

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That §29-25-7 of the Code of West Virginia, 1931, as amended, be repealed; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28,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
- 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
6 the terms specified in this article and article twenty-two-c of
7 this 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
12 declares that the authorization of the operation of a gaming
13 facility at no more than one well-established historic resort
14 hotel and one rural resort community in this state as
15 provided in this article will serve to protect and enhance the
16 tourism industry, and indirectly other segments of the
17 economy of this state, by providing a resort hotel amenity
18 which is becoming increasingly important to many actual
19 and potential resort hotel patrons.

20 The Legislature finds and declares that video lottery
21 operations pursuant to section twenty-eight of this article
22 and the operation of the other West Virginia Lottery table

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

26 (c) *Legislative intent.* – It is the intent of the Legislature
27 in the enactment of this article to promote tourism and
28 year-round employment in this state. It is expressly not 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
33 the operation of ~~the~~ a gaming facility, other than those
34 necessary to reimburse reasonable costs of operation, to
35 inure to the benefit of the state. Further, it is the intent of
36 the Legislature that amendments made to this article during
37 the 2009 regular session will establish appropriate
38 conformity between the operations of video lottery and West
39 Virginia Lottery table games at ~~the~~ a licensed gaming
40 facility under this article and the operations of video lottery
41 and table games at the pari-mutuel racetracks licensed under
42 articles twenty-two-a 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
8 less winnings paid to wagerers in such games.

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

15 (d) “Background investigation” means a security,
16 criminal and credit investigation of an applicant who has
17 applied for the issuance or renewal or a license pursuant 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
46 considered 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
73 the video lottery terminals in exchange for winning
74 redemption 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
78 Historic Places having not fewer than five hundred guest
79 rooms under common ownership and having substantial
80 recreational guest amenities in addition to the gaming
81 facility.

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

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

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

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

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

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

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

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

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

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

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

110 (y) "Manufacturer" means any person holding a license
111 granted by the commission to engage in the business of
112 designing, building, constructing, assembling or

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

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

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

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

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

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

145 (ee) “Rural resort community” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

186 (1) Is connected to the commission’s central control
187 computer by an online or dial-up communication system;

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

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

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

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

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

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

219 (C) Randomly generates additional or replacement
220 symbols and numbers for the player after automatically
221 selecting the symbols and numbers which should be retained
222 to present the best chance, based upon probabilities, for a
223 winning combination, so that in any event, the player is not
224 permitted to benefit from any personal skill, based upon a
225 knowledge of probabilities, before deciding which optional
226 numbers or symbols to choose in the course of video lottery
227 game play;

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

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

238 ~~(ee)~~ (jj) “Wager” means a sum of money or thing of value
239 risked on an uncertain occurrence.

240 ~~(ff)~~ (kk) “West Virginia Lottery table game” means any
241 game played with cards, dice or any mechanical,
242 electromechanical or electronic device or machine for
243 money, credit or any representative of value, including, but
244 not limited to, baccarat, blackjack, poker, craps, roulette,
245 wheel of fortune or any variation of these games similar in
246 design or operation and expressly authorized by rule of the

247 commission, including multiplayer electronic table games,
248 machines and devices, but excluding video lottery,
249 punchboards, faro, numbers tickets, push cards, jar tickets,
250 pull tabs or similar games.

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

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

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

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

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

13 (4) Provide staff to supervise, inspect and monitor the
14 operation of any gaming facility, including inspection of

15 gaming devices and supplies used in the operation to assure
16 continuous compliance with all rules of the commission and
17 provisions of this article;

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

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

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

27 (8) Issue all licenses;

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

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

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

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

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

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

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

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

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

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

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

60 (5) To exercise such other powers as may be necessary to
61 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
10 provisions of subsection (a) of this section, including, but
11 not limited to, necessary training costs, shall be paid by the
12 commission as 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~~
8 ~~and any license issued under the provisions of this article~~
9 ~~prior thereto shall be void. The Legislature intends that no~~
10 ~~more than one license to operate one gaming facility in this~~
11 ~~state shall be authorized in any event. at the historic resort~~
12 ~~hotel and one license to operate a gaming facility at the rural~~
13 ~~resort 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
20 historic resort hotel or a rural resort community in order to
21 operate a gaming facility as defined by this article. ~~The~~
22 ~~resort hotel shall be located within the jurisdiction of a~~
23 ~~county approving the operation of a gaming facility in~~

