

E N G R O S S E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 492

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

[Originating in the Committee on the Judiciary;
reported March 28, 2013.]

A BILL to repeal §29-25-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-34, §29-25-35, §29-25-37 and §29-25-38 of said code; and to amend said code by adding thereto two new sections, designated §29-25-22b and §29-25-22c, all relating to gaming facilities; authorizing gaming facilities; permitting a rural resort

community as limited gaming facility; defining terms; creating the Rural Resort Community Fund and Rural Resort Community Human Resource Benefit Fund; providing for the regulation and control of a rural resort community; and repealing the local option provision of this article.

Be it enacted by the Legislature of West Virginia:

That §29-25-7 of the Code of West Virginia, 1931, as amended, be repealed; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28,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

ARTICLE 25. AUTHORIZED GAMING FACILITY.

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

- 1 (a) *Operation of West Virginia Lottery table games.* –
- 2 Notwithstanding any provision of law to the contrary, the

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

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

20 The Legislature finds and declares that video lottery
21 operations pursuant to section twenty-eight of this article and

22 the operation of the other West Virginia Lottery table games
23 permitted by this article constitute the operation of lotteries
24 within the purview of section thirty-six, Article VI of the
25 Constitution of West Virginia.

26 (c) *Legislative intent.* – It is the intent of the Legislature
27 in the enactment of this article to promote tourism and
28 year-round employment in this state. It is expressly not the
29 intent of the Legislature to promote gaming. As a
30 consequence, it is the intent of the Legislature to allow
31 limited gaming as authorized by this article and article
32 twenty-two-c of this chapter with all moneys gained from the
33 operation of ~~the~~ a gaming facility, other than those necessary
34 to reimburse reasonable costs of operation, to inure to the
35 benefit of the state. Further, it is the intent of the Legislature
36 that amendments made to this article during the 2009 regular
37 session will establish appropriate conformity between the
38 operations of video lottery and West Virginia Lottery table
39 games at ~~the~~ a licensed gaming facility under this article and
40 the operations of video lottery and table games at the

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41 pari-mutuel racetracks licensed under articles twenty-two-a
42 and twenty-two-c of this chapter.

§29-25-2. Definitions.

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

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

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

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

15 (d) “Background investigation” means a security,
16 criminal and credit investigation of an applicant who has

17 applied for the issuance or renewal of a license pursuant to
18 this article or a licensee who holds a current license.

19 (e) “Controlling interest” means:

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

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

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

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

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

31 (h) “Designated gaming area” means one or more specific
32 floor areas of a licensed gaming facility within which the
33 commission has authorized operation of video lottery
34 terminals or West Virginia Lottery table games, or the

35 operation of both video lottery terminals and West Virginia
36 Lottery table games.

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

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

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

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

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

56 (m) “Gaming facility” means a designated area on the
57 premises of an existing historic resort hotel or a rural resort
58 community in which West Virginia Lottery table games are
59 conducted by a gaming licensee.

60 (n) “Gaming licensee” means the licensed operator of a
61 gaming facility.

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

67 (p) “Gross terminal income”, as used in this article and as
68 used in article twenty-two-a of this chapter, means the total
69 amount of cash, vouchers or tokens inserted into the video
70 lottery terminals operated by a licensee, minus promotional
71 credits played, and minus the total value of coins and tokens
72 won by a player and game credits which are cleared from the

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73 video lottery terminals in exchange for winning redemption
74 tickets.

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

81 (r) “Historic Resort Hotel Fund” means the special fund
82 in the State Treasury created in section twenty-two of this
83 article.

84 (s) “Human Resource Benefit Fund” means the special
85 fund in the State Treasury created in section twenty-two-a of
86 this article.

87 (t) “Human Resource Benefit Advisory Board” or
88 “board” means the advisory board created in section
89 twenty-two-a of this article.

90 (u) “License” means a license issued by the commission,
91 including:

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

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

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

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

99 (v) “Licensed gaming facility employee” means any
100 individual licensed to be employed by a gaming licensee in
101 connection with the operation of a gaming facility.

102 (w) “Licensed gaming facility supplier” means a person
103 who is licensed by the commission to engage in the business
104 of supplying gaming devices and gaming supplies to a
105 gaming facility.

106 (x) “Licensee” means a gaming licensee, a licensed
107 gaming facility supplier or a licensed gaming facility
108 employee.

109 (y) “Manufacturer” means any person holding a license
110 granted by the commission to engage in the business of

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111 designing, building, constructing, assembling or
112 manufacturing video lottery terminals, the electronic
113 computer components of the video lottery terminals, the
114 random number generator of the video lottery terminals, or
115 the cabinet in which it is housed, and whose product is
116 intended for sale, lease or other assignment to a licensed
117 gaming facility in West Virginia and who contracts directly
118 with the licensee for the sale, lease or other assignment to a
119 licensed gaming facility in West Virginia.

