

**H. B. 4437**

(By Delegates Doyle, Michael, Hartman, D. Campbell  
and Evans)

[Introduced February 6, 2012; referred to the

Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

12 A BILL to amend the Code of West Virginia, 1931, as amended, by  
13 adding thereto a new article, designated §29-30-1, §29-30-2,  
14 §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7, §29-30-8,  
15 §29-30-9, §29-30-10, §29-30-11, §29-30-12, §29-30-13,  
16 §29-30-14, §29-30-15, §29-30-16, §29-30-17, §29-30-18,  
17 §29-30-19, §29-30-20, §29-30-21, §29-30-22, §29-30-23,  
18 §29-30-24, §29-30-25, §29-30-26, §29-30-27, §29-30-28,  
19 §29-30-29, §29-30-30, §29-30-31, §29-30-32, §29-30-33,  
20 §29-30-34, §29-30-35, §29-30-36 and §29-30-37, all relating  
21 to permitting certain ski resorts to be limited gaming  
22 facilities; making findings; defining terms; setting forth the  
23 duties and powers of the State Lottery Commission; permitting  
24 a gaming facility only in a county whose voters approve the  
25 facility; permitting up to four licenses to be issued; setting

1       forth an applicant's qualifications; requiring a licensee to  
2       make reports; setting forth the qualification of suppliers of  
3       gaming devices; setting forth the requirements of the  
4       licensee's employees; setting forth expirations dates; setting  
5       forth the cost of a license and other fees; setting forth  
6       hearing procedures; permitting the commission to inspect and  
7       investigate violations; establishing the right of  
8       law-enforcement officers at the facility; setting forth the  
9       accounting and reporting of income; establishing the tax  
10       rates; setting forth where the taxes will be deposited;  
11       creating the Big Vertical Ski Resort Fund; prohibiting  
12       unauthorized wagering; setting forth individual gaming  
13       restrictions; permitting the forfeiture of property; setting  
14       forth requirements for video lottery games; stating the basis  
15       for the exemption from federal law; granting rule-making  
16       authority; and creating penalties.

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

18       That the Code of West Virginia, 1931, as amended, be amended  
19 by adding thereto a new article, designated §29-30-1, §29-30-2,  
20 §29-30-3, §29-30-4, §29-30-5, §29-30-6, §29-30-7, §29-30-8,  
21 §29-30-9, §29-30-10, §29-30-11, §29-30-12, §29-30-13, §29-30-14,  
22 §29-30-15, §29-30-16, §29-30-17, §29-30-18, §29-30-19, §29-30-20,  
23 §29-30-21, §29-30-22, §29-30-23, §29-30-24, §29-30-25, §29-30-26,  
24 §29-30-27, §29-30-28, §29-30-29, §29-30-30, §29-30-31, §29-30-32,

1 §29-30-33, §29-30-34, §29-30-35, §29-30-36 and §29-30-37, all to  
2 read as follows:

3 **ARTICLE 30. AUTHORIZED SKI RESORT GAMING FACILITY.**

4 **§29-30-1. Authorization of limited gaming facility; findings;**  
5 **intent.**

6 (a) Operation of West Virginia Lottery table games. --

7 Notwithstanding any provision of law to the contrary, the operation  
8 of West Virginia Lottery games permitted by this article and the  
9 related operation of a gaming facility and ancillary activities is  
10 not unlawful when conducted under the terms specified in this  
11 article and article twenty-two-c of this chapter.

12 (b) Legislative findings. --

13 (1) The Legislature finds and declares that the tourism  
14 industry plays a critical role in the economy of this state and  
15 that a substantial state interest exists in protecting that  
16 industry. It further finds and declares that the authorization of  
17 the operation of a gaming facility at no more than four  
18 well-established big vertical ski resorts in this state as provided  
19 in this article will serve to protect and enhance the tourism  
20 industry, and indirectly other segments of the economy of this  
21 state, by providing a ski resort amenity which is becoming  
22 increasingly important to many actual and potential ski resort  
23 patrons.

1       (2) The Legislature finds and declares that video lottery  
2 operations pursuant to section twenty-nine of this article and the  
3 operation of the other West Virginia Lottery table games permitted  
4 by this article constitute the operation of lotteries within the  
5 purview of section thirty-six, article VI of the Constitution of  
6 West Virginia.

7       (c) *Legislative intent.* -- It is the intent of the Legislature  
8 in the enactment of this article to promote tourism and year-round  
9 employment in this state. It is expressly not the intent of the  
10 Legislature to promote gaming. Rather, it is the intent of the  
11 Legislature to encourage the further development of the downhill  
12 skiing and snow sports industry in West Virginia by allowing  
13 limited gaming as authorized by this article and article  
14 twenty-two-c of this chapter. Further, it is the intent of the  
15 Legislature that this article will establish appropriate conformity  
16 between the operations of video lottery and West Virginia Lottery  
17 table games at the licensed gaming facility under this article and  
18 the operations of video lottery and table games at the pari-mutuel  
19 racetracks licensed under articles twenty-two-a and twenty-two-c of  
20 this chapter.

21 **§29-30-2. Definitions.**

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

24       (a) "Applicant" means any person or entity applying for a

1 license.

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

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

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

15 (e) "Big vertical ski resort" means a ski resort that:

16 (1) Has a minimum of fifteen thousand feet of total vertical  
17 drop on no more than ten separate and distinct ski trails;

18 (2) Has a minimum peak elevation of at least four thousand  
19 feet for a minimum of one ski lift; and

20 (3) No ski trail that has a deflection on a compass of the  
21 downhill pitch whose face is between ninety-one degrees and two  
22 hundred sixty-nine degrees will count as trail towards the  
23 requirements of subdivisions (1) and (2) of this subsection.

24 (f) "Big Vertical Ski Resort Fund" means the special fund in

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

2 (g) "Controlling interest" means:

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

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

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

9 (h) "Controlling person" means, with respect to another  
10 person, any person directly or indirectly owning or holding a  
11 controlling interest in that other person.

12 (i) "Commission" means the State Lottery Commission created in  
13 section four, article twenty-two of this chapter.

14 (j) "Designated gaming area" means one or more specific floor  
15 areas of a licensed gaming facility within which the commission has  
16 authorized operation of video lottery terminals or West Virginia  
17 Lottery table games, or the operation of both video lottery  
18 terminals and West Virginia Lottery table games.

19 (k) "Director" means the Director of the State Lottery  
20 Commission.

21 (l) "Downhill skiing and snow sports industry" means any  
22 activity engaged in on snow covered slopping terrain with skis,  
23 snowboards, or other equipment designed for that purpose.

24 (m) "Erasable programmable read-only memory chips" or "EPROM"

1 means the electronic storage medium on which the operation software  
2 for all games playable on a video lottery terminal resides and can  
3 also be in the form of CD ROM, flash ROM or other new technology  
4 medium that the commission may from time to time approve for use in  
5 video lottery terminals. All electronic storage media are  
6 considered to be property of the state of West Virginia.

7 (n) "Gaming devices and supplies" mean gaming tables for all  
8 West Virginia Lottery table games, roulette wheels, wheels of  
9 fortune, video lottery terminals, cards, dice, chips, tokens,  
10 markers or any other mechanical, electronic or other device,  
11 mechanism equipment or related supplies utilized in the operation  
12 of a West Virginia Lottery table game.

13 (o) "Gaming facility" means a designated area on the premises  
14 of an existing big vertical ski resort in which West Virginia  
15 Lottery table games are conducted by a gaming licensee.

16 (p) "Gaming licensee" means the licensed operator of a gaming  
17 facility.

18 (q) "Gross receipts" means the total amount of money exchanged  
19 for the purchase of chips, tokens or electronic cards by patrons of  
20 a gaming facility reduced by gross terminal income to the extent  
21 gross terminal income is included in the amount of money exchanged.