24 ~~accordance with section seven of this article.~~ The applicant
25 shall meet the qualifications and requirements set forth in
26 this article and rules adopted by the commission. In
27 determining whether to grant a license to operate a gaming
28 facility to an applicant, 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

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
47 table game in a designated gaming area, ~~the~~ a gaming
48 facility licensee shall submit to the commission for its
49 approval a detailed floor plan depicting the location of the
50 designated gaming area in which West Virginia Lottery
51 table game gaming equipment will be located and its
52 proposed arrangement of the West Virginia Lottery table
53 game gaming equipment. If the floor plans for the
54 designated gaming area preserve the historic integrity of the
55 historic resort hotel or rural resort community where the
56 licensed gaming facility is located, then any floor plan
57 submission that satisfies the requirements of the rules
58 promulgated by the commission shall be considered
59 approved by the commission unless a gaming facility is
60 notified in writing to the contrary within one month of filing
61 a detailed floor plan.

62 (d) *Management service contracts.* –

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

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

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

79 (4) *Other commission approvals and licenses.* – The
80 duties and responsibility of a management services provider

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

89 (e) *License application requirements.* – An applicant for
90 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
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
133 to 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
144 concerning only those executive officers of the publicly
145 traded corporation whose ongoing and regular
146 responsibilities relate or are expected to relate directly to the
147 operation or oversight of ~~the~~ a gaming facility. “Publicly
148 traded corporation” as used herein means any corporation or
149 other legal entity, except a natural person, which has one or
150 more classes of securities registered pursuant to Section
151 twelve of the Securities Exchange Act of 1934, as amended
152 (15 U. S. C. §78), or is an issuer subject to Section fifteen-d
153 of said act.

154 (h) *Gaming facility qualifications.* – An applicant for a
155 license to operate a gaming facility shall demonstrate that
156 the gaming facility will: (1) Be accessible to disabled

157 individuals; (2) not be located at the main entrance to the
158 historic resort hotel or rural resort community; (3) be
159 licensed in accordance with all other applicable federal, state
160 and local laws; and (4) meet any other qualifications
161 specified by rules adopted by the commission.

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

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

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

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

176 liability of the surety on the bond is limited to the amount
177 specified in the bond.

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

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

191 (l) *Annual license renewal fee.* – For the second year that
192 it is licensed, ~~the~~ a licensed gaming facility shall pay to the
193 commission a license renewal fee of \$250,000. For the third
194 year that it is licensed, ~~the~~ a licensed gaming facility shall

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

209 (m) ~~The~~ A licensed gaming facility shall provide to the
210 commission, at no cost to the commission, suitable office
211 space at the gaming facility to perform the duties required of
212 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
9 contingent upon licensure pursuant to the provisions of this
10 section. The commission, by rule, may specify additional
11 requirements to be met by applicants based on the specific
12 job classification 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
15 facility 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
22 Investigation. The fingerprints shall be furnished by all
23 persons required to be named in the application and shall be
24 accompanied by a signed authorization for the release of
25 information by the Criminal Investigation Bureau and the
26 Federal Bureau of Investigation. The commission may
27 require any applicant seeking the renewal of a license or
28 permit to furnish fingerprints for a national criminal records
29 check by the Criminal Identification Bureau of the West
30 Virginia State Police and the Federal Bureau of
31 Investigation; and

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

36 (d) *Authorization of licensee.* – A license to be employed
37 by a gaming facility authorizes the licensee to be so

38 employed in the capacity designated by the commission with
39 respect to the license while the license is effective.

40 (e) *Annual license renewal fee.* – Each licensed employee
41 shall pay to the commission an annual license renewal fee
42 set by the commission, which renewal fee may vary based
43 on the capacity designated with respect to the licensee but in
44 no event to exceed \$100. The fee may be paid on behalf of
45 the 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
24 behalf 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.
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
29 license issued pursuant to this article while that person is
30 present on the grounds of a licensed gaming facility having
31 West Virginia Lottery table games.