120 (z) “Net terminal income” means gross terminal income
121 minus an amount deducted by the commission to reimburse
122 the commission for its actual cost of administering video
123 lottery at the licensed gaming facility. No deduction for any
124 or all costs and expenses of a licensee related to the operation
125 of video lottery games shall be deducted from gross terminal
126 income.

127 (aa) “Person” means any natural person, corporation,
128 association, partnership, limited partnership, limited liability

129 company or other entity, regardless of its form, structure or
130 nature.

131 (bb) “Premises of an existing historic resort hotel” means
132 the historic resort hotel, attachments of the historic resort
133 hotel, and the traditional, immediate grounds of the historic
134 resort hotel.

135 (cc) “Premises of a rural resort community” means the
136 rural resort community, attachments of the rural resort
137 community and the immediate grounds of the rural resort
138 community.

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

144 (ee) “Rural resort community” means:

145 (1) A planned community with no less than one thousand
146 planned home sites occupying no less than one thousand
147 contiguous or adjacent acres which includes;

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

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

152 (4) A planned development with specific amenities for
153 guests and residents including green spaces, walking, hiking,
154 jogging trails, swimming pools, lakes or other areas, tennis
155 facilities, golfing facilities, fitness facilities, private, public
156 and community meeting space and other recreation activities;

157 (5) A planned development with an overall project cost
158 of no less than \$60 million at the time of any application
159 toward gaming license; and

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

162 (A) An inadequate economic base within the county from
163 any source other than tourism;

164 (B) A population of less than fifteen persons per square
165 mile in an overall county population of less than ten thousand

166 persons according to the most recent United States Census at
167 the time of application; and

168 (C) Access to state and national forest from the county in
169 which the rural resort community is located.

170 (ff) “Rural Resort Community Fund” means the special
171 fund in the State Treasury created in section twenty-two-b of
172 this article.

173 (gg) “Rural Resort Community Human Resource Benefit
174 Fund” means the special fund in the State Treasury created in
175 section twenty-two-c of this article.

176 (hh) “Rural Resort Community Human Resource Benefit
177 Advisory Board” or “board” means the advisory board
178 created in section twenty-two-c of this article.

179 ~~(dd)~~ (ii) “Video lottery game”, as used in this article and
180 as used in article twenty-two-a of this chapter, means a
181 commission-approved, -owned and -controlled electronically
182 simulated game of chance which is displayed on a video
183 lottery terminal and which:

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

186 (2) Is initiated by a player's insertion of cash, vouchers
187 or tokens into a video lottery terminal, which causes game
188 play credits to be displayed on the video lottery terminal and,
189 with respect to which, each game play credits entitles a
190 player to choose one or more symbols or numbers or to cause
191 the video lottery terminal to randomly select symbols or
192 numbers;

193 (3) Allows the player to win additional game play credits,
194 coins or tokens based upon game rules which establish the
195 random selection of winning combinations of symbols or
196 numbers or both and the number of free play credits, coins or
197 tokens to be awarded for each winning combination of
198 symbols or numbers or both;

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

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

206 (A) Signals the player, prior to any optional selection by
207 the player of randomly generated replacement symbols or
208 numbers, as to which symbols or numbers should be retained
209 by the player to present the best chance, based upon
210 probabilities, that the player may select a winning
211 combination;

212 (B) Signals the player, prior to any optional selection by
213 the player of randomly generated additional symbols or
214 numbers, as to whether such additional selection presents the
215 best chance, based upon probabilities, that the player may
216 select a winning combination; or

217 (C) Randomly generates additional or replacement
218 symbols and numbers for the player after automatically
219 selecting the symbols and numbers which should be retained
220 to present the best chance, based upon probabilities, for a

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221 winning combination, so that in any event, the player is not
222 permitted to benefit from any personal skill, based upon a
223 knowledge of probabilities, before deciding which optional
224 numbers or symbols to choose in the course of video lottery
225 game play;

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

230 (7) Does not use the following game themes commonly
231 associated with casino gambling: Roulette, dice or baccarat
232 card games: *Provided*, That games having a display with
233 symbols which appear to roll on drums to simulate a classic
234 casino slot machine, game themes of other card games and
235 keno may be used.

236 ~~(cc)~~ (jj) “Wager” means a sum of money or thing of value
237 risked on an uncertain occurrence.

238 ~~(ff)~~ (kk) “West Virginia Lottery table game” means any
239 game played with cards, dice or any mechanical,

240 electromechanical or electronic device or machine for money,
241 credit or any representative of value, including, but not
242 limited to, baccarat, blackjack, poker, craps, roulette, wheel
243 of fortune or any variation of these games similar in design
244 or operation and expressly authorized by rule of the
245 commission, including multiplayer electronic table games,
246 machines and devices, but excluding video lottery,
247 punchboards, faro, numbers tickets, push cards, jar tickets,
248 pull tabs or similar games.