22 (r) "Gross terminal income", as used in this article and as  
23 used in article twenty-two-a of this chapter, means the total  
24 amount of cash, vouchers or tokens inserted into the video lottery

1 terminals operated by a licensee, minus promotional credits played,  
2 and minus the total value of coins and tokens won by a player and  
3 game credits which are cleared from the video lottery terminals in  
4 exchange for winning redemption tickets.

5 (s) "License" means a license issued by the commission,  
6 including:

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

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

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

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

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

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

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

22 (w) "Lift ticket" means the ticket that provides skiers access  
23 to the ski slopes and ski lifts.

24 (x) "Manufacturer" means any person holding a license granted



1 by the commission to engage in the business of designing, building,  
2 constructing, assembling or manufacturing video lottery terminals,  
3 the electronic computer components of the video lottery terminals,  
4 the random number generator of the video lottery terminals, or the  
5 cabinet in which it is housed, and whose product is intended for  
6 sale, lease or other assignment to a licensed gaming facility in  
7 West Virginia and who contracts directly with the licensee for the  
8 sale, lease or other assignment to a licensed gaming facility in  
9 West Virginia.

10 (y) "Net terminal income" means gross terminal income minus an  
11 amount deducted by the commission to reimburse the commission for  
12 its actual cost of administering video lottery at the licensed  
13 gaming facility. No deduction for any or all costs and expenses of  
14 a licensee related to the operation of video lottery games shall be  
15 deducted from gross terminal income.

16 (z) "Person" means any natural person, corporation,  
17 association, partnership, limited partnership, limited liability  
18 company or other entity, regardless of its form, structure or  
19 nature.

20 (aa) "Premises of an existing big vertical ski resort" means  
21 the big vertical ski resort, attachments of the big vertical ski  
22 resort, and the traditional, immediate grounds of the big vertical  
23 ski resort.

24 (bb) "Promotional credits" means credits given by the licensed

1 gaming facility or licensed racetrack to players allowing limited  
2 free play of video lottery terminals in total amounts and under  
3 conditions approved in advance by the commission.

4 (cc) "Ski lift" means any power-driven conveyor, usually with  
5 attached tow bars, suspended chairs, gondolas or moveable carpet,  
6 used to carry skiers to the top of a trail or slope.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **§29-30-3. Commission duties and powers.**

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

- 1       (1) Establish minimum standards for gaming devices and  
2 supplies, including electronic or mechanical gaming devices;
- 3       (2) Approve, modify or reject game rules of play for all West  
4 Virginia Lottery table games proposed to be operated by a gaming  
5 licensee;
- 6       (3) Approve, modify or reject minimum internal control  
7 standards proposed by the licensee gaming facility for a West  
8 Virginia Lottery table game, including the maintenance of financial  
9 books and records;
- 10       (4) Provide staff to supervise, inspect and monitor the  
11 operation of any gaming facility, including inspection of gaming  
12 devices and supplies used in the operation to assure continuous  
13 compliance with all rules of the commission and provisions of this  
14 article;
- 15       (5) Establish minimum levels of insurance to be maintained  
16 with respect to a gaming facility;
- 17       (6) Investigate applicants to determine eligibility for any  
18 license and, where appropriate, select among competing applicants;
- 19       (7) Designate appropriate classifications of personnel to be  
20 employed in the operation of a gaming facility and establish  
21 appropriate licensing standards within the classifications;
- 22       (8) Issue all licenses;
- 23       (9) Charge and collect the taxes and fees authorized, required  
24 or specified in this article, and deposit the specified percentage

1 of taxes collected under sections twenty and twenty-one of this  
2 article into the Big Vertical Ski Resort Fund; and

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

4 (11) Keep a public record of all commission actions and  
5 proceedings; and

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

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

12 (1) To sue to enforce any provision of this article by  
13 injunction;

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

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

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

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

23 **§29-30-4. Appointment of commission staff; conditions of**  
24 **employment.**

1       The director, pursuant to the provisions of section six,  
2 article twenty-two of this chapter, with the approval of the  
3 commission, may appoint any professional, clerical, technical and  
4 administrative personnel, who shall be state employees hired in  
5 accordance with article six of this chapter, that may be necessary  
6 to carry out the provisions of this article. Prior to his or her  
7 appointment, each staff person shall undergo a thorough background  
8 investigation, including fingerprinting and a check of criminal  
9 records. No employee may directly or indirectly hold any financial  
10 interest in any entity licensed under this article.

11 **§29-30-5. Rules.**

12       The commission shall propose for promulgation legislative  
13 rules in accordance with the provisions of article three, chapter  
14 twenty-nine-a of this code as are necessary to provide for  
15 implementation and enforcement of the provisions of this article.  
16 Any legislative rules proposed by the commission before September  
17 1, 2012, may be by emergency rule.

18 **§29-30-6. Law enforcement.**

19       (a) Generally. -- Notwithstanding any provision of this code  
20 to the contrary, the commission shall, by contract or cooperative  
21 agreement with the West Virginia State Police, arrange for those  
22 law-enforcement services uniquely related to gaming as such occurs  
23 at the gaming facility that are necessary to enforce the provisions  
24 of this article.

1       (b) Costs. -- The actual cost of services provided by the  
2 West Virginia State Police pursuant to a contract or cooperative  
3 agreement entered into pursuant to the provisions of subsection (a)  
4 of this section, including, but not limited to, necessary training  
5 costs, shall be paid by the commission as an administrative  
6 expense.

7       (c) Notwithstanding any provision of this code to the  
8 contrary, the West Virginia State Police shall have exclusive  
9 jurisdiction over felony offenses committed on the grounds of the  
10 gaming facility.

11 **§29-30-7. Local option.**

12       (a) (1) No gaming facility may be licensed to operate in a  
13 county until the county commission of the county holds an election  
14 on the question of whether a gaming facility may be operated within  
15 the county and the voters approve the operation of a gaming  
16 facility in the county. The election shall be determined by a vote  
17 of the resident voters of the county in which the facility is  
18 proposed to be located.

19       (2) The county commission of the county in which the proposed  
20 facility is located shall give notice to the public of the election  
21 by publication of the notice as a Class II-0 legal advertisement in  
22 compliance with the provisions of article three, chapter fifty-nine  
23 of this code, and the publication area for the publication shall be  
24 the county in which the election is to be held. The date of the



1 last publication of the notice shall fall on a date within the  
2 period of the fourteen consecutive days next preceding the  
3 election.

4 (3) On the local option election ballot shall be printed the  
5 following:

6 Shall West Virginia Lottery Commission video lottery games and  
7 authorized games of chance be permitted within an area at the [name  
8 of qualified big vertical ski resort]?

9 [ ] Yes [ ] No

10 (Place a cross mark in the square opposite your choice.)

11 (4) Any local option election to approve or disapprove of the  
12 proposed authorization of a gaming facility within a county shall  
13 be in accordance with procedures adopted by the commission. The  
14 local option election may be held in conjunction with a primary or  
15 general election, or at a special election. Approval shall be by  
16 a majority of the voters casting votes on the question of approval  
17 or disapproval of gaming facility operations at the election.

18 (5) If a majority votes against allowing a gaming facility, no  
19 election on the issue shall be held for a period of one hundred  
20 four weeks. If a majority votes "yes", no election reconsidering  
21 the action may be held for a period of five years. A local option  
22 election may thereafter be held if a written petition of qualified  
23 voters residing within the county equal to at least five percent of  
24 the number of persons who were registered to vote in the next

1 preceding general election is received by the county commission of  
2 the county in which the gaming facility is to be located. The  
3 petition may be in any number of counterparts. The election shall  
4 take place at the next general election scheduled more than ninety  
5 days following receipt by the county commission of the petition  
6 required by this subsection: *Provided, That the issue may not be*  
7 placed on the ballot until all statutory notice requirements have  
8 been met: *Provided, however, That no subsequent disapproval may*  
9 take effect until after the expiration of the five-year licensing  
10 period in effect at the time of the referendum.