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

1 (a) *Consent to presence of law-enforcement officers.* –
2 Any individual entering ~~the~~ a gaming facility shall be
3 advised by the posting of a notice or other suitable means of
4 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.* – Video
9 lottery terminals operated at ~~the~~ a gaming facility may allow
10 minimum and maximum wagers on a single game the

11 amounts determined by the license in the exercise of its
12 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:

32 (1) Minimum and maximum payout percentages;

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

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

38 (d) *Posting of betting limits.* – A gaming facility shall
39 conspicuously post a sign at each West Virginia Lottery
40 table game indicating the permissible minimum and
41 maximum wagers pertaining at that table. A gaming facility
42 licensee may not require any wager to be greater than the
43 stated minimum or less than the stated maximum. However,
44 any wager actually made by a patron and not rejected by a
45 gaming facility licensee prior to the commencement of play
46 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
2 percent of the gross terminal income from video lottery
3 games at the licensed gaming facility to the commission
4 through electronic funds transfer to be deposited:

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
15 deposited:

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

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

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

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

1 (a) *Imposition and rate of limited gaming profits tax.* –
2 There is hereby levied and shall be collected a privilege 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
12 the 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~~
23 ~~tax is in addition to all other taxes and fees imposed.~~
24 ~~Provided, That the consumers sales and service tax imposed~~
25 ~~pursuant to article fifteen, chapter eleven of this code may~~

26 ~~not apply to the proceeds from any wagering with respect to~~
27 ~~a West 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
30 licensee shall use the accrual method of accounting. This
31 tax is in addition to all other taxes and fees imposed:
32 Provided, That the consumers sales and service tax imposed
33 pursuant to article fifteen, chapter eleven of this code may
34 not apply to the proceeds from any wagering with respect to
35 a West Virginia Lottery table game pursuant to this article.

36 The taxes levied under the provisions of this section are due
37 and 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
40 submit by electronic communication to the commission a
41 return for 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
44 receipts; (2) the amount of tax for which the taxpayer is

45 liable; and (3) any further information necessary in the
46 computation and collection of the tax which the Tax
47 Commissioner or the commission may require. Payment of
48 the amount of tax due shall accompany the return. All
49 payments made pursuant to this section shall be deposited in
50 accordance with sections twenty-two, ~~and~~ twenty-two-a,
51 twenty-two-b and twenty-two-c of this article. Payments
52 due to the commission under this section and payments due
53 to the commission under section twenty of this article shall
54 be sent simultaneously.

55 (c) *Negative adjusted gross receipts.* – When adjusted
56 gross receipts for a week is a negative number because the
57 winnings paid to patrons wagering on ~~the~~ a gaming facility's
58 West Virginia Lottery table games exceeds the gaming
59 facility's gross receipts from the purchase of table game
60 tokens, chips or electronic media by patrons, the
61 commission shall allow the licensee to, pursuant to rules of
62 the commission, carry over the negative amount of adjusted
63 gross receipts to returns filed for subsequent weeks. The

64 negative amount of adjusted gross receipts may not be
65 carried back to an earlier week and the commission is not
66 required to refund any tax received by the commission,
67 except when the licensee surrenders its license to act as
68 agent of the commission in operating West Virginia Lottery
69 table game under this article and the licensee's last return
70 filed under this section shows negative adjusted gross
71 receipts. In that case, the commission shall multiply the
72 amount of negative adjusted gross receipts by the applicable
73 rate of tax and pay the amount to the licensee, in accordance
74 with rules of the commission.

75 (d) *Prohibition on credits.* – Notwithstanding any other
76 provision of this code to the contrary, no credits may be
77 allowed against any tax imposed on any taxpayer by this
78 code for an investment in gaming devices and supplies, for
79 an investment in real property which would be directly
80 utilized for the operation of a gaming facility or for any jobs
81 created at a gaming facility. Notwithstanding any other
82 provision of this code to the contrary, the tax imposed by

83 this section may not be added to federal taxable income in
84 determining West Virginia taxable income of a taxpayer for
85 purposes of article twenty-four, chapter eleven of this code.

