WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2047

By Delegates Howell and Nestor

[Introduced February 10, 2021; Referred to the Committee on Government Organization]

A BILL to amend and reenact §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-6, §29-22C-13, §29-22C-14, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-29, and §29-22C-31 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-25-2, §29-25-3, §29-25-8, §29-25-12, §29-25-14, §29-25-15, §29-25-16, §29-25-17, §29-25-18, §29-25-22, §29-25-25, and §29-25-27 of said code, all relating to changing the licensing requirement for certain casino employees from a licensure to a registration; and granting emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-2. State authorization of table games at licensed racetrack facilities; legislative findings and declarations.

(a) *Operation of West Virginia Lottery table games*. — Notwithstanding any provision of law to the contrary, the operation of West Virginia Lottery racetrack table games and ancillary activities at a licensed racetrack and the playing of those West Virginia Lottery table games at a licensed racetrack are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

(b) *Legislative findings: —*

(1) The Legislature finds that horse racing and dog racing and breeding play a critical role in the economy of this state, enhance the revenue collected at the racetracks, contribute vital revenues to the counties and municipalities in which the activities are conducted, provide for significant employment and protect and preserve greenspace and; that a substantial state interest exists in protecting these industries. Furthermore, it finds that the breeding and racing of thoroughbred horses is an integral part of West Virginia’s agriculture, and that agriculture is a critical ingredient in West Virginia’s economy. It further finds that the operation of table games pursuant to this article, at racetracks in this state that hold racetrack video lottery licenses and licenses to conduct horse or dog racing, will protect and preserve the horse racing and dog racing industries and horse and dog breeding industries, will protect, and enhance the tourism industry in this state, and indirectly benefit other segments of the economy of this state.

(2) The Legislature finds that, pursuant to Section 36, Article VI of the Constitution of the State of West Virginia grants exclusively to the state the right to lawfully own and operate a lottery in this state.

(3) The Legislature finds that recognized principals of ownership allow an owner to maintain ownership while operating an enterprise through agents, ~~and~~ licensees, and registrants.

(4) The Legislature finds that it is in the best interest of the State of West Virginia for the state to operate a lottery in the form of table games.

(5) The Legislature finds that the table games authorized under the provisions of this article are lotteries as each game involves consideration, the possibility of a prize, and their outcome is determined predominantly by chance, which the common law of West Virginia has long held are the three essential elements of a lottery.

(6) The Legislature finds that the lottery authorized by the provisions of this article is the exclusive intangible intellectual property of the State of West Virginia as are the other versions of lottery authorized under this chapter.

(7) The Legislature finds that the most effective manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to do so through agents, licensees, and registrants, and, further, that effective operation and regulation requires limiting the number of locations at which the lottery and lottery games so authorized are allowed.

(8) The Legislature finds that limiting such table games as authorized under this article to facilities authorized by the provisions of §19-23-1 *et seq*. of this code, which are licensed pursuant to the provisions of §29-22A-1 *et seq*. of this code to operate video lottery terminals is the most efficient and effective manner in which to regulate agents, licensees, and registrants.

(9) The Legislature finds that the granting of licenses and registrations pursuant to the provisions of this article while maintaining all ownership rights and exercising control through strict regulation of all West Virginia lottery table games authorized by the provisions of this article constitutes an appropriate exercise by the Legislature of the power granted it by the Constitution pursuant to the provisions of Section 36, Article VI of the Constitution of West Virginia.

(10) The Legislature finds that the operation of West Virginia lottery table games at racetracks licensed pursuant to the provisions of §29-22A-1 *et seq*. of this code and by the provisions of §19-23-1 *et seq*. of this code serves to protect, preserve, and promote the horse and dog racing and breeding industries of this state and will serve to protect, promote, and enhance the tourism industry of the state as well as the general fiscal well-being of the state and its subdivisions.

§29-22C-3. Definitions.

(a) *Applicability of definitions*. — For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context in which the word or term is used.

(b) *Terms defined*. —

(1) “Adjusted gross receipts” means gross receipts from West Virginia Lottery table games less winnings paid to patrons wagering on the racetrack’s table games.

(2) “Applicant” means any person who on his or her own behalf, or on behalf of another, has applied for permission to engage in any act or activity that is regulated under the provision of this article for which a license or registration is required by this article or rule of the commission.

(3) “Application” means any written request for permission to engage in any act or activity that is regulated under the provisions of this article submitted in the form prescribed by the commission.

(4) “Background investigation” means a security, criminal, and credit investigation of an applicant who has applied for the issuance or renewal of a license or registration pursuant to this article, or a licensee or registrant who holds a current license or registration.

(5) “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission created by §29-22-1 *et seq*. of this code.