11 (6) A separate local option election shall be held for each  
12 big vertical ski resort that applies for a license to operate a  
13 gaming facility license pursuant to this article in a county:  
14 *Provided, That should more than one big vertical ski resorts submit*  
15 application for a license to operate a gaming facility within sixty  
16 days of each other, more than one election may appear on the same  
17 ballot, subject to the provisions of subdivision (3) of this  
18 subsection.

19 (b) No local law or regulation providing any penalty,  
20 disability, restriction, regulation or prohibition for operating a  
21 gaming facility or supplying a gaming facility may be enacted, and  
22 the provisions of this article preempt all regulations, rules,  
23 ordinances and laws of any county or municipality in conflict with  
24 this article.

1        (c) Except as specifically provided in this article, no other  
2 fees or taxes may be imposed by a local governing body.

3 **§29-30-8. Licenses required.**

4        (a) No person may engage in any activity in connection with a  
5 gaming facility at a big vertical ski resort in this state for  
6 which a license is required by subsection (b) of this section  
7 unless that person has been licensed by the commission in  
8 accordance with this article.

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

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

12       (2) For any person engaging in the business of supplying a  
13 gaming facility with gaming devices, gaming supplies or gaming  
14 services;

15       (3) For any individual employed by a gaming licensee in  
16 connection with the operation of a gaming facility in the state;  
17 and

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

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

22 **§29-30-9. License to operate a gaming facility.**

23       (a) Gaming facility license. -- The commission may issue up  
24 to four licenses to operate a gaming facility. If the four license

1 limitation in the preceding sentence is found to be  
2 unconstitutional in a final, nonappealable order by a court of  
3 competent jurisdiction, the commission shall have no authority to  
4 issue any license under this article and, in such event, the  
5 provisions of this article shall not be severable and any license  
6 issued under the provisions of this article prior thereto shall be  
7 void. The Legislature intends that no more than four licenses to  
8 operate a gaming facility at a big vertical ski resort in this  
9 state shall be authorized in any event.

10 (b) Applicant qualifications. -- The applicant shall be the  
11 actual operator of the gaming facility to be located on the  
12 premises of an existing big vertical ski resort. The applicant may  
13 be the owner of the existing big vertical ski resort or a person  
14 that leases well-defined spaces on the premises of the big vertical  
15 ski resort in order to operate a gaming facility as defined by this  
16 article. The gaming facility shall be located within the  
17 jurisdiction of a county approving the operation of a gaming  
18 facility in accordance with section seven of this article. The  
19 applicant shall meet the qualifications and requirements set forth  
20 in this article and rules adopted by the commission. In  
21 determining whether to grant a license to operate a gaming facility  
22 to an applicant, the commission shall consider:

23 (1) The character, reputation, experience and financial  
24 integrity of the applicant and any controlling person of the

1 applicant;

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

5 (3) The extent to which the applicant meets standards  
6 contained in rules adopted by the commission relating to public  
7 safety or other standards.

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

22 (d) Management service contracts. --

23 (1) Approval. -- A gaming facility may not enter into any  
24 management service contract that would permit any person other than

1 the licensee to act as the commission's agent in operating West  
2 Virginia Lottery table game unless the management service contract:  
3 (A) Is with a person licensed under this article to provide  
4 management services; (B) is in writing; and (C) the contract has  
5 been approved by the commission.

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

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

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

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

24 (1) Submit an application to the commission on a form

1 prescribed by the commission, which form shall include:

2 (A) Information concerning the applicant and of any  
3 controlling person of the applicant sufficient to serve as a basis  
4 for a thorough background check;

5 (B) Subject to the provisions of subsection (g) of this  
6 section with respect to publicly-traded corporations, the identity  
7 of all stockholders or other persons having a financial interest in  
8 either the applicant or any controlling person of the applicant and  
9 the identity of each director or executive officer of the applicant  
10 and of any controlling person of the applicant;

11 (C) The identity of the big vertical ski resort at which the  
12 gaming facility is to be located, including identification of the  
13 county in which the big vertical ski resort is located; and

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

17 (2) Pay to the commission a nonrefundable application fee for  
18 deposit into the Community-Based Service Fund created in section  
19 twenty-seven, article twenty-two-c of this chapter in the amount of  
20 \$65,000.

21 (f) *Privately held corporations.* -- In the event that an  
22 applicant or any controlling person of an applicant is a privately  
23 held corporation, then the commission may not grant a license until  
24 the commission determines that each person who has control of the

1 applicant also meets all of the qualifications the applicant must  
2 meet to hold the license for which application is made. The  
3 following persons are considered to have control of an applicant:

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

11 (2) Each person associated with a noncorporate applicant who  
12 directly or indirectly holds any beneficial or proprietary interest  
13 in the applicant or who the commission determines to have the  
14 ability to control the applicant; and

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

19 (g) Publicly traded corporations. -- In the event that an  
20 applicant or any controlling person of an applicant is a publicly  
21 traded corporation, then information otherwise required to be  
22 furnished by an applicant with respect to stockholders, directors  
23 and executive officers of the publicly traded corporation shall be  
24 limited to information concerning only those executive officers of



1 the publicly traded corporation whose ongoing and regular  
2 responsibilities relate or are expected to relate directly to the  
3 operation or oversight of the gaming facility. "Publicly traded  
4 corporation" as used herein means any corporation or other legal  
5 entity, except a natural person, which has one or more classes of  
6 securities registered pursuant to section twelve of the Securities  
7 Exchange Act of 1934, as amended (15 U.S.C. §78), or is an issuer  
8 subject to section fifteen-d of said act.

9 (h) Gaming facility qualifications. -- An applicant for a  
10 license to operate a gaming facility shall demonstrate that the  
11 gaming facility will: (1) Be accessible to disabled individuals;  
12 (2) not be located at the main entrance to the big vertical ski  
13 resort; (3) be licensed in accordance with all other applicable  
14 federal, state and local laws; and (4) meet any other  
15 qualifications specified by rules adopted by the commission.

16 (i) Surety bond requirement. -- The licensed gaming facility  
17 shall execute a surety bond to be given to the state to guarantee  
18 the licensee faithfully makes all payments in accordance with the  
19 provisions of this article and rules promulgated by the commission.

20 The surety bond shall be:

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

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

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

7       (j) Authorization of license. -- A license to operate a gaming  
8 facility authorizes the licensee to engage in the business of  
9 operating a gaming facility while the license is effective. A  
10 license to operate a gaming facility is not transferable or  
11 assignable and cannot be sold or pledged as collateral.

12       (k) Audits. -- A licensed gaming facility operator shall  
13 submit to the commission an annual audit, by a certified public  
14 accountant who is, or whose firm is, licensed in the State of West  
15 Virginia, or by a nationally recognized accounting firm, of the  
16 financial transactions and condition of the licensee's total  
17 operations. The audit shall be in accordance with generally  
18 accepted auditing principles.

19       (l) Annual license renewal fee. -- For the second year that it  
20 is licensed, the licensed gaming facility shall pay to the  
21 commission a license renewal fee of \$100,000. For the third year  
22 that it is licensed, the licensed gaming facility shall pay to the  
23 commission a license renewal fee of \$200,000. For every year after  
24 the third year that it is licensed, the licensed gaming facility

1 shall pay to the commission a license renewal fee equal to the  
2 percentage of the annual average gross receipts of the West  
3 Virginia pari-mutuel racetracks with table games licenses pay for  
4 the last full fiscal year of adjusted gross receipts available.

5 (m) The licensed gaming facility shall provide to the  
6 commission, at no cost to the commission, suitable office space at  
7 the gaming facility to perform the duties required of it by the  
8 provisions of this article.

9 **§29-30-10. Reports by licensee.**

10 (a) A gaming licensee shall file with the commission an annual  
11 balance sheet and profit and loss statement pertaining to the  
12 licensee's operation of a gaming facility in this state. A gaming  
13 licensee also shall file with the commission an annual statement  
14 identifying each controlling person of the licensee and all  
15 stockholders, partners, officers or directors for the licensee and  
16 any controlling person: *Provided*, That if a gaming licensee or  
17 controlling person is a publicly-traded corporation, then as to the  
18 publicly-traded corporation the annual report is required to  
19 identify only executive officers whose ongoing regular duties  
20 relate directly to the operation of the gaming facility. A gaming  
21 licensee shall file further reports with the commission as the  
22 commission may require by rule.