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

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

102 (2) With the exception of the ad valorem property tax
103 collected under chapter eleven-a of this code, the tax
104 imposed by this section is in lieu of all local taxes and fees
105 levied on or imposed with respect to the privilege of offering
106 a West Virginia Lottery table game to the public, including,
107 but not limited to, the municipal business and occupation
108 taxes and amusement taxes authorized by article thirteen,
109 chapter eight of this code and the municipal sales and
110 service tax and use tax authorized by article thirteen-c of
111 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
10 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
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
16 or 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
20 fees, taxes or other amounts required to be deposited in the
21 Rural Resort Community Fund.

22 (c) A Rural Resort Community Modernization Fund is
23 hereby created within the Rural Resort Community Fund.
24 For all fiscal years beginning on or after July 1, 2013, the
25 commission shall deduct two and one-half percent from

26 gross terminal income received by the commission under
27 section twenty of this article for the fiscal year and deposit
28 these amounts into a separate facility modernization account
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
38 modernization improvements” include acquisition of
39 computer hardware and software, communications and
40 Internet access equipment, security and surveillance
41 equipment, video lottery terminals and other electronic
42 equipment or other equipment designed to modernize the
43 facility.

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

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

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

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

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

61 (5) The municipality where the gaming facility is located
62 or the municipality closest to the gaming facility by paved

63 road access as of the effective date of the reenactment of this
64 section by the 2013 regular session of the Legislature shall
65 receive two and one-half percent of the Rural Resort
66 Community Fund net income;

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

77 (7) Each county commission in the state that is not
78 eligible to receive a distribution under subdivision (4) of this
79 subsection shall receive equal shares of two and one-half
80 percent of the Rural Resort Community Fund net income:
81 *Provided*, That funds transferred to the county commission

82 under this subdivision shall be used only to pay regional jail
83 expenses and the costs of infrastructure improvements and
84 other capital improvements; and

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

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

100 (f) With the exception of the license fees and license
101 renewal fees received by the commission pursuant to section
102 nine of this article, all revenues received from licensees and
103 license applicants under this article shall be retained by the
104 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
10 fund 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:

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
47 that they represent, if the entity or persons choose to set
48 terms.

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

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

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

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

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

70 (e) In the event that an audit conducted by the
71 commission, or suggested changes to the audit submitted by
72 the board and adopted by the commission, reveals that the
73 rural resort community has acted improperly or negligently
74 in its claim for money from the Rural Resort Community
75 Human Resource Benefit Fund, the commission may impose
76 a civil penalty against the rural resort community of up to
77 one hundred percent of the improperly claimed amount. Any
78 civil penalty imposed on the rural resort community by the
79 commission under this subsection shall be deposited by the
80 commission into the Rural Resort Community Fund.

81 **§29-25-24. Individual gaming restrictions.**

82 (a) An individual may enter a designated gaming area or
83 remain in a designated gaming area only if the individual
84 meets the qualifications in subdivisions (1) through (5) of
85 this subsection.

86 (1) ~~fs~~ If the designated gaming area is located within the
87 historic resort hotel, then the individual must be either:

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

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

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

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

102 (3) The individual is not visibly intoxicated.

103 (4) The individual has not been determined by ~~the~~ a
104 gaming facility operator or the commission to be unruly,
105 disruptive or otherwise interfering with operation of the
106 gaming facility; or to be likely to commit, or to attempt to
107 commit, a violation of this article. ~~and~~

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

110 (b) Notwithstanding any provisions of this code to the
111 contrary, no employee of the commission or employee of the
112 historic resort hotel or rural resort community or any
113 member of his or her immediate household may wager at the
114 gaming 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
18 models of a video lottery terminal be transported to the
19 location designated by the commission for testing,
20 examination and analysis.

21 (1) The manufacturer shall pay all costs of testing,
22 examination, analysis and transportation of such video
23 lottery terminal models. The testing, examination and
24 analysis of any video lottery terminal model may require
25 dismantling of the terminal and some tests may result in
26 damage or destruction to one or more electronic components
27 of such terminal model. The commission may require that
28 the manufacturer provide specialized equipment or pay for
29 the 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
45 trial period not to exceed sixty days for a licensed gaming
46 facility to test the terminal. During the trial period, the
47 manufacturer may not make any modifications to the
48 terminal model unless modifications are approved by the
49 commission.

