

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 492**

5 (By Senators Tucker, Barnes, Chafin, Cookman, Edgell, Facemire,

6 Kirkendoll, McCabe, Stollings, Williams and Kessler (Mr.

7 President))

8 _____
9 [Originating in the Committee on the Judiciary;

10 reported March 28, 2013.]

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14 A BILL to repeal §29-25-7 of the Code of West Virginia, 1931, as

15 amended; to amend and reenact §29-25-1, §29-25-2, §29-25-3,

16 §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18,

17 §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28,

18 §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-34,

19 §29-25-35, §29-25-37 and §29-25-38 of said code; and to amend

20 said code by adding thereto two new sections, designated

21 §29-25-22b and §29-25-22c, all relating to gaming facilities;

22 authorizing gaming facilities; permitting a rural resort

23 community as limited gaming facility; defining terms; creating

24 the Rural Resort Community Fund and Rural Resort Community

25 Human Resource Benefit Fund; providing for the regulation and

26 control of a rural resort community; and repealing the local

1 option provision of this article.

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

3 That §29-25-7 of the Code of West Virginia, 1931, as amended,
4 be repealed; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6,
5 §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20,
6 §29-25-21, §29-25-24, §29-25-28, §29-25-29, §29-25-30, §29-25-31,
7 §29-25-32, §29-25-34, §29-25-35, §29-25-37 and §29-25-38 of said
8 code be amended and reenacted; and that said code be amended by
9 adding thereto two new sections, designated §29-25-22b and
10 §29-25-22c, all to read as follows:

11 **ARTICLE 25. AUTHORIZED GAMING FACILITY.**

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

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

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

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

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

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

1 this chapter.

2 **§29-25-2. Definitions.**

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

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

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

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

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

20 (e) "Controlling interest" means:

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

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

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

1 (f) "Controlling person" means, with respect to another person,
2 any person directly or indirectly owning or holding a controlling
3 interest in that other person.

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

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

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

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

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

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

1 of a West Virginia Lottery table game.

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

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

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

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

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

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

1 (s) "Human Resource Benefit Fund" means the special fund in the
2 State Treasury created in section twenty-two-a of this article.

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

5 (u) "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 gaming
9 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 (v) "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 (w) "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 (x) "Licensee" means a gaming licensee, a licensed gaming
21 facility supplier or a licensed gaming facility employee.

22 (y) "Manufacturer" means any person holding a license granted
23 by the commission to engage in the business of designing, building,
24 constructing, assembling or manufacturing video lottery terminals,
25 the electronic computer components of the video lottery terminals,
26 the random number generator of the video lottery terminals, or the

1 cabinet in which it is housed, and whose product is intended for
2 sale, lease or other assignment to a licensed gaming facility in
3 West Virginia and who contracts directly with the licensee for the
4 sale, lease or other assignment to a licensed gaming facility in
5 West Virginia.

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

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

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

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

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

26 (ee) "Rural resort community" means;

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

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

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

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

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

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

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

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

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

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

26 (gg) "Rural Resort Community Human Resource Benefit Fund" means

1 the special fund in the State Treasury created in section
2 twenty-two-c of this article.

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

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

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

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

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

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

26 (5) In the case of a video lottery game which allows the player

1 an option to select replacement symbols or numbers or additional
2 symbols or numbers after the game is initiated and in the course of
3 play, either:

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

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

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

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

26 (7) Does not use the following game themes commonly associated

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

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

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

17 **§29-25-3. Commission duties and powers.**

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

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

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

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

1 Virginia Lottery table game, including the maintenance of financial
2 books and records;

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

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

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

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

15 (8) Issue all licenses;

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

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

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

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

1 (11) Keep a public record of all commission actions and
2 proceedings; and

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

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

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

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

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

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

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

20 **§29-25-5. Rules.**

21 The commission shall propose for promulgation legislative rules
22 in accordance with the provisions of article three, chapter
23 twenty-nine-a of this code as are necessary to provide for
24 implementation and enforcement of the provisions of this article.
25 Any legislative rules proposed by the commission before September
26 1, ~~2009~~ 2013, may be by emergency rule.