23 (b) A gaming licensee shall maintain daily records showing the  
24 following:

1 (1) The total number of patrons of the gaming facility; and

2 (2) The gross receipts and the adjusted gross receipts.

3 (c) From information provided under this subsection, from the  
4 audit described in subsection (k), section nine of this article,  
5 and from any other source available to the commission, the  
6 commission shall identify the profits made from the operation of  
7 the gaming facility and compare the profits to profits made from  
8 the operation of facilities of a similar nature in other states.  
9 Annually, the commission shall submit a report to the Joint  
10 Committee on Government and Finance setting forth the profits made  
11 in the operation of the gaming facility in this state and the  
12 results of the comparison to profits made in other states. The  
13 commission shall include in the report its recommendations for any  
14 adjustments in the taxes imposed upon the operation of a gaming  
15 facility under the provisions of this article that would be  
16 commensurate with the legislative intent to maximize taxes received  
17 from the operation of a gaming facility and minimize profits  
18 derived by a licensee from the operation of a gaming facility.

19 **§29-30-11. License to supply gaming facility.**

20 (a) Licenses. -- The commission may issue a license to each  
21 applicant for a license to supply a gaming facility with gaming  
22 devices, gaming supplies or services who meets the requirements of  
23 this section.

24 (b) License qualifications. -- To qualify for a license, an

1 applicant shall meet the requirements of this section. Each  
2 applicant who is an individual who is a controlling person of an  
3 applicant that is not an individual shall be of good moral  
4 character and reputation and shall have the necessary experience  
5 and financial ability to successfully carry out the functions of a  
6 gaming facility supplier. The commission may adopt rules  
7 establishing additional requirements for a gaming facility  
8 supplier.

9 (c) *Supplier specification.* -- An applicant for a license to  
10 supply gaming devices, equipment and supplies to a gaming facility  
11 shall demonstrate that the gaming devices, equipment and supplies  
12 that the applicant plans to sell or lease to the licensed operator  
13 of the gaming facility, conform or will conform to standards  
14 established by rules of the commission and applicable state law.

15 (d) *License application requirements.* -- An applicant for a  
16 license shall:

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

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

1 the release of information by the Criminal Investigation Bureau and  
2 the Federal Bureau of Investigation. The commission may require  
3 any applicant seeking the renewal of a license or permit to furnish  
4 fingerprints for a national criminal records check by the Criminal  
5 Identification Bureau of the West Virginia State Police and the  
6 Federal Bureau of Investigation; and

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

10 (e) Authorization of licensee. -- A license to supply a gaming  
11 facility authorizes the licensee to engage in the business of  
12 selling gaming devices and supplies to a gaming facility while the  
13 license is effective.

14 (f) Inventory. -- A licensed gaming facility supplier shall  
15 submit to the commission a list of all equipment, gaming devices  
16 and supplies sold or delivered to a gaming facility in this state  
17 when required by the commission.

18 (g) Annual license renewal fee. -- A licensed gaming facility  
19 supplier shall pay to the commission an annual license renewal fee  
20 of \$100.

21 **§29-30-12. License to be employed by operator of gaming facility.**

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

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

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

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

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

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

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

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

15 **§29-30-13. False statements on applications; other license**  
16 **requirements and prohibitions.**

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

23       (b) The commission may not grant a license pursuant to the  
24 provisions of this article if there is substantial evidence that



1 the applicant:

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

4 (2) Has been suspended from operating a gambling game, gaming  
5 device or gambling operation in another jurisdiction by a board or  
6 other governmental authority of that jurisdiction having  
7 responsibility for the regulation of gambling or gaming activities;

8 (3) Has been convicted of a felony, an offense of moral  
9 turpitude, a gambling offense, a theft or fraud offense or has  
10 otherwise demonstrated, either by a police record or other  
11 satisfactory evidence, a lack of respect for law and order;

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

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

16 (A) Has not demonstrated financial responsibility sufficient  
17 to meet adequately the requirements of the enterprise proposed;

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

21 (C) Is a corporation and five percent or more of the stock of  
22 the corporation is subject to a contract or option to purchase at  
23 any time during the period for which the license is issued unless  
24 the contract or option was disclosed to and approved by the

1 commission.

2 (c) In addition to any other grounds specified in this  
3 article, and subject to the hearing provisions of section seventeen  
4 of this article, in the case of a license to operate a gaming  
5 facility the commission may deny a license to any applicant,  
6 reprimand any licensee, or suspend or revoke a license if the  
7 applicant or licensee or any controlling person of the applicant or  
8 licensee knowingly employs an individual in a senior management  
9 position who has been convicted of a felony under the laws of this  
10 state, another state, a territory of the United States, or the  
11 United States or employs any individual in a senior management  
12 position who has had a license relating to the operation of a  
13 gaming facility revoked by this state or any other state.

14 (d) Character references may be required of persons licensed,  
15 but the character reference may not be obtained from persons in the  
16 same or similar occupations or professions in other states.

17 **§29-30-14. Licenses; availability for inspection; change of**  
18 **address.**

19 (a) The commission shall include on each license that the  
20 commission issues:

21 (1) The type of license;

22 (2) The identity and address of the licensee;

23 (3) The effective date of the license; and

24 (4) Any other information the commission considers

1 appropriate.

2 (b) Each gaming licensee or licensed supplier of a gaming  
3 facility shall display the license conspicuously in its place of  
4 business or have the license readily available for inspection at  
5 the request of any agent of the commission or of the State Police.  
6 Each holder of a license to be employed by a gaming facility shall  
7 carry the license on his or her person at all times when present in  
8 a gaming facility and, if required by rules adopted by the  
9 commission with respect to the particular capacity in which the  
10 licensee is employed, have some indicia of licensure prominently  
11 displayed on his or her person.

12 (c) Each licensee shall give the commission written notice of  
13 any change of address and any other relevant information necessary  
14 for the maintenance of accurate records by the commission.

15 **§29-30-15. Expiration date and renewal of gaming license.**

16 (a) Licenses issued pursuant to this article expires on the  
17 fifth anniversary of its effective date, unless the license is  
18 renewed for additional five-year terms as provided in this  
19 section.

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

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

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

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

3 (3) The amount of the renewal fee.

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

6 (1) Otherwise is entitled to be licensed;

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

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

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

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

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

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

22 **§29-30-16. License denial, revocation and reprimand.**

23 (a) The commission may deny a license to any applicant,  
24 reprimand any licensee, or suspend or revoke a license if the

1 applicant or licensee, or any controlling person of the applicant  
2 or license:

3 (1) Fraudulently or deceptively obtains or attempts to obtain  
4 a license for the applicant or licensee or for another;

5 (2) Fraudulently or deceptively uses a license;

6 (3) Is convicted of a felony under the laws of this state,  
7 another state, a territory of the United States or the United  
8 States;

9 (4) Is convicted of a misdemeanor under the laws of this  
10 state, another state, the United States or a territory of the  
11 United States for gambling or a gambling-related activity; or

12 (5) Is not complying with this act, the rules or the minimum  
13 internal control standards promulgated by the commission or the  
14 gaming facility.

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

18 **§29-30-17. Hearing procedures.**

19 (a) Right to a hearing. -- Except as otherwise provided by  
20 law, before the commission takes any action involving a licensee  
21 under the provisions of this article, it shall give the persons  
22 against whom the action is contemplated an opportunity for a  
23 hearing before the commission.

24 (b) Notice of hearing and right to counsel. -- The commission

1 shall give notice and hold the hearing in accordance with article  
2 five, chapter twenty-nine-a of this code. The notice shall be  
3 given to the person by certified mail to the last known address of  
4 the person at least thirty days before the hearing. The person may  
5 be represented at the hearing by counsel.