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

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

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

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

8 (3) Approve, modify or reject minimum internal control
9 standards proposed by the licensee gaming facility for a West

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10 Virginia Lottery table game, including the maintenance of
11 financial books and records;

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

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

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

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

26 (8) Issue all licenses;

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

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

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

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

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

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

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

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

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

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

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

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

§29-25-5. Rules.

1 The commission shall propose for promulgation
2 legislative rules in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code as are necessary to
4 provide for implementation and enforcement of the
5 provisions of this article. Any legislative rules proposed by

6 the commission before September 1, ~~2009~~ 2013, may be by
7 emergency rule.

§29-25-6. Law enforcement.

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

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

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

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

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

14 (b) *Applicant qualifications.* – The applicant shall be the
15 actual operator of the gaming facility to be located on the
16 premises of an existing historic resort hotel or a rural resort
17 community. The applicant may be the owner of the existing
18 historic resort hotel or a rural resort community or a person

19 that leases well-defined spaces on the premises of the historic
20 resort hotel or a rural resort community in order to operate a
21 gaming facility as defined by this article. ~~The resort hotel~~
22 ~~shall be located within the jurisdiction of a county approving~~
23 ~~the operation of a gaming facility in accordance with section~~
24 ~~seven of this article.~~ The applicant shall meet the
25 qualifications and requirements set forth in this article and
26 rules adopted by the commission. In determining whether to
27 grant a license to operate a gaming facility to an applicant,
28 the commission shall consider:

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

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

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

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

45 (c) *Floor plan submission requirement.* – Prior to
46 commencing the operation of any West Virginia Lottery table
47 game in a designated gaming area, ~~the~~ a gaming facility
48 licensee shall submit to the commission for its approval a
49 detailed floor plan depicting the location of the designated
50 gaming area in which West Virginia Lottery table game
51 gaming equipment will be located and its proposed
52 arrangement of the West Virginia Lottery table game gaming
53 equipment. If the floor plans for the designated gaming area
54 preserve the historic integrity of the historic resort hotel or
55 rural resort community where the licensed gaming facility is
56 located, then any floor plan submission that satisfies the

57 requirements of the rules promulgated by the commission
58 shall be considered approved by the commission unless a
59 gaming facility is notified in writing to the contrary within
60 one month of filing a detailed floor plan.

61 (d) *Management service contracts.* –

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

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

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75 (3) *Prohibition on assignment or transfer.* – A
76 management services contract may not be assigned or
77 transferred to a third party.

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

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

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

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

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

103 (C) The identity of the historic resort hotel or rural resort
104 community at which the gaming facility is to be located,
105 including identification of the county in which the historic
106 resort hotel or rural resort community is located; and

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

110 (2) Pay to the commission a nonrefundable application
111 fee for deposit into the Community-Based Service Fund

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112 created in section twenty-seven, article twenty-two-c of this
113 chapter in the amount of \$65,000.

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

122 (1) Each person associated with a corporate applicant,
123 including any corporate holding company, parent company
124 or subsidiary company of the applicant, but not including a
125 bank or other licensed lending institution which holds a
126 mortgage or other lien acquired in the ordinary course of
127 business, who has the ability to control the activities of the
128 corporate applicant or elect a majority of the board of
129 directors of that corporation;

130 (2) Each person associated with a noncorporate applicant
131 who directly or indirectly holds any beneficial or proprietary
132 interest in the applicant or who the commission determines to
133 have the ability to control the applicant; and

134 (3) Key personnel of an applicant, including any
135 executive, employee or agent, having the power to exercise
136 significant influence over decisions concerning any part of
137 the applicant's business operation.

138 (g) *Publicly traded corporations.* – In the event that an
139 applicant or any controlling person of an applicant is a
140 publicly traded corporation, then information otherwise
141 required to be furnished by an applicant with respect to
142 stockholders, directors and executive officers of the publicly
143 traded corporation shall be limited to information concerning
144 only those executive officers of the publicly traded
145 corporation whose ongoing and regular responsibilities relate
146 or are expected to relate directly to the operation or oversight
147 of ~~the~~ a gaming facility. “Publicly traded corporation” as

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148 used herein means any corporation or other legal entity,
149 except a natural person, which has one or more classes of
150 securities registered pursuant to Section twelve of the
151 Securities Exchange Act of 1934, as amended (15 U. S. C.
152 §78), or is an issuer subject to Section fifteen-d of said act.

153 (h) *Gaming facility qualifications.* – An applicant for a
154 license to operate a gaming facility shall demonstrate that the
155 gaming facility will: (1) Be accessible to disabled
156 individuals; (2) not be located at the main entrance to the
157 historic resort hotel or rural resort community; (3) be licensed
158 in accordance with all other applicable federal, state and local
159 laws; and (4) meet any other qualifications specified by rules
160 adopted by the commission.

