23 occupied at the historic resort hotel; or

24 (C) A member of a homeowner or facility association that  
25 entitles members to substantial privileges at the historic resort  
26 hotel on whose premises the gaming facility is located or an



1 overnight guest of such a member: *Provided*, That the association  
2 was in existence as of April 1, 2009.

3 (2) The individual is at least twenty-one years of age.

4 (3) The individual is not visibly intoxicated.

5 (4) The individual has not been determined by ~~the~~ a gaming  
6 facility operator or the commission to be unruly, disruptive or  
7 otherwise interfering with operation of the gaming facility; or to  
8 be likely to commit, or to attempt to commit, a violation of this  
9 article. ~~and~~

10 (5) The individual has not been barred by the commission from  
11 entering a gaming facility.

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

16 **§29-25-28. Specific provision for video lottery games.**

17 The commission is authorized to implement and operate video  
18 lottery games at ~~one~~ a gaming facility in this state in accordance  
19 with the provisions of this article and the applicable provisions  
20 of article twenty-two-a of this chapter. The provisions of said  
21 article apply to this article, except in the event of conflict or  
22 inconsistency between any of the provisions of this article and the  
23 provisions of article twenty-two-a of this chapter. In that event,  
24 the provisions of this article shall supersede any conflicting or  
25 inconsistent provisions contained in article twenty-two-a of this  
26 chapter.

1 **§29-25-29. Video lottery terminal requirements; application for**  
2 **approval of video lottery terminals; testing of video**  
3 **lottery terminals; report of test results;**  
4 **modifications to previously approved models;**  
5 **conformity to prototype; seizure and destruction of**  
6 **terminals.**

7 (a) Video lottery terminals registered with and approved by the  
8 commission for use at ~~the~~ a gaming facility may offer video lottery  
9 games regulated, controlled, owned and operated by the commission  
10 in accordance with the provisions of this section and utilizing  
11 specific game rules.

12 (b) A manufacturer may not sell or lease a video lottery  
13 terminal for placement at ~~the~~ a gaming facility unless the terminal  
14 has been approved by the commission. Only manufacturers with  
15 licenses may apply for approval of a video lottery terminal or  
16 associated equipment. The manufacturer shall submit two copies of  
17 terminal illustrations, schematics, block diagrams, circuit  
18 analysis, technical and operation manuals and any other information  
19 requested by the commission for the purpose of analyzing and testing  
20 the video lottery terminal or associated equipment.

21 (c) The commission may require that two working models of a  
22 video lottery terminal be transported to the location designated by  
23 the commission for testing, examination and analysis.

24 (1) The manufacturer shall pay all costs of testing,  
25 examination, analysis and transportation of such video lottery

1 terminal models. The testing, examination and analysis of any video  
2 lottery terminal model may require dismantling of the terminal and  
3 some tests may result in damage or destruction to one or more  
4 electronic components of such terminal model. The commission may  
5 require that the manufacturer provide specialized equipment or pay  
6 for the services of an independent technical expert to test the  
7 terminal.

8       (2) The manufacturer shall pay the cost of transportation of  
9 two video lottery terminals to lottery headquarters. The commission  
10 shall conduct an acceptance test to determine terminal functions and  
11 central system compatibility. If the video lottery terminal fails  
12 the acceptance test conducted by the commission, the manufacturer  
13 shall make all modifications required by the commission.

14       (d) After each test has been completed, the commission shall  
15 provide the terminal manufacturer with a report containing findings,  
16 conclusions and pass/fail results. The report may contain  
17 recommendations for video lottery terminal modification to bring the  
18 terminal into compliance with the provisions of this article. Prior  
19 to approving a particular terminal model, the commission may require  
20 a trial period not to exceed sixty days for a licensed gaming  
21 facility to test the terminal. During the trial period, the  
22 manufacturer may not make any modifications to the terminal model  
23 unless modifications are approved by the commission.

24       (e) The video lottery terminal manufacturer and licensed gaming  
25 facility are jointly responsible for the assembly and installation  
26 of all video lottery terminals and associated equipment. The

1 manufacturer and licensed gaming facility shall not change the  
2 assembly or operational functions of a terminal licensed for  
3 placement in West Virginia unless a request for modification of an  
4 existing video terminal prototype is approved by the commission.  
5 The request shall contain a detailed description of the type of  
6 change, the reasons for the change and technical documentation of  
7 the change.

8 (f) Each video lottery terminal approved for placement at ~~the~~  
9 a gaming facility shall conform to the exact specifications of the  
10 video lottery terminal prototype tested and approved by the  
11 commission. If any video lottery terminal or any video lottery  
12 terminal modification, which has not been approved by the  
13 commission, is supplied by a manufacturer and operated by ~~the~~ a  
14 gaming facility, the commission shall seize and destroy all of that  
15 licensed gaming facility's and manufacturer's noncomplying video  
16 lottery terminals and shall suspend the license and permit of the  
17 licensed gaming facility and manufacturer.