6 (c) Failure to comply with subpoena. -- If a person fails to  
7 comply with a subpoena issued under this section, on petition of  
8 the commission, the circuit court may compel obedience to the  
9 subpoena. If after due notice the person against whom the action  
10 is contemplated fails or refuses to appear, the commission may hear  
11 and determine the matter.

12 (d) Appeal. -- Any person aggrieved by a final decision of the  
13 commission in a contested case may file a petition for appeal in  
14 the circuit court of Kanawha County within thirty days after the  
15 person received notice of the final order or decision, as provided  
16 in section four, article five, chapter twenty-nine-a of this code.

17 **§29-30-18. Inspection and seizure.**

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

22 (1) Inspect and examine all premises of the gaming facility  
23 with West Virginia Lottery table games, gaming devices, the  
24 premises where gaming equipment is manufactured, sold, distributed

1 or serviced or any premises in which any records of the activities  
2 are prepared or maintained;

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

6 (3) Seize summarily and remove from the premises and impound  
7 any gaming equipment for the purposes of examination, inspection or  
8 testing;

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

11 (5) Summarily seize, impound or assume physical control of any  
12 book, record, ledger, West Virginia Lottery table game, gaming  
13 equipment or device, cash box and its contents, counting room or  
14 its equipment or West Virginia Lottery table game operations; and

15 (6) Inspect the person, and the person's personal effects  
16 present on the grounds of a licensed gaming facility with West  
17 Virginia Lottery table games, of any holder of a license issued  
18 pursuant to this article while that person is present on the  
19 grounds of a licensed gaming facility having West Virginia Lottery  
20 table games.

21 **§29-30-19. Consent to presence of law-enforcement officers;**  
22 **wagering limits; operations and services; posting**  
23 **of betting limits.**

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

7       (b) Commission discretion in gaming operations. -- Video  
8 lottery terminals operated at the gaming facility may allow minimum  
9 and maximum wagers on a single game the amounts determined by the  
10 license in the exercise of its business judgment subject to the  
11 approval of the commission.

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

15       (A) Maximum and minimum wagers;

16       (B) Advertising and promotional activities;

17       (C) Hours of operation;

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

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

24       (c) Setting of operations. -- Notwithstanding anything to the



1 contrary contained elsewhere in this chapter, the commission may  
2 establish the following parameters for commission regulated lottery  
3 games of any kind which is played at a licensed gaming facility:

4 (1) Minimum and maximum payout percentages;

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

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

10 (d) Posting of betting limits. -- A gaming facility shall  
11 conspicuously post a sign at each West Virginia Lottery table game  
12 indicating the permissible minimum and maximum wagers pertaining at  
13 that table. A gaming facility licensee may not require any wager  
14 to be greater than the stated minimum or less than the stated  
15 maximum. However, any wager actually made by a patron and not  
16 rejected by a gaming facility licensee prior to the commencement of  
17 play shall be treated as a valid wager.

18 **§29-30-20. Accounting and reporting of gross terminal income;**  
19 **distribution.**

20 The licensed gaming facility shall submit thirty-five percent  
21 of the gross terminal income from video lottery games at the  
22 licensed gaming facility to the commission through electronic funds  
23 transfer to be deposited into the Big Vertical Ski Resort Fund  
24 created in section twenty-two of this article. The submission

1 shall be made to the commission weekly. The gaming licensee shall  
2 furnish to the commission all information and bank authorizations  
3 required to facilitate the timely transfer of moneys to the  
4 commission. The gaming licensee shall provide the commission  
5 thirty days' advance notice of any proposed account changes in  
6 order to assure the uninterrupted electronic transfer of funds.

7 **§29-30-21. Taxes on games other than video lottery games.**

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

22 (b) Computation and payment of tax. -- The taxes levied under  
23 the provisions of this section are due and payable to the  
24 commission in weekly installments on or before the Wednesday of

1 each week. The taxpayer shall, on or before the Wednesday of each  
2 week, make out and submit by electronic communication to the  
3 commission a return for the preceding week, in the form prescribed  
4 by the commission, showing: (1) The total gross receipts from the  
5 gaming facility for that month and the adjusted gross receipts; (2)  
6 the amount of tax for which the taxpayer is liable; and (3) any  
7 further information necessary in the computation and collection of  
8 the tax which the Tax Commissioner or the commission may require.  
9 Payment of the amount of tax due shall accompany the return. All  
10 payments made pursuant to this section shall be deposited in  
11 accordance with sections twenty-two and twenty-three of this  
12 article. Payments due to the commission under this section and  
13 payments due to the commission under section twenty of this article  
14 shall be sent simultaneously.

15 (c) *Negative adjusted gross receipts.* -- When adjusted gross  
16 receipts for a week is a negative number because the winnings paid  
17 to patrons wagering on the gaming facility's West Virginia Lottery  
18 table games exceeds the gaming facility's gross receipts from the  
19 purchase of table game tokens, chips or electronic media by  
20 patrons, the commission shall allow the licensee to, pursuant to  
21 rules of the commission, carry over the negative amount of adjusted  
22 gross receipts to returns filed for subsequent weeks. The negative  
23 amount of adjusted gross receipts may not be carried back to an  
24 earlier week, and the commission is not required to refund any tax

1 received by the commission, except when the licensee surrenders its  
2 license to act as agent of the commission in operating West  
3 Virginia Lottery table game under this article and the licensee's  
4 last return filed under this section shows negative adjusted gross  
5 receipts. In that case, the commission shall multiply the amount  
6 of negative adjusted gross receipts by the applicable rate of tax  
7 and pay the amount to the licensee, in accordance with rules of the  
8 commission.

9 (d) Prohibition on credits. -- Notwithstanding any other  
10 provision of this code to the contrary, no credits may be allowed  
11 against any tax imposed on any taxpayer by this code for an  
12 investment in gaming devices and supplies, for an investment in  
13 real property which would be directly utilized for the operation of  
14 a gaming facility or for any jobs created at a gaming facility.  
15 Notwithstanding any other provision of this code to the contrary,  
16 the tax imposed by this section may not be added to federal taxable  
17 income in determining West Virginia taxable income of a taxpayer  
18 for purposes of article twenty-four, chapter eleven of this code.

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

20 (1) With the exception of the ad valorem property tax  
21 collected under chapter eleven-a of this code, the tax imposed by  
22 this section is in lieu of all other state taxes and fees imposed  
23 on the operation of, or the proceeds from operation of West  
24 Virginia Lottery table games, except as otherwise provided in this

1 section. The consumers sales and service tax imposed pursuant to  
2 article fifteen, chapter eleven of this code shall not apply to the  
3 licensee's gross receipts from any wagering on a West Virginia  
4 Lottery table game pursuant to this article or to the licensee's  
5 purchasing of gaming equipment, supplies or services directly used  
6 in operation of a West Virginia Lottery table games authorized by  
7 this article. These purchases are also exempt from the use tax  
8 imposed by article fifteen-a, chapter eleven of this code.

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

18 **§29-30-22. Big Vertical Ski Resort Fund; allocation of adjusted**  
19 **gross receipts; disposition of license fees.**

20 (a) There is hereby created a special fund in the State  
21 Treasury which shall be designated and known as the Big Vertical  
22 Ski Resort Fund. Thirty-five percent of the gross terminal income  
23 received by the commission under section twenty of this article,  
24 and thirty-five percent of the adjusted gross receipts received by

1 the commission under section twenty-one of this article shall be  
2 deposited with the State Treasurer and placed in the Big Ski Resort  
3 Fund. The fund shall be an interest-bearing account with interest  
4 to be credited to and deposited in the Big Vertical Ski Resort  
5 Fund.

6 (b) All expenses of the commission shall be paid from the Big  
7 Vertical Ski Resort Fund, including reimbursement of the State  
8 Police for activities performed at the request of the commission in  
9 connection with background investigations or enforcement activities  
10 pursuant to this article. At no time may the commission's expenses  
11 under this article exceed ten percent of amounts collected from the  
12 licensee pursuant to sections twenty and twenty-one of this  
13 article.