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

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

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

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

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

183 (k) *Audits.* – A licensed gaming facility operator shall
184 submit to the commission an annual audit, by a certified

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185 public accountant who is, or whose firm is, licensed in the
186 State of West Virginia, or by a nationally recognized
187 accounting firm, of the financial transactions and condition
188 of the licensee's total operations. The audit shall be in
189 accordance with generally accepted auditing principles.

190 (l) *Annual license renewal fee.* – For the second year that
191 it is licensed, ~~the~~ a licensed gaming facility shall pay to the
192 commission a license renewal fee of \$250,000. For the third
193 year that it is licensed, ~~the~~ a licensed gaming facility shall
194 pay to the commission a license renewal fee of \$500,000.
195 For every year after the third year that it is licensed, ~~the~~ a
196 licensed gaming facility shall pay to the commission a license
197 renewal fee that is calculated by determining the annual
198 average gross receipts of the West Virginia pari-mutuel
199 racetracks with table games licenses for the last full fiscal
200 year of adjusted gross receipts available, and dividing that
201 number into the licensed gaming facility operator's adjusted
202 gross receipts for the same full fiscal year of adjusted gross
203 receipts to obtain a percentage, and by multiplying the

204 resulting percentage by \$2,500,000: *Provided*, That the
205 amount required to be paid by the licensed gaming facility
206 shall be not less than \$500,000, nor more than \$2,500,000.

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

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

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

5 (b) *License qualifications.* – To qualify for a license to be
6 employed in a gaming facility, the applicant shall be an
7 individual of good moral character and reputation and have
8 been offered employment by ~~the~~ a gaming facility contingent
9 upon licensure pursuant to the provisions of this section. The

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10 commission, by rule, may specify additional requirements to
11 be met by applicants based on the specific job classification
12 in which the applicant is to be employed.

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

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

19 (2) Submit fingerprints for a national criminal records
20 check by the Criminal Identification Bureau of the West
21 Virginia State Police and the Federal Bureau of Investigation.

22 The fingerprints shall be furnished by all persons required to
23 be named in the application and shall be accompanied by a
24 signed authorization for the release of information by the
25 Criminal Investigation Bureau and the Federal Bureau of
26 Investigation. The commission may require any applicant
27 seeking the renewal of a license or permit to furnish

28 fingerprints for a national criminal records check by the
29 Criminal Identification Bureau of the West Virginia State
30 Police and the Federal Bureau of Investigation; and

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

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

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

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

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

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

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

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

12 (3) The amount of the renewal fee.

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

15 (1) Otherwise is entitled to be licensed;

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

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

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

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

25 (3) Submits to the commission a renewal application in
26 the form that the commission requires accompanied by
27 satisfactory evidence of compliance with any additional
28 requirements set by rules of the commission for license
29 renewal; and

30 (4) Submits to the commission evidence satisfactory to
31 the commission of the gaming facility operator's compliance
32 with the plan described in subdivision (4), subsection (b),
33 section nine of this article to create at least one hundred
34 full-time equivalent positions with a salary and benefit
35 package commensurate with existing employees at the
36 historic resort hotel or rural resort community.

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37 Notwithstanding any provision of subsection (d) of this
38 section, the failure to substantially comply with the plan, as
39 determined by the commission, may constitute grounds for
40 the denial of the renewal of the license.

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

§29-25-18. Inspection and seizure.

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

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

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

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

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

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

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

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30 the grounds of a licensed gaming facility having West
31 Virginia Lottery table games.

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

1 (a) *Consent to presence of law-enforcement officers.* –

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

8 (b) *Commission discretion in gaming operations.* –

9 Video lottery terminals operated at ~~the~~ a gaming facility
10 may allow minimum and maximum wagers on a single
11 game the amounts determined by the license in the exercise
12 of its business judgment subject to the approval of the
13 commission.

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

17 (A) Maximum and minimum wagers;

18 (B) Advertising and promotional activities;

19 (C) Hours of operation;

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

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

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

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(1) Minimum and maximum payout percentages;

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(2) Any probability limits of obtaining the maximum

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payout for a particular play; and

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(3) Limitations on the types and amounts of financial

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transactions, including extension of credit to a patron, which

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a gaming facility can enter into with its patrons.

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(d) *Posting of betting limits.* – A gaming facility shall

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conspicuously post a sign at each West Virginia Lottery table

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game indicating the permissible minimum and maximum

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wagers pertaining at that table. A gaming facility licensee

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may not require any wager to be greater than the stated

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minimum or less than the stated maximum. However, any

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wager actually made by a patron and not rejected by a

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gaming facility licensee prior to the commencement of play

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shall be treated as a valid wager.

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

distribution.