50 (e) The video lottery terminal manufacturer and licensed
51 gaming facility are jointly responsible for the assembly and
52 installation of all video lottery terminals and associated

53 equipment. The manufacturer and licensed gaming facility
54 shall not change the assembly or operational functions of a
55 terminal licensed for placement in West Virginia unless a
56 request for modification of an existing video terminal
57 prototype is approved by the commission. The request shall
58 contain a detailed description of the type of change, the
59 reasons for the change and technical documentation of the
60 change.

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

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

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

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

11 (2) A surge protector shall be installed on the electrical
12 power supply line to each video lottery terminal. A battery

13 or equivalent power back-up for the electronic meters shall
14 be capable of maintaining accuracy of all accounting records
15 and terminal status reports for a period of one hundred
16 eighty days after power is disconnected from the terminal.
17 The power back-up device shall be located within the locked
18 logic board compartment of the video lottery terminal.

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

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

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

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

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

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

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

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

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

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

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

- 64 (i) Manufacturer of the video lottery terminal;
- 65 (ii) Serial number of the terminal; and
- 66 (iii) Model number of the terminal.

67 (12) The rules of play for each game shall be displayed
68 on the video lottery terminal face or screen. The

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

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

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

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

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

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

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

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

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

122 (d) Each video lottery terminal shall be capable of
123 continuing the current game with all current game features
124 after a video lottery terminal malfunction is cleared. If a

125 video lottery terminal is rendered totally inoperable during
126 game play, the current wager and all credits appearing on
127 the video lottery terminal screen prior to the malfunction
128 shall be returned to the player.

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

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

138 (2) Number of credits wagered;

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

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

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

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

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

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

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

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

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

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

161 (h) The commission shall directly or through a contract
162 with a third party vendor other than the video lottery

163 licensee, maintain a central site system of monitoring the
164 lottery terminals, utilizing an online or dial-up inquiry. The
165 central site system shall be capable of monitoring the
166 operation of each video lottery game or video lottery
167 terminal operating pursuant to this article and, at the
168 direction of the director, immediately disable and cause not
169 to operate any video lottery game and video lottery terminal.
170 As provided in this section, the commission may require the
171 licensed racetrack to pay the cost of a central site computer
172 as part of the licensing 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
18 gaming 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
27 years 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;

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
37 notify the commission of the failure of a manufacturer or
38 service technician to provide prompt service and repair of
39 such terminals and associated equipment;

40 (l) Install, post and display prominently at locations
41 within or about the licensed gaming facility signs,
42 redemption information and other promotional material as
43 required by the 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~~
10 each 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
15 destination resort facility operations, or at adjacent facilities
16 owned by the historic resort hotel or rural resort community
17 having a useful life of seven or more years and placed in
18 service after April 1, 2009, ~~the~~ a licensed gaming facility

19 shall receive \$1 in recoupment from its Capital
20 Reinvestment Fund account: If a historic resort hotel's or
21 rural resort community's unrecouped capital improvements
22 exceed its Capital Reinvestment Fund account at the end of
23 any fiscal year, the excess improvements may be carried
24 forward to seven 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
8 the commission.

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

15 (c) ~~The~~ A gaming facility licensee shall make available
16 in 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.

28 **§29-25-38. Shipment of gambling devices.**

29 All shipments of gambling devices, including video
30 lottery machines, to ~~the~~ a licensed gaming facility in this
31 state, the registering, recording and labeling of which have
32 been completed by the manufacturer or dealer thereof in
33 accordance with Chapter 1194, 64 Stat. 1134, 15 U. S. C.
34 §1171 to §1178, are legal shipments of gambling devices
35 into the State of West Virginia.

(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.)

FINANCE COMMITTEE AMENDMENTS

On page twelve, section two, line one hundred forty-eight, after the word “contiguous” by inserting the words “or adjacent”;

On page thirteen, section two, line one hundred sixty, by striking out “\$80” and inserting in lieu thereof “\$60”;

On page thirteen, section two, line one hundred sixty-four, by striking out the word “adequate” and inserting in lieu thereof the word “inadequate”;

And,

On page fourteen, section two, line one hundred seventy, by striking out the word “within” and inserting in lieu thereof the word “from”.