14 (c) The balance of the Big Vertical Ski Resort Fund shall  
15 become net income and shall be paid to the county where the gaming  
16 facility is located.

17 (d) Notwithstanding any provision of this article to the  
18 contrary, all limited gaming facility license fees and license  
19 renewal fees received by the commission pursuant to section nine of  
20 this article shall be deposited into the Community-Based Service  
21 Fund created in section twenty-seven, article twenty-two-c of this  
22 chapter.

23 (e) With the exception of the license fees and license renewal  
24 fees received by the commission pursuant to section nine of this

1 article, all revenues received from licensees and license  
2 applicants under this article shall be retained by the commission  
3 as reimbursement for the licensing process.

4 **§29-30-23. Prohibition on unauthorized wagering; complimentary**  
5 **service, gift, cash or other item.**

6 (a) A gaming licensee may not permit any form of wagering  
7 except as authorized under this article or article twenty-two,  
8 twenty-two-a or twenty-two-c of this chapter.

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

11 (c) All gaming facility operations shall utilize a cashless  
12 wagering system whereby all players' money is converted to tokens,  
13 paper vouchers, electronic cards or chips at the request of the  
14 wagerer which can only be used for wagering in a licensed gaming  
15 facility and wagering may not be conducted with money or other  
16 negotiable currency:

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

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

1       (3) The licensee may not charge a fee for converting a  
2 player's money to an acceptable media for playing a West Virginia  
3 Lottery table game or charge a fee for converting the acceptable  
4 media for wagering a West Virginia Lottery table game back to  
5 money.

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

9       (1) The complimentary consists of room, food, beverage or  
10 entertainment expenses provided directly to the patron and his or  
11 her guests by the gaming facility licensee or indirectly to the  
12 patron and his or her guests on behalf of the licensee by a third  
13 party;

14       (2) The complimentary consists of documented transportation  
15 expenses provided directly to the patron and his or her guests on  
16 behalf of a gaming facility licensee by a third party: *Provided,*  
17 That the licensee complies with the rules promulgated by the  
18 commission to ensure that a patron's and his or her guests'  
19 documented transportation expenses are paid for or reimbursed only  
20 once; or

21       (3) The complimentary consists of coins, tokens, cash or other  
22 complimentary items or services provided through any complimentary  
23 distribution program, the terms of which shall be filed with the  
24 commission upon implementation of the program or maintained



1 pursuant to commission rule. Any change in the terms of a  
2 complimentary program shall be filed with the commission upon  
3 implementation of the change.

4 (e) Notwithstanding any provision of subsection (d) of this  
5 section to the contrary, a gaming facility licensee may offer and  
6 provide complimentary cash or noncash gifts that are not otherwise  
7 included in that subsection to any person: *Provided, That any*  
8 complimentary cash or noncash gifts in excess of an amount per trip  
9 to be set by interpretive rule of the commission are supported by  
10 documentation regarding the reason the gift was provided to the  
11 patron and his or her guests, including, where applicable, a  
12 patron's player rating. The documentation shall be maintained by  
13 a gaming facility licensee in accordance with commission rules.  
14 For purposes of this subsection, all gifts presented to a patron  
15 and a patron's guests directly by the gaming facility licensee or  
16 indirectly on behalf of the licensee by a third party within any  
17 five-day period shall be considered to have been made during a  
18 single trip.

19 **§29-30-24. Individual gaming restrictions.**

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

22 (1) Is either;

23 (A) A registered overnight guest at the big vertical ski  
24 resort on whose premises the gaming facility is located;

1 (B) Has a valid lift ticket for that day or the following day;

2 or

3 (C) A member of a homeowner or facility association that  
4 entitles members to substantial privileges at the big vertical ski  
5 resort on whose premises the gaming facility is located or an  
6 overnight guest of such a member: Provided, That the association  
7 was in existence as of April 1, 2012;

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

9 (3) Is not visibly intoxicated;

10 (4) Has not been determined by the gaming facility operator or  
11 the commission to be unruly, disruptive or otherwise interfering  
12 with operation of the gaming facility; or to be likely to commit,  
13 or to attempt to commit, a violation of this article; and

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

16 (b) Notwithstanding any provisions of this code to the  
17 contrary, no employee of the commission or employee of the big  
18 vertical ski resort or any member of his or her immediate household  
19 may wager at the gaming facility.

20 **§29-30-25. Offenses and penalties.**

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

23 (1) The licensee operates a West Virginia Lottery table game  
24 or places a video lottery game or video lottery terminal in any

1 location that is not a designated gaming area approved by the  
2 commission;

3 (2) The licensee acts or employs another person to act as if  
4 he or she is not an agent or employee of the licensee in order to  
5 encourage participation in a West Virginia Lottery table game in a  
6 gaming facility;

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

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

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

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

1       (7) The licensee employs an individual in a position or to  
2 perform duties, for which a license is required by this article or  
3 rules of the commission and the employee does not have a license  
4 issued under the provisions of this article or the licensee  
5 continues to employ the individual in a position or to perform  
6 duties, for which a license is required by this article or rules of  
7 the commission, after the employee's license expired, was revoked  
8 by the commission or not renewed by the commission.

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

10       (1) The person operates, carries on or exposes for play a West  
11 Virginia Lottery table game prior to obtaining a license or after  
12 the person's license has expired and prior to actual renewal of the  
13 license or before the West Virginia Lottery table game and the  
14 licensee's rules for play for the game are approved or modified and  
15 approved by the commission;

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

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

23       (4) A licensee who knowingly conducts, carries on, operates or  
24 exposes for play, or allows to be conducted, carried on, operated

1 or exposed for play any video lottery game, video lottery terminal,  
2 or other device, equipment or material which has in any manner been  
3 tampered with, or placed in a condition, or operated in a manner,  
4 the result of which tends to deceive the public or tends to alter  
5 the normal random selection of characteristics or the normal random  
6 selection of characteristics or the normal chance of the video  
7 lottery game.

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

9 (1) The person offers, promises or gives anything of value or  
10 benefit to a person who has an ownership or financial interest in,  
11 is employed by or has a service contract with a gaming facility or  
12 to that person's spouse or any dependent child or dependent parent,  
13 pursuant to an agreement or arrangement, in fact or implied from  
14 the circumstances, with intent that the promise or thing of value  
15 or benefit will influence the actions of the person in order to  
16 affect or attempt to affect the outcome of a West Virginia Lottery  
17 table game or to influence official action of the commission. For  
18 the purposes of this subdivision and subdivision (2) of this  
19 subsection, the term "person who is connected with a gaming  
20 facility" includes, but is not limited to, a person licensed under  
21 this article as well as an officer or employee of a licensee;

22 (2) The person solicits or knowingly accepts or receives a  
23 promise of anything of value or benefit while the person is  
24 connected with a gaming facility, pursuant to an understanding or

1 arrangement or with the intent that the promise or thing of value  
2 or benefit will influence the actions of the person to affect or  
3 attempt to affect the outcome of a West Virginia Lottery table game  
4 or to influence official action of the commission;

5 (3) The person uses or possesses on property owned by the  
6 licensed gaming facility or on property contiguous to the gaming  
7 facility, with the intent to use, an electronic, electrical or  
8 mechanical device that is designed, constructed or programmed to  
9 assist the user or another person:

10 (A) In projecting the outcome of a West Virginia Lottery table  
11 game;

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

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

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

18 (E) In obtaining an advantage at playing any West Virginia  
19 Lottery table game at a licensed gaming facility authorized under  
20 this article to operate a West Virginia Lottery table game;

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

23 (5) The person manufacturers, sells, or distributed any cards,  
24 chips, dice, game or device which is intended to be used to violate

1 any provision of this article or the table gaming laws of any other  
2 state;

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

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

12 (8) The person claims, collects, takes or attempts to claim,  
13 collect or take money or anything of value into or from a gaming  
14 facility, with intent to defraud, without having made a wager  
15 contingent on winning a West Virginia Lottery table game, or  
16 claims, collects or takes an amount of money or thing of value or  
17 greater value than the amount won;

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

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

23 (11) The person, not a gaming licensee or employee or agent of  
24 a gaming facility licensed under this article, acting in

1 furtherance of the gaming licensee's interests, has in his or her  
2 possession on grounds owned by the gaming facility licensed under  
3 this article or on grounds contiguous to the gaming facility, any  
4 device, by whatever name called, intended to be used to violate a  
5 provision of this article or a rule of the commission implementing  
6 or explaining a provision of this article; or

7       (12) The person, not a gaming licensee or agent of a gaming  
8 licensee acting in furtherance of the gaming licensee's interests,  
9 has in his or her possession any key or device designed for the  
10 purpose of opening, entering or affecting the operation of a West  
11 Virginia Lottery table game, drop box or an electronic or  
12 mechanical device connected with or used in connection with a West  
13 Virginia Lottery table game in a gaming facility or for removing  
14 coins, tokens, chips or other contents therefrom.