1

(a) ~~The~~ A licensed gaming facility shall submit thirty-six

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percent of the gross terminal income from video lottery

3 games at the licensed gaming facility to the commission
4 through electronic funds transfer to be deposited:

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

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

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

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

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

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21 (c) ~~Each of these~~ The submissions required by this
22 section shall be made to the commission weekly. The
23 gaming licensee shall furnish to the commission all
24 information and bank authorizations required to facilitate the
25 timely transfer of moneys to the commission. The gaming
26 licensee shall provide the commission thirty days' advance
27 notice of any proposed account changes in order to assure the
28 uninterrupted electronic transfer of funds.

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

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

7 (1) If the licensed gaming facility is located in a historic
8 resort hotel, thirty percent shall be directly deposited by the
9 commission into the Historic Resort Hotel Fund created in
10 section twenty-two of this article and the remaining five

11 percent shall be directly deposited by the commission into the
12 Human Resource Benefit Fund created in section
13 twenty-two-a of this article; or

14 (2) If the licensed gaming facility is located in a rural
15 resort community, thirty percent shall be directly deposited
16 by the commission into the Rural Resort Community Fund
17 created in section twenty-two-b of this article and the
18 remaining five percent shall be directly deposited by the
19 commission into the Rural Resort Community Fund created
20 in section twenty-two-b of this article. ~~For purposes of~~
21 ~~calculating the amount of tax due under this section, the~~
22 ~~licensee shall use the accrual method of accounting. This tax~~
23 ~~is in addition to all other taxes and fees imposed. *Provided,*~~
24 ~~That the consumers sales and service tax imposed pursuant to~~
25 ~~article fifteen, chapter eleven of this code may not apply to~~
26 ~~the proceeds from any wagering with respect to a West~~
27 ~~Virginia Lottery table game pursuant to this article.~~

28 (b) *Computation and payment of tax.* – For purposes of
29 calculating the amount of tax due under this section, the

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30 licensee shall use the accrual method of accounting. This tax
31 is in addition to all other taxes and fees imposed: *Provided,*
32 That the consumers sales and service tax imposed pursuant to
33 article fifteen, chapter eleven of this code may not apply to
34 the proceeds from any wagering with respect to a West
35 Virginia Lottery table game pursuant to this article. The
36 taxes levied under the provisions of this section are due and
37 payable to the commission in weekly installments on or
38 before the Wednesday of each week. The taxpayer shall, on
39 or before the Wednesday of each week, make out and submit
40 by electronic communication to the commission a return for
41 the preceding week, in the form prescribed by the
42 commission, showing: (1) The total gross receipts from the
43 gaming facility for that month and the adjusted gross receipts;
44 (2) the amount of tax for which the taxpayer is liable; and (3)
45 any further information necessary in the computation and
46 collection of the tax which the Tax Commissioner or the
47 commission may require. Payment of the amount of tax due
48 shall accompany the return. All payments made pursuant to

49 this section shall be deposited in accordance with sections
50 twenty-two, ~~and~~ twenty-two-a, twenty-two-b and
51 twenty-two-c of this article. Payments due to the commission
52 under this section and payments due to the commission under
53 section twenty of this article shall be sent simultaneously.

54 (c) *Negative adjusted gross receipts.* – When adjusted
55 gross receipts for a week is a negative number because the
56 winnings paid to patrons wagering on ~~the~~ a gaming facility's
57 West Virginia Lottery table games exceeds the gaming
58 facility's gross receipts from the purchase of table game
59 tokens, chips or electronic media by patrons, the commission
60 shall allow the licensee to, pursuant to rules of the
61 commission, carry over the negative amount of adjusted gross
62 receipts to returns filed for subsequent weeks. The negative
63 amount of adjusted gross receipts may not be carried back to
64 an earlier week and the commission is not required to refund
65 any tax received by the commission, except when the
66 licensee surrenders its license to act as agent of the

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67 commission in operating West Virginia Lottery table game
68 under this article and the licensee's last return filed under this
69 section shows negative adjusted gross receipts. In that case,
70 the commission shall multiply the amount of negative
71 adjusted gross receipts by the applicable rate of tax and pay
72 the amount to the licensee, in accordance with rules of the
73 commission.

74 (d) *Prohibition on credits.* – Notwithstanding any other
75 provision of this code to the contrary, no credits may be
76 allowed against any tax imposed on any taxpayer by this code
77 for an investment in gaming devices and supplies, for an
78 investment in real property which would be directly utilized
79 for the operation of a gaming facility or for any jobs created
80 at a gaming facility. Notwithstanding any other provision of
81 this code to the contrary, the tax imposed by this section may
82 not be added to federal taxable income in determining West
83 Virginia taxable income of a taxpayer for purposes of article
84 twenty-four, chapter eleven of this code.