1 **§29-25-6. Law enforcement.**

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

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

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

17 **§29-25-9. License to operate a gaming facility.**

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

1 ~~Legislature intends that no more than one license to operate one~~
2 ~~gaming facility in this state shall be authorized in any event. at~~
3 ~~the historic resort hotel and one license to operate a gaming~~
4 ~~facility at the rural resort community.~~

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

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

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

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

1 (4) The plan submitted by the applicant regarding employment
2 levels and the extent to which the submitted plan demonstrates an
3 ability on the part of the applicant to create at least one hundred
4 full-time equivalent jobs with a salary and benefit package
5 commensurate with existing employees at the historic resort hotel
6 or rural resort community.

7 (c) *Floor plan submission requirement.* - Prior to commencing
8 the operation of any West Virginia Lottery table game in a
9 designated gaming area, ~~the~~ a gaming facility licensee shall submit
10 to the commission for its approval a detailed floor plan depicting
11 the location of the designated gaming area in which West Virginia
12 Lottery table game gaming equipment will be located and its proposed
13 arrangement of the West Virginia Lottery table game gaming
14 equipment. If the floor plans for the designated gaming area
15 preserve the historic integrity of the historic resort hotel or
16 rural resort community where the licensed gaming facility is
17 located, then any floor plan submission that satisfies the
18 requirements of the rules promulgated by the commission shall be
19 considered approved by the commission unless a gaming facility is
20 notified in writing to the contrary within one month of filing a
21 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
25 the licensee to act as the commission's agent in operating West
26 Virginia Lottery table game unless the management service contract:

1 (A) Is with a person licensed under this article to provide
2 management services; (B) is in writing; and (C) the contract has
3 been approved by the commission.

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

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

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

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

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

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

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

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

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

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

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

25 (1) Each person associated with a corporate applicant,
26 including any corporate holding company, parent company or

1 subsidiary company of the applicant, but not including a bank or
2 other licensed lending institution which holds a mortgage or other
3 lien acquired in the ordinary course of business, who has the
4 ability to control the activities of the corporate applicant or
5 elect a majority of the board of directors of that corporation;

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

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

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

1 subject to Section fifteen-d of said act.

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

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

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

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

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

24 (j) *Authorization of license.* - A license to operate a gaming
25 facility authorizes the licensee to engage in the business of
26 operating a gaming facility while the license is effective. A

1 license to operate a gaming facility is not transferable or
2 assignable and cannot be sold or pledged as collateral.

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

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

26 (m) ~~The~~ A licensed gaming facility shall provide to the

1 commission, at no cost to the commission, suitable office space at
2 the gaming facility to perform the duties required of it by the
3 provisions of this article.

4 **§29-25-12. License to be employed by operator of gaming facility.**

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

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

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

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

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

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

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

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

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

20 **§29-25-15. Expiration date and renewal of gaming license.**

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

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

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

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

5 (3) The amount of the renewal fee.

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

8 (1) Otherwise is entitled to be licensed;

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

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

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

14 (C) As set by the commission by rule in the case of a license
15 to be employed by an operator of a gaming facility, not to exceed
16 \$300, which renewal fee may be paid on behalf of the licensee by the
17 employer; and

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

22 (4) Submits to the commission evidence satisfactory to the
23 commission of the gaming facility operator's compliance with the
24 plan described in subdivision (4), subsection (b), section nine of
25 this article to create at least one hundred full-time equivalent
26 positions with a salary and benefit package commensurate with

1 existing employees at the historic resort hotel or rural resort
2 community. Notwithstanding any provision of subsection (d) of this
3 section, the failure to substantially comply with the plan, as
4 determined by the commission, may constitute grounds for the denial
5 of the renewal of the license.