15       (d) Any person who violates the provisions of subsection (a)  
16 or (b) of this section is guilty of a misdemeanor and, upon  
17 conviction thereof, shall be fined not more than \$1,000 and  
18 confined in jail for not more than six months, except that in the  
19 case of a person other than a natural person, the amount of the  
20 fine imposed may not be more than \$25,000.

21       (e) Any person who violates the provisions of subsection (c)  
22 of this section is guilty of a felony and, upon conviction thereof,  
23 shall be fined not less than \$5,000 nor more than \$10,000 and  
24 committed to a state correctional facility for a term of



1 imprisonment of not less than one year nor more than five years.

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

6 **§29-30-26. Forfeiture of property.**

7 (a) Anything of value, including all traceable proceeds  
8 including, but not limited to, real and personal property, moneys,  
9 negotiable instruments, securities and conveyances, is subject to  
10 forfeiture to the State of West Virginia if the item was used for  
11 any of the following:

12 (1) As a bribe intended to affect the outcome of a West  
13 Virginia Lottery table game in a gaming facility; or

14 (2) In exchange for or to facilitate a violation of this  
15 article.

16 (b) The Legislature finds and declares that the seizure and  
17 sale of items under the provisions of this section is not  
18 contemplated to be a forfeiture as that term is used in section  
19 five, article XII of the Constitution of West Virginia and, to the  
20 extent that a seizure and sale may be found to be a forfeiture, the  
21 Legislature hereby finds and declares that the proceeds from a  
22 seizure and sale under this article are not part of net proceeds as  
23 it is contemplated by section five, article XII of the Constitution  
24 of West Virginia.

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

5 **§29-30-27. Civil penalties.**

6 The commission may impose on a person who violates the  
7 provisions of this article a civil penalty not to exceed \$10,000  
8 for each violation, whether or not the person is licensed under  
9 this article.

10 The provisions of article five, chapter twenty-nine-a of this  
11 code shall apply to any civil penalty imposed pursuant to the  
12 provisions of this section.

13 **§29-30-28. Specific provision for video lottery games.**

14 The commission is authorized to implement and operate video  
15 lottery games at no more than four gaming facilities at big  
16 vertical ski resorts in this state in accordance with this article  
17 and the applicable provisions of article twenty-two-a of this  
18 chapter. The provisions of that article apply to this article,  
19 except in the event of conflict or inconsistency between any of the  
20 provisions of this article and the provisions of article  
21 twenty-two-a of this chapter. In that event, the provisions of  
22 this article shall supersede any conflicting or inconsistent  
23 provisions contained in article twenty-two-a of this chapter.

24 **§29-30-29. Video lottery terminal requirements; application for**

1           approval of video lottery terminals; testing of  
2           video lottery terminals; report of test results;  
3           modifications to previously approved models;  
4           conformity to prototype; seizure and destruction of  
5           terminals.

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

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

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

23          (1) The manufacturer shall pay all costs of testing,

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

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

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

1 terminal model unless modifications are approved by the commission.

2 (e) The video lottery terminal manufacturer and licensed  
3 gaming facility are jointly responsible for the assembly and  
4 installation of all video lottery terminals and associated  
5 equipment. The manufacturer and licensed gaming facility shall not  
6 change the assembly or operational functions of a terminal licensed  
7 for placement in West Virginia unless a request for modification of  
8 an existing video terminal prototype is approved by the commission.  
9 The request shall contain a detailed description of the type of  
10 change, the reasons for the change and technical documentation of  
11 the change.

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

22 **§29-30-30. Video lottery terminal hardware and software**  
23 **requirements; hardware specifications; software**  
24 **requirements for randomness testing; software**

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

5           (a) The commission may approve video lottery terminals and in  
6 doing so shall take into account advancements in computer  
7 technology, competition from nearby states and the preservation of  
8 jobs at the big vertical ski resort. In approving video lottery  
9 terminals licensed for placement in this state the commission shall  
10 insure that the terminals meet the following hardware  
11 specifications:

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

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

22           (3) An on/off switch which controls the electrical current  
23 used in the operation of the terminal shall be located in an

1 accessible place within the interior of the video lottery terminal.

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

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

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

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

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

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

24 (10) Each video lottery terminal shall contain a single

1 printing mechanism capable of printing an original ticket and  
2 capturing and retaining an electronic copy of the ticket data as  
3 approved by the commission: *Provided*, That the printing mechanism  
4 is optional on any video lottery terminal which is designed and  
5 equipped exclusively for coin or token payouts. The following  
6 information shall be recorded on the ticket when credits accrued on  
7 a video lottery terminal are redeemed for cash:

- 8 (i) The number of credits accrued;  
9 (ii) Value of the credits in dollars and cents displayed in  
10 both numeric and written form;  
11 (iii) Time of day and date;  
12 (iv) Validation number; and  
13 (v) Any other information required by the commission.

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

- 17 (i) Manufacturer of the video lottery terminal;  
18 (ii) Serial number of the terminal; and  
19 (iii) Model number of the terminal.

20 (12) The rules of play for each game shall be displayed on the  
21 video lottery terminal face or screen. The commission may reject  
22 any rules of play which are incomplete, confusing, misleading or  
23 inconsistent with game rules approved by the commission. For each  
24 video lottery game, there shall be a display detailing the credits



1 awarded for the occurrence of each possible winning combination of  
2 numbers or symbols. All information required by this subdivision  
3 shall be displayed under glass or another transparent substance.  
4 No stickers or other removable devices may be placed on the video  
5 lottery terminal screen or face without the prior approval of the  
6 commission.

7 (13) Communication equipment and devices shall be installed to  
8 enable each video lottery terminal to communicate with the  
9 commission's central computer system by use of a communications  
10 protocol provided by the commission to each permitted manufacturer,  
11 which protocol shall include information retrieval and terminal  
12 activation and disable programs, and the commission may require  
13 each licensed racetrack to pay the cost of a central site computer  
14 as a part of the licensing requirement.

15 (14) All video lottery terminals shall have a security system  
16 which temporarily disables the gaming function of the terminal  
17 while opened.

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

22 (1) *Chi-square test.* -- Each symbol or number shall satisfy  
23 the ninety-nine percent confidence limit using the standard  
24 chi-square statistical analysis of the difference between the

1 expected result and the observed result.

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

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

12 (4) *Serial correlation test.* -- Each symbol or number is  
13 random if it meets the ninety-nine percent confidence level using  
14 standard serial correlation analysis to determine whether each  
15 symbol or number is independently chosen without reference to the  
16 same symbol or number in a previous game.

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

21 (d) Each video lottery terminal shall be capable of continuing  
22 the current game with all current game features after a video  
23 lottery terminal malfunction is cleared. If a video lottery  
24 terminal is rendered totally inoperable during game play, the

1 current wager and all credits appearing on the video lottery  
2 terminal screen prior to the malfunction shall be returned to the  
3 player.