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

86 (1) With the exception of the ad valorem property tax
87 collected under chapter eleven-a of this code, the tax imposed
88 by this section is in lieu of all other state taxes and fees
89 imposed on the operation of, or the proceeds from operation
90 of West Virginia Lottery table games, except as otherwise
91 provided in this section. The consumers sales and service tax
92 imposed pursuant to article fifteen, chapter eleven of this
93 code shall not apply to the licensee’s gross receipts from any
94 wagering on a West Virginia Lottery table game pursuant to
95 this article or to the licensee’s purchasing of gaming
96 equipment, supplies or services directly used in operation of
97 a West Virginia Lottery table games authorized by this
98 article. These purchases are also exempt from the use tax
99 imposed by article fifteen-a, chapter eleven of this code.

100 (2) With the exception of the ad valorem property tax
101 collected under chapter eleven-a of this code, the tax imposed
102 by this section is in lieu of all local taxes and fees levied on

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103 or imposed with respect to the privilege of offering a West
104 Virginia Lottery table game to the public, including, but not
105 limited to, the municipal business and occupation taxes and
106 amusement taxes authorized by article thirteen, chapter eight
107 of this code and the municipal sales and service tax and use
108 tax authorized by article thirteen-c of said chapter.

**§29-25-22b. Rural Resort Community Fund; allocation of
adjusted gross receipts; disposition of license
fees.**

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

10 be credited to and deposited in the Rural Resort Community
11 Fund.

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

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

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29 maintained within the Rural Resort Community
30 Modernization Fund for each rural resort community. For
31 each dollar expended by a rural resort community for video
32 lottery or table gaming facility modernization improvements
33 at the rural resort community, having a useful life of three or
34 more years and placed in service after July 1, 2013, the rural
35 resort community shall receive \$1 in recoupment from its
36 facility modernization account. For purposes of this section,
37 the term “video lottery or table gaming facility modernization
38 improvements” include acquisition of computer hardware and
39 software, communications and Internet access equipment,
40 security and surveillance equipment, video lottery terminals
41 and other electronic equipment or other equipment designed
42 to modernize the facility.

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

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

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

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

57 (4) The county where the gaming facility is located shall
58 receive four percent of the Rural Resort Community Fund net
59 income;

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

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66 (6) The municipalities within the county where the
67 gaming facility is located, except for the municipality
68 receiving funds under subdivision (5) of this subsection, shall
69 receive equal shares of two and one-half percent of the Rural
70 Resort Community Fund net income, if no other municipality
71 is located within the county where the gaming facility is
72 located as of the effective date of the reenactment of this
73 section by the 2013 regular session of the Legislature then the
74 equal shares shall be received by the county's board of
75 education;

76 (7) Each county commission in the state that is not
77 eligible to receive a distribution under subdivision (4) of this
78 subsection shall receive equal shares of two and one-half
79 percent of the Rural Resort Community Fund net income:
80 *Provided*, That funds transferred to the county commission
81 under this subdivision shall be used only to pay regional jail
82 expenses and the costs of infrastructure improvements and
83 other capital improvements; and

84 (8) The governing body of each municipality in the state
85 that is not eligible to receive a distribution under subdivisions
86 (5) and (6) of this subsection shall receive equal shares of
87 two and one-half percent of the Rural Resort Community
88 Fund net income: *Provided*, That funds transferred to
89 municipalities under this subdivision shall be used only to
90 pay for debt reduction in municipal police and fire pension
91 funds and the costs of infrastructure improvements and other
92 capital improvements.

93 (e) Notwithstanding any provision of this article to the
94 contrary, all limited gaming facility license fees and license
95 renewal fees received by the commission pursuant to section
96 nine of this article shall be deposited into the
97 community-based service fund created in section
98 twenty-seven, article twenty-two-c of this chapter.

99 (f) With the exception of the license fees and license
100 renewal fees received by the commission pursuant to section
101 nine of this article, all revenues received from licensees and

102 license applicants under this article shall be retained by the
103 commission as reimbursement for the licensing process.

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

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

13 (b) For each dollar expended by a rural resort community
14 for fringe benefits for the employees of the rural resort
15 community, the commission shall transfer to the rural resort

16 community \$1 of recoupment from the Rural Resort
17 Community Human Resource Benefit Fund: *Provided*, That
18 the rural resort community is not entitled to recoupment for
19 money spent on fringe benefits beyond the amount of money
20 available to be expended from the Rural Resort Community
21 Human Resource Benefit Fund at the time the request for
22 recoupment is made by the rural resort community.

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

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

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

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34 (A) One member shall be a representative of the
35 collective bargaining unit that represents a majority of the
36 employees of the rural resort community or if no collective
37 bargaining unit has been established then the employees of
38 the rural resort community shall elect a representative who
39 will represent the majority of the employees;

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

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

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

48 (3) A majority of members constitutes a quorum for the
49 transaction of business.

50 (4) The board shall meet every six months at the
51 headquarters of the commission. Upon its own motion or
52 upon the request of the commission, it may hold meetings in

53 addition to the required meetings. The commission shall pay
54 the travel expenses of members of the board who are not
55 employed by the commission.