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

8 **§29-25-18. Inspection and seizure.**

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

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

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

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

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

26 (5) Summarily seize, impound or assume physical control of any

1 book, record, ledger, West Virginia Lottery table game, gaming
2 equipment or device, cash box and its contents, counting room or its
3 equipment or West Virginia Lottery table game operations; and

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

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

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

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

24 (1) Subject to the approval of the commission, ~~the~~ a gaming
25 facility licensee shall, with respect to West Virginia Lottery table

1 games, establish the following:

2 (A) Maximum and minimum wagers;

3 (B) Advertising and promotional activities;

4 (C) Hours of operation;

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

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

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

15 (1) Minimum and maximum payout percentages;

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

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

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

1 rejected by a gaming facility licensee prior to the commencement of
2 play shall be treated as a valid wager.

3 **§29-25-20. Accounting and reporting of gross terminal income;**
4 **distribution.**

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

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

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

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

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

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

25 (c) ~~Each of these~~ The submissions required by this section
26 shall be made to the commission weekly. The gaming licensee shall

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

6 **§29-25-21. Taxes on games other than video lottery games.**

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

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

19 (2) If the licensed gaming facility is located in a rural
20 resort community, thirty percent shall be directly deposited by the
21 commission into the Rural Resort Community Fund created in section
22 twenty-two-b of this article and the remaining five percent shall
23 be directly deposited by the commission into the Rural Resort
24 Community Fund created in section twenty-two-b of this article. ~~For~~
25 ~~purposes of calculating the amount of tax due under this section,~~
26 ~~the licensee shall use the accrual method of accounting. This tax~~

~~1 is in addition to all other taxes and fees imposed: *Provided, That*~~
~~2 the consumers sales and service tax imposed pursuant to article~~
~~3 fifteen, chapter eleven of this code may not apply to the proceeds~~
~~4 from any wagering with respect to a West Virginia Lottery table game~~
~~5 pursuant to this article.~~

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

1 Payments due to the commission under this section and payments due
2 to the commission under section twenty of this article shall be sent
3 simultaneously.

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

21 (d) *Prohibition on credits.* - Notwithstanding any other
22 provision of this code to the contrary, no credits may be allowed
23 against any tax imposed on any taxpayer by this code for an
24 investment in gaming devices and supplies, for an investment in real
25 property which would be directly utilized for the operation of a
26 gaming facility or for any jobs created at a gaming facility.

1 Notwithstanding any other provision of this code to the contrary,
2 the tax imposed by this section may not be added to federal taxable
3 income in determining West Virginia taxable income of a taxpayer for
4 purposes of article twenty-four, chapter eleven of this code.

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

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

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

1 chapter.

2 **§29-25-22b. Rural Resort Community Fund; allocation of adjusted**
3 **gross receipts; disposition of license fees.**

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

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

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

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

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

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

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

25 (3) The Tourism Promotion Fund established in section twelve,
26 article two, chapter five-b of this code shall receive three percent

1 of the Rural Resort Community Fund net income;

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

4 (5) The municipality where the gaming facility is located or
5 the municipality closest to the gaming facility by paved road access
6 as of the effective date of the reenactment of this section by the
7 2013 regular session of the Legislature shall receive two and
8 one-half percent of the Rural Resort Community Fund net income;

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

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

25 (8) The governing body of each municipality in the state that
26 is not eligible to receive a distribution under subdivisions (5) and

1 (6) of this subsection shall receive equal shares of two and
2 one-half percent of the Rural Resort Community Fund net income:
3 *Provided*, That funds transferred to municipalities under this
4 subdivision shall be used only to pay for debt reduction in
5 municipal police and fire pension funds and the costs of
6 infrastructure improvements and other capital improvements.

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

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

18 **§29-25-22c. Rural Resort Community Human Resource Benefit Fund.**

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

1 shall be an interest-bearing account with interest to be credited
2 to and deposited in the Rural Resort Community Human Resource
3 Benefit Fund.