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

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

12 (2) Number of credits wagered;

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

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

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

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

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

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

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

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

24 (f) No video lottery terminal may have any mechanism which

1 allows the electronic accounting meters to clear automatically.  
2 Electronic accounting meters may not be cleared without the prior  
3 approval of the commission. Both before and after any electronic  
4 accounting meter is cleared, all meter readings shall be recorded  
5 in the presence of a commission employee.

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

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

20 **§29-30-31. The specific video lottery duties required of the**  
21 **gaming facility.**

22 The gaming facility licensee shall:

23 (a) Acquire video lottery terminals by purchase, lease or  
24 other assignment and provide a secure location for the placement,

1 operation and play of the video lottery terminals;

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

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

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

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

15 (f) Ensure that video lottery terminals are placed and remain  
16 placed in the specific locations within the gaming facility that  
17 have been approved by the commission. No video lottery terminal or  
18 terminals at the gaming facility shall be relocated without the  
19 prior approval of the commission;

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

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

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

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

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

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

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

16 **§29-30-32. License to be a provider of management services.**

17 (a) License. -- The commission may issue a license to a person  
18 providing management services under a management services contract  
19 to a gaming facility when the commission determines that the person  
20 meets the requirements of this section and any applicable rules of  
21 the commission.

22 (b) License qualifications. -- Each applicant who is an  
23 individual and each individual who controls an applicant, as  
24 provided in subsection (g), section two of this article, shall be

1 of good moral character, honesty and integrity and shall have the  
2 necessary experience and financial ability to successfully carry  
3 out the functions of a management services provider. The  
4 commission may adopt rules establishing additional requirements for  
5 an authorized management services provider. The commission may  
6 accept licensing by another jurisdiction, specifically determined  
7 by the commission to have similar licensing requirements, as  
8 evidence the applicant meets authorized management services  
9 provider licensing requirements.

10 (c) Management service provider specifications. -- An  
11 applicant for a license to provide management services to a gaming  
12 facility licensee shall demonstrate that the management services  
13 that the applicant plans to offer to the gaming facility licensee  
14 conform or will conform to standards established by rules of the  
15 commission and applicable state law.

16 (d) License application requirements. -- An applicant for a  
17 license to provide management services to a gaming facility  
18 licensee shall:

19 (1) Submit an application to the commission in the form  
20 required by the commission including adequate information to serve  
21 as a basis for a thorough background check;

22 (2) Submit fingerprints for a national criminal records check  
23 by the Criminal Identification Bureau of the West Virginia State  
24 Police and the Federal Bureau of Investigation. The fingerprints

1 shall be furnished by all persons required to be named in the  
2 application and shall be accompanied by a signed authorization for  
3 the release of information by the Criminal Investigation Bureau and  
4 the Federal Bureau of Investigation. The commission may require  
5 any applicant seeking the renewal of a license or permit to furnish  
6 fingerprints for a national criminal records check by the Criminal  
7 Identification Bureau of the West Virginia State Police and the  
8 Federal Bureau of Investigation; and

9 (3) Pay to the commission a nonrefundable application fee for  
10 deposit into the Big Vertical Ski Resort Fund in the amount of  
11 \$100.

12 (e) Authorization. -- A license to provide management services  
13 to a gaming facility licensee authorizes the licensee to provide  
14 management service to a gaming facility while the license is  
15 active. The commission may by rule establish the conditions which  
16 constitute an emergency under which the commission may issue  
17 provisional licenses pending completion of final action on an  
18 application.

19 (f) Fees, expiration date and renewal. -- A licensed provider  
20 of management services shall pay to the commission an annual  
21 license fee of \$100 for an initial term beginning prior to the date  
22 of the provider's first contract with a gaming facility licensee  
23 and continuing through the end of the twelfth month thereafter  
24 whenever the licensee has paid the renewal fee and has continued to



1 comply with all applicable statutory and rule requirements. The  
2 commission shall renew a license to provide management services to  
3 a gaming facility annually thereafter. A gaming facility licensee  
4 may continue to use the management services provided by the  
5 management services provider while that provider was licensed,  
6 notwithstanding the expiration of the provider's license, unless  
7 the commission finds the services provided are not conforming to  
8 standards established by rule of the commission and applicable  
9 state law.

10 **§29-30-33. State ownership of West Virginia Lottery table games.**

11 All West Virginia Lottery table games authorized by this  
12 article shall be West Virginia lottery games owned by the State of  
13 West Virginia. A gaming facility license granted to a big vertical  
14 ski resort by the commission pursuant to this article shall include  
15 the transfer by the commission to the big vertical ski resort  
16 limited license rights in and to the commission's intellectual  
17 property ownership of the West Virginia lottery games which  
18 includes granting licensees limited lawful authority relating to  
19 the conduct of lottery table games for consideration, within the  
20 terms and conditions established pursuant to this article and any  
21 rules promulgated under this article.

22 **§29-30-34. Preemption.**

23 No local law or rule providing any penalty, disability,  
24 restriction, regulation or prohibition for operating a big vertical

1 ski resort with West Virginia Lottery table games or supplying a  
2 licensed gaming facility may be enacted and the provisions of this  
3 article preempt all regulations, rules, ordinances and laws of any  
4 county or municipality in conflict with this article.

5 **§29-30-35. Exemption from federal law.**

6 Pursuant to Section 2, Chapter 1194, 64 Stat. 1134, 15 U.S.C.  
7 §1172, approved January 2, 1951, the State of West Virginia, acting  
8 by and through duly elected and qualified members of the  
9 Legislature, does declare and proclaim that the state is exempt  
10 from Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.

11 **§29-30-36. Game rules of play; disputes.**

12 (a) As an agent of the commission authorized to operate West  
13 Virginia Lottery table games, the gaming facility licensee shall  
14 have written rules of play for each West Virginia Lottery table  
15 game it operates that are approved by the commission before the  
16 West Virginia Lottery table game is offered to the public. Rules  
17 of play proposed by the gaming facility may be approved, amended or  
18 rejected by the commission.

19 (b) All West Virginia Lottery table games shall be conducted  
20 according to the specific rules of play approved by the commission.  
21 All wagers and pay-offs of winning wagers shall be made according  
22 to those rules of play, which shall establish any limitations  
23 necessary to assure the vitality of West Virginia Lottery table  
24 game operations.

1       (c) The gaming facility licensee shall make available in  
2 printed form to any patron, upon request of the patron, the  
3 complete texts of the rules of play of any West Virginia Lottery  
4 table games in operation at the gaming facility, pay-offs of  
5 winning wagers and any other advice to the player required by the  
6 commission.

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

13 **§29-30-37. Shipment of gambling devices.**

14       All shipments of gambling devices, including video lottery  
15 machines, to the licensed gaming facility in this state, the  
16 registering, recording and labeling of which have been completed by  
17 the manufacturer or dealer thereof in accordance with Chapter 1194,  
18 64 Stat. 1134, 15 U.S.C. §1171 to §1178, are legal shipments of  
19 gambling devices into the State of West Virginia.

NOTE: The bill permits certain ski resorts to be limited gaming facilities. The bill makes findings. The bill defines terms. The bill sets forth the duties and powers of the State Lottery Commission. The bill permits a gaming facility only in a county whose voters approve the facility. The bill permits up to four licenses to be issued. The bill sets forth an applicant's qualifications. The bill requires a licensee to make reports. The

bill sets forth the qualification of suppliers of gaming devices. The bill sets forth the requirements of the licensee's employees. The bill sets forth expirations dates. The bill sets forth the cost of a license and other fees. The bill sets forth hearing procedures. The bill permits the commission to inspect and investigate violations. The bill establishes the right of law-enforcement officers to be present at the facility. The bill sets forth the accounting and reporting of income. The bill establishes the tax rates. The bill sets forth where the taxes will be deposited. The bill creates the Big Vertical Ski Resort Fund. The bill prohibits unauthorized wagering. The bill sets forth individual gaming restrictions. The bill permits the forfeiture of property. The bill sets forth requirements for video lottery games. The bill states the exemption from federal law. The bill grants rule-making authority. The bill creates penalties.

This article is new; therefore, it has been completely underscored.