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

57 (6) The board shall operate in an advisory capacity. Its
58 functions include, but are not limited to, reviewing and
59 verifying financial audits of the Rural Resort Community
60 Human Resource Benefit Fund conducted by the commission
61 and its employees and reviewing source documents
62 associated with disbursements from the Rural Resort
63 Community Human Resource Benefit Fund.

64 (7) Within thirty days of any board meeting, the board
65 shall report to the commission its findings and any
66 recommendations it may have. The report to the commission
67 shall be made at a commission meeting that is open to the
68 public.

69 (e) In the event that an audit conducted by the
70 commission, or suggested changes to the audit submitted by
71 the board and adopted by the commission, reveals that the

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72 rural resort community has acted improperly or negligently
73 in its claim for money from the Rural Resort Community
74 Human Resource Benefit Fund, the commission may impose
75 a civil penalty against the rural resort community of up to one
76 hundred percent of the improperly claimed amount. Any civil
77 penalty imposed on the rural resort community by the
78 commission under this subsection shall be deposited by the
79 commission into the Rural Resort Community Fund.

§29-25-24. Individual gaming restrictions.

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

5 (1) ~~ts~~ If the designated gaming area is located within the
6 historic resort hotel, then the individual must be either:

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

9 (B) A person who is a not a registered overnight guest,
10 but is a registered participant at a convention or event being

11 held at the historic resort hotel: *Provided*, That this
12 paragraph does not apply on any calendar day when less than
13 four hundred guest rooms are occupied at the historic resort
14 hotel; or

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

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

21 (3) The individual is not visibly intoxicated.

22 (4) The individual has not been determined by ~~the~~ a
23 gaming facility operator or the commission to be unruly,
24 disruptive or otherwise interfering with operation of the
25 gaming facility; or to be likely to commit, or to attempt to
26 commit, a violation of this article. ~~and~~

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

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

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

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

**§29-25-29. Video lottery terminal requirements; application for
approval of video lottery terminals; testing of
video lottery terminals; report of test results;**

**modifications to previously approved models;
conformity to prototype; seizure and destruction
of terminals.**

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

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

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

21 (1) The manufacturer shall pay all costs of testing,
22 examination, analysis and transportation of such video lottery
23 terminal models. The testing, examination and analysis of
24 any video lottery terminal model may require dismantling of
25 the terminal and some tests may result in damage or
26 destruction to one or more electronic components of such
27 terminal model. The commission may require that the
28 manufacturer provide specialized equipment or pay for the
29 services of an independent technical expert to test the
30 terminal.

31 (2) The manufacturer shall pay the cost of transportation
32 of two video lottery terminals to lottery headquarters. The
33 commission shall conduct an acceptance test to determine
34 terminal functions and central system compatibility. If the
35 video lottery terminal fails the acceptance test conducted by

36 the commission, the manufacturer shall make all
37 modifications required by the commission.

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

49 (e) The video lottery terminal manufacturer and licensed
50 gaming facility are jointly responsible for the assembly and
51 installation of all video lottery terminals and associated
52 equipment. The manufacturer and licensed gaming facility
53 shall not change the assembly or operational functions of a
54 terminal licensed for placement in West Virginia unless a

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55 request for modification of an existing video terminal
56 prototype is approved by the commission. The request shall
57 contain a detailed description of the type of change, the
58 reasons for the change and technical documentation of the
59 change.

60 (f) Each video lottery terminal approved for placement at
61 ~~the~~ a gaming facility shall conform to the exact specifications
62 of the video lottery terminal prototype tested and approved
63 by the commission. If any video lottery terminal or any
64 video lottery terminal modification, which has not been
65 approved by the commission, is supplied by a manufacturer
66 and operated by ~~the~~ a gaming facility, the commission shall
67 seize and destroy all of that licensed gaming facility's and
68 manufacturer's noncomplying video lottery terminals and
69 shall suspend the license and permit of the licensed gaming
70 facility and manufacturer.

**§29-25-30. Video lottery terminal hardware and software
requirements; hardware specifications; software
requirements for randomness testing; software**

requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

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

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

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

16 power back-up device shall be located within the locked logic
17 board compartment of the video lottery terminal.

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

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

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

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

32 (7) The main logic boards and all erasable programmable
33 read-only memory chips ("EPROMS") are considered to be

34 owned by the commission and shall be located in a separate
35 locked and sealed area within the video lottery terminal.

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

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

45 (10) Each video lottery terminal shall contain a single
46 printing mechanism capable of printing an original ticket and
47 capturing and retaining an electronic copy of the ticket data
48 as approved by the commission: *Provided*, That the printing
49 mechanism is optional on any video lottery terminal which is
50 designed and equipped exclusively for coin or token payouts.
51 The following information shall be recorded on the ticket

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52 when credits accrued on a video lottery terminal are
53 redeemed for cash:

54 (i) The number of credits accrued;

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

57 (iii) Time of day and date;

58 (iv) Validation number; and

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

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

63 (i) Manufacturer of the video lottery terminal;

64 (ii) Serial number of the terminal; and

65 (iii) Model number of the terminal.