18 **§29-25-30. Video lottery terminal hardware and software**  
19 **requirements; hardware specifications; software**  
20 **requirements for randomness testing; software**  
21 **requirements for percentage payout; software**  
22 **requirements for continuation of video lottery**  
23 **game after malfunction; software requirements for**  
24 **play transaction records.**

25 (a) The commission may approve video lottery terminals and in

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

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

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

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

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

23 (5) A bill or voucher acceptor or other means accurately and  
24 efficiently to establish credits shall be installed on each video  
25 lottery terminal. All acceptors shall be approved by the commission  
26 prior to use on any video lottery terminal in this state.

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

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

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

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

15 (10) Each video lottery terminal shall contain a single  
16 printing mechanism capable of printing an original ticket and  
17 capturing and retaining an electronic copy of the ticket data as  
18 approved by the commission: *Provided*, That the printing mechanism  
19 is optional on any video lottery terminal which is designed and  
20 equipped exclusively for coin or token payouts. The following  
21 information shall be recorded on the ticket when credits accrued on  
22 a video lottery terminal are redeemed for cash:

23 (i) The number of credits accrued;

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

26 (iii) Time of day and date;

1 (iv) Validation number; and

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

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

6 (i) Manufacturer of the video lottery terminal;

7 (ii) Serial number of the terminal; and

8 (iii) Model number of the terminal.

9 (12) The rules of play for each game shall be displayed on the  
10 video lottery terminal face or screen. The commission may reject  
11 any rules of play which are incomplete, confusing, misleading or  
12 inconsistent with game rules approved by the commission. For each  
13 video lottery game, there shall be a display detailing the credits  
14 awarded for the occurrence of each possible winning combination of  
15 numbers or symbols. All information required by this subdivision  
16 shall be displayed under glass or another transparent substance.  
17 No stickers or other removable devices may be placed on the video  
18 lottery terminal screen or face without the prior approval of the  
19 commission.

20 (13) Communication equipment and devices shall be installed to  
21 enable each video lottery terminal to communicate with the  
22 commission's central computer system by use of a communications  
23 protocol provided by the commission to each permitted manufacturer,  
24 which protocol shall include information retrieval and terminal  
25 activation and disable programs, and the commission may require each  
26 licensed racetrack to pay the cost of a central site computer as a

1 part of the licensing requirement.

2 (14) All video lottery terminals shall have a security system  
3 which temporarily disables the gaming function of the terminal while  
4 opened.

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

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

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

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

23 (4) *Serial correlation test.* - Each symbol or number is random  
24 if it meets the ninety-nine percent confidence level using standard  
25 serial correlation analysis to determine whether each symbol or  
26 number is independently chosen without reference to the same symbol



1 or number in a previous game.

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

6 (d) Each video lottery terminal shall be capable of continuing  
7 the current game with all current game features after a video  
8 lottery terminal malfunction is cleared. If a video lottery  
9 terminal is rendered totally inoperable during game play, the  
10 current wager and all credits appearing on the video lottery  
11 terminal screen prior to the malfunction shall be returned to the  
12 player.

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

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

21 (2) Number of credits wagered;

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

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

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

25 (6) Number of times the logic area was accessed;

26 (7) Number of times the cash door was accessed;

1 (8) Number of credits wagered in the current game;

2 (9) Number of credits won in the last complete video lottery  
3 game; and

4 (10) Number of cumulative credits representing money inserted  
5 by a player and credits for video lottery games won, but not  
6 collected.

7 (f) No video lottery terminal may have any mechanism which  
8 allows the electronic accounting meters to clear automatically.  
9 Electronic accounting meters may not be cleared without the prior  
10 approval of the commission. Both before and after any electronic  
11 accounting meter is cleared, all meter readings shall be recorded  
12 in the presence of a commission employee.

13 (g) The primary responsibility for the control and regulation  
14 of any video lottery games and video lottery terminals operated  
15 pursuant to this article rests with the commission.

16 (h) The commission shall directly or through a contract with  
17 a third party vendor other than the video lottery licensee, maintain  
18 a central site system of monitoring the lottery terminals, utilizing  
19 an online or dial-up inquiry. The central site system shall be  
20 capable of monitoring the operation of each video lottery game or  
21 video lottery terminal operating pursuant to this article and, at  
22 the direction of the director, immediately disable and cause not to  
23 operate any video lottery game and video lottery terminal. As  
24 provided in this section, the commission may require the licensed  
25 racetrack to pay the cost of a central site computer as part of the  
26 licensing requirement.