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

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

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

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

24 (A) One member shall be a representative of the collective
25 bargaining unit that represents a majority of the employees of the
26 rural resort community or if no collective bargaining unit has been

1 established then the employees of the rural resort community shall
2 elect a representative who will represent the majority of the
3 employees;

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

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

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

11 (3) A majority of members constitutes a quorum for the
12 transaction of business.

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

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

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

25 (7) Within thirty days of any board meeting, the board shall
26 report to the commission its findings and any recommendations it may

1 have. The report to the commission shall be made at a commission
2 meeting that is open to the public.

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

13 **§29-25-24. Individual gaming restrictions.**

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

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

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

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

26 (C) A member of a homeowner or facility association that

1 entitles members to substantial privileges at the historic resort
2 hotel on whose premises the gaming facility is located or an
3 overnight guest of such a member: *Provided*, That the association
4 was in existence as of April 1, 2009.

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

6 (3) The individual is not visibly intoxicated.

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

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

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

18 **§29-25-28. Specific provision for video lottery games.**

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

1 inconsistent provisions contained in article twenty-two-a of this
2 chapter.

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

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

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

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

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

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

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

26 (e) The video lottery terminal manufacturer and licensed gaming

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

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

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

1 **play transaction records.**

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

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

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

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

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

25 (5) A bill or voucher acceptor or other means accurately and
26 efficiently to establish credits shall be installed on each video

1 lottery terminal. All acceptors shall be approved by the commission
2 prior to use on any video lottery terminal in this state.

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

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

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

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

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

25 (i) The number of credits accrued;

26 (ii) Value of the credits in dollars and cents displayed in

1 both numeric and written form;

2 (iii) Time of day and date;

3 (iv) Validation number; and

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

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

8 (i) Manufacturer of the video lottery terminal;

9 (ii) Serial number of the terminal; and

10 (iii) Model number of the terminal.

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

22 (13) Communication equipment and devices shall be installed to
23 enable each video lottery terminal to communicate with the
24 commission's central computer system by use of a communications
25 protocol provided by the commission to each permitted manufacturer,
26 which protocol shall include information retrieval and terminal

1 activation and disable programs, and the commission may require each
2 licensed racetrack to pay the cost of a central site computer as a
3 part of the licensing requirement.

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

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

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

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

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

25 (4) *Serial correlation test.* - Each symbol or number is random
26 if it meets the ninety-nine percent confidence level using standard

1 serial correlation analysis to determine whether each symbol or
2 number is independently chosen without reference to the same symbol
3 or number in a previous game.

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

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

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

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

23 (2) Number of credits wagered;

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

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

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

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

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

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

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

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

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

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

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

1 racetrack to pay the cost of a central site computer as part of the
2 licensing requirement.

3 **§29-25-31. The specific video lottery duties required of a gaming**
4 **facility.**

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

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

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

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

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

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

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

1 the prior approval of the commission;

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

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

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

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

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

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

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

21 **§29-25-32. Surcharge; Capital Reinvestment Fund.**

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

26 (b) The Capital Reinvestment Fund is hereby created within the

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

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

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

26 **§29-25-34. State ownership of West Virginia Lottery table games.**

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

13 **§29-25-35. Preemption.**

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

21 **§29-25-37. Game rules of play; disputes.**

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

1 proposed by the gaming facility may be approved, amended or rejected
2 by the commission.

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

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

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

20 **§29-25-38. Shipment of gambling devices.**

21 All shipments of gambling devices, including video lottery
22 machines, to ~~the~~ a licensed gaming facility in this state, the
23 registering, recording and labeling of which have been completed by
24 the manufacturer or dealer thereof in accordance with Chapter 1194,
25 64 Stat. 1134, 15 U. S. C. §1171 to §1178, are legal shipments of
26 gambling devices into the State of West Virginia.