66 (12) The rules of play for each game shall be displayed
67 on the video lottery terminal face or screen. The commission
68 may reject any rules of play which are incomplete, confusing,
69 misleading or inconsistent with game rules approved by the
70 commission. For each video lottery game, there shall be a

71 display detailing the credits awarded for the occurrence of
72 each possible winning combination of numbers or symbols.
73 All information required by this subdivision shall be
74 displayed under glass or another transparent substance. No
75 stickers or other removable devices may be placed on the
76 video lottery terminal screen or face without the prior
77 approval of the commission.

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

87 (14) All video lottery terminals shall have a security
88 system which temporarily disables the gaming function of the
89 terminal while opened.

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

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

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

105 (3) *Correlation test.* – Each pair of symbols or numbers
106 is random if it meets the ninety-nine percent confidence level
107 using standard correlation analysis to determine whether each

108 symbol or number is independently chosen without regard to
109 another symbol or number within a single game play.

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

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

120 (d) Each video lottery terminal shall be capable of
121 continuing the current game with all current game features
122 after a video lottery terminal malfunction is cleared. If a
123 video lottery terminal is rendered totally inoperable during
124 game play, the current wager and all credits appearing on the
125 video lottery terminal screen prior to the malfunction shall be
126 returned to the player.

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

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

136 (2) Number of credits wagered;

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

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

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

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

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

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

143 (9) Number of credits won in the last complete video

144 lottery game; and

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

148 (f) No video lottery terminal may have any mechanism
149 which allows the electronic accounting meters to clear
150 automatically. Electronic accounting meters may not be
151 cleared without the prior approval of the commission. Both
152 before and after any electronic accounting meter is cleared,
153 all meter readings shall be recorded in the presence of a
154 commission employee.

155 (g) The primary responsibility for the control and
156 regulation of any video lottery games and video lottery
157 terminals operated pursuant to this article rests with the
158 commission.

159 (h) The commission shall directly or through a contract
160 with a third party vendor other than the video lottery licensee,
161 maintain a central site system of monitoring the lottery
162 terminals, utilizing an online or dial-up inquiry. The central
163 site system shall be capable of monitoring the operation of

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164 each video lottery game or video lottery terminal operating
165 pursuant to this article and, at the direction of the director,
166 immediately disable and cause not to operate any video
167 lottery game and video lottery terminal. As provided in this
168 section, the commission may require the licensed racetrack to
169 pay the cost of a central site computer as part of the licensing
170 requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) For all fiscal years beginning on or after July 1, 2009,
2 there shall be imposed a surcharge of ten percent against the

3 share of gross terminal income retained by ~~the~~ a gaming
4 facility as provided by section twenty of this article.

5 (b) The Capital Reinvestment Fund is hereby created
6 within the Lottery Fund. The surcharge amount attributable
7 to the historic resort hotel or rural resort community shall be
8 retained by the commission and deposited into a separate
9 capital reinvestment account for ~~the historic resort hotel~~ each
10 contributing licensed gaming facility. For each dollar
11 expended by ~~the historic resort hotel~~ a licensed gaming
12 facility for capital improvements at the ~~historic resort hotel~~
13 licensed gaming facility, of any amenity associated with the
14 historic resort hotel's or rural resort community's destination
15 resort facility operations, or at adjacent facilities owned by
16 the historic resort hotel or rural resort community having a
17 useful life of seven or more years and placed in service after
18 April 1, 2009, ~~the~~ a licensed gaming facility shall receive \$1
19 in recoupment from its Capital Reinvestment Fund account:
20 If a historic resort hotel's or rural resort community's
21 unrecouped capital improvements exceed its Capital

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22 Reinvestment Fund account at the end of any fiscal year, the
23 excess improvements may be carried forward to seven
24 subsequent fiscal years.

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

30 (2) If the gaming facility is located in the rural resort
31 community, any moneys remaining in the rural resort
32 community's Capital Reinvestment Fund account at the end
33 of any fiscal year shall be deposited in the Rural Resort
34 Community Fund.

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

1 All West Virginia Lottery table games authorized by this
2 article shall be West Virginia lottery games owned by the
3 State of West Virginia. A gaming facility license granted to
4 a historic resort hotel or rural resort community by the

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

§29-25-35. Preemption.

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

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

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

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

15 (c) ~~The~~ A gaming facility licensee shall make available in
16 printed form to any patron, upon request of the patron, the
17 complete texts of the rules of play of any West Virginia
18 Lottery table games in operation at ~~the~~ a gaming facility,

19 pay-offs of winning wagers and any other advice to the
20 player required by the commission.

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

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

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