1 **§29-25-31. The specific video lottery duties required of a gaming**  
2 **facility.**

3 ~~The~~ A gaming facility licensee shall:

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

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

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

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

18 (e) Ensure that video lottery terminals are within the sight  
19 and control of designated employees of ~~the~~ a licensed gaming  
20 facility;

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

26 (g) Monitor video lottery terminals to prevent access to or

1 play by persons who are under the age of twenty-one years or who are  
2 visibly intoxicated;

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

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

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

10 (k) Report promptly to the manufacturer and the commission all  
11 video lottery terminal malfunctions and notify the commission of the  
12 failure of a manufacturer or service technician to provide prompt  
13 service and repair of such terminals and associated equipment;

14 (l) Install, post and display prominently at locations within  
15 or about the licensed gaming facility signs, redemption information  
16 and other promotional material as required by the commission; and

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

19 **§29-25-32. Surcharge; Capital Reinvestment Fund.**

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

24 (b) The Capital Reinvestment Fund is hereby created within the  
25 Lottery Fund. The surcharge amount attributable to the historic  
26 resort hotel or rural resort community shall be retained by the

1 commission and deposited into a separate capital reinvestment  
2 account for ~~the historic resort hotel~~ each contributing licensed  
3 gaming facility. For each dollar expended by ~~the historic resort~~  
4 ~~hotel~~ a licensed gaming facility for capital improvements at the  
5 ~~historic resort hotel~~ licensed gaming facility, of any amenity  
6 associated with the historic resort hotel's or rural resort  
7 community's destination resort facility operations, or at adjacent  
8 facilities owned by the historic resort hotel or rural resort  
9 community having a useful life of seven or more years and placed in  
10 service after April 1, 2009, ~~the~~ a licensed gaming facility shall  
11 receive \$1 in recoupment from its Capital Reinvestment Fund account:  
12 If a historic resort hotel's or rural resort community's unrecouped  
13 capital improvements exceed its Capital Reinvestment Fund account  
14 at the end of any fiscal year, the excess improvements may be  
15 carried forward to seven subsequent fiscal years.

16 (c) (1) If the gaming facility is located in the historic  
17 resort hotel, any moneys remaining in the historic resort hotel's  
18 Capital Reinvestment Fund account at the end of any fiscal year  
19 shall be deposited in the Historic Resort Hotel Fund; or

20 (2) If the gaming facility is located in the rural resort  
21 community, any moneys remaining in the rural resort community's  
22 Capital Reinvestment Fund account at the end of any fiscal year  
23 shall be deposited in the Rural Resort Community Fund.

24 **§29-25-34. State ownership of West Virginia Lottery table games.**

25 All West Virginia Lottery table games authorized by this  
26 article shall be West Virginia lottery games owned by the State of

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

11 **§29-25-35. Preemption.**

12 No local law or rule providing any penalty, disability,  
13 restriction, regulation or prohibition for operating a historic  
14 resort hotel or rural resort community with West Virginia Lottery  
15 table games or supplying a licensed gaming facility may be enacted  
16 and the provisions of this article preempt all regulations, rules,  
17 ordinances and laws of any county or municipality in conflict with  
18 this article.

19 **§29-25-37. Game rules of play; disputes.**

20 (a) As an agent of the commission authorized to operate West  
21 Virginia Lottery table games, ~~the~~ a gaming facility licensee shall  
22 have written rules of play for each West Virginia Lottery table game  
23 it operates that are approved by the commission before the West  
24 Virginia Lottery table game is offered to the public. Rules of play  
25 proposed by the gaming facility may be approved, amended or rejected  
26 by the commission.

1 (b) All West Virginia Lottery table games shall be conducted  
2 according to the specific rules of play approved by the commission.  
3 All wagers and pay-offs of winning wagers shall be made according  
4 to those rules of play, which shall establish any limitations  
5 necessary to assure the vitality of West Virginia Lottery table game  
6 operations.

7 (c) ~~The~~ A gaming facility licensee shall make available in  
8 printed form to any patron, upon request of the patron, the complete  
9 texts of the rules of play of any West Virginia Lottery table games  
10 in operation at ~~the~~ a gaming facility, pay-offs of winning wagers  
11 and any other advice to the player required by the commission.

12 (d) Patrons are considered to have agreed that the  
13 determination of whether the patron is a valid winner is subject to  
14 the game of play rules and, in the case of any dispute, will be  
15 determined by the commission. The determination by the commission  
16 shall be final and binding upon all patrons and shall not be subject  
17 to further review or appeal.

18 **§29-25-38. Shipment of gambling devices.**

19 All shipments of gambling devices, including video lottery  
20 machines, to ~~the~~ a licensed gaming facility in this state, the  
21 registering, recording and labeling of which have been completed by  
22 the manufacturer or dealer thereof in accordance with Chapter 1194,  
23 64 Stat. 1134, 15 U. S. C. §1171 to §1178, are legal shipments of  
24 gambling devices into the State of West Virginia.

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(NOTE: The purpose of this bill is to authorize a rural resort community as a limited gaming facility. The bill also repeals §29-25-7 relating to local options.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§29-25-22b and §29-25-22c are new; therefore, strike-throughs and underscoring have been omitted.)

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FINANCE COMMITTEE AMENDMENTS

On page nine, section two, line twelve, by striking out "\$80" and inserting in lieu thereof "\$60";

On page nine, section two, line fifteen, by striking out the word "adequate" and inserting in lieu thereof the word "inadequate";

And,

On page nine, section two, line twenty-one, by striking out the word "within" and inserting in lieu thereof the word "from".