(6) “Complimentary” means a service or item provided at no cost or at a reduced price.

(7) “Compensation” means any money, thing of value, or financial benefit conferred or received by a person in return for services rendered, or to be rendered, whether by that person or another.

(8) “Contested case” means a proceeding before the commission, or a hearing examiner designated by the commission to hear the contested case, in which the legal rights, duties, interests, or privileges of specific persons are required by law or Constitutional right to be determined after a commission hearing, but does not include cases in which the commission issues a license, registration, permit, or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and does not include rule making.

(9) “Control” means the authority directly or indirectly to direct the management and policies of an applicant for a license or registration issued under this article or the holder of a license or registration issued under this article.

(10) “Designated gaming area” means one or more specific floor areas of a licensed racetrack within which the commission has authorized operation of racetrack video lottery terminals or table games, or the operation of both racetrack video lottery terminals and West Virginia Lottery table games.

(11) “Director” means the Director of the West Virginia State Lottery Commission appointed pursuant to §29-22-6 of this code.

(12) “Disciplinary action” is an action by the commission suspending or revoking a license or registration, fining, excluding, reprimanding, or otherwise penalizing a person for violating this article or rules promulgated by the commission.

(13) “Financial interest” or “financially interested” means any interest in investments, awarding of contracts, grants, loans, purchases, leases, sales, or similar matters under consideration for consummation by the commission. A member, employee, or agent of the commission will be considered to have a financial interest in a matter under consideration if any of the following circumstances exist:

(A) He or she owns one percent or more of any class of outstanding securities that are issued by a party to the matter under consideration by the commission; or

(B) He or she is employed by an independent contractor for a party to the matter under consideration or consummated by the commission.

(14) “Gaming equipment” means gaming tables, cards, dice, chips, shufflers, drop boxes or any other mechanical, electronic, or other device, mechanism or equipment or related supplies used or consumed in the operation of any West Virginia Lottery table game at a licensed racetrack.

(15) “Gross receipts” means the total of all sums including valid or invalid checks, currency, tokens, coupons (excluding match play coupons), vouchers, or instruments of monetary value whether collected or uncollected, received by a racetrack with table games from table gaming operations at a race track, including all entry fees assessed for tournaments or other contests.

(16) “Indirect ownership” means an interest a person owns in an entity or in property solely as a result of application of constructive ownership rules without regard to any direct ownership interest (or other beneficial interest) in the entity or property. “Indirect ownership” shall be determined under the same rules applicable to determining whether a gain or loss between related parties is recognized for federal income tax purposes.

(17) “Licensed racetrack” means a thoroughbred horse or greyhound dog racing facility licensed under both §29-22A-1 *et seq*. and §19-23-1 *et seq*. of this code.

(18) “License” means any license applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery table games at a licensed racetrack;

(B) A license to supply a racetrack licensed under this article to operate table games with table gaming equipment or services necessary for the operation of table games; or

~~(C) A license to be employed at a racetrack licensed under this article to operate West Virginia Lottery table games when the employee works in a designated gaming area that has table games or performs duties in furtherance of or associated with the operation of table games at the licensed racetrack; or~~

~~(D)~~ (C) A license to provide management services under a contract to a racetrack licensed under this article to operate table games.

(19) “Licensee” means any person who is licensed under any provision of this article.

(20) “Lottery” means the public gaming systems or games regulated, controlled, owned, and operated by the state Lottery Commission in the manner provided by general law, as provided in this article and in §29-22-1 *et seq*., §29-22A-1 *et seq*., §29-22B-1 *et seq*., and §29-25-1 *et seq.* of this code.

(21) “Member” means a commission member appointed to the West Virginia Lottery Commission under §29-22-1 *et seq*. of this code.

(22) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(23) “Own” means any beneficial or proprietary interest in any real or personal property, including intellectual property, and also includes, but is not limited to, any direct or indirect beneficial or proprietary interest in any business of an applicant or licensee.

(24) “Person” means any natural person, and any corporation, association, partnership, limited liability company, limited liability partnership, trust, or other entity, regardless of its form, structure or nature other than a government agency or instrumentality.

(25) “Player” or “Patron” means a person who plays a racetrack video lottery game or a West Virginia Lottery table game at a racetrack licensed under this article to have table games.

(26) “Player’s account” means a financial record established by a licensed racetrack for an individual racetrack patron to which the racetrack may credit winnings and other amounts due to the racetrack patron and from which the patron may withdraw moneys due to the patron for purchase of tokens, chips or electronic media or other purposes.

(27) “Racetrack table games license” means authorization granted under this article by the commission to a racetrack that is already licensed under §29-22A-1 *et seq.* of this code to operate racetrack video lottery terminals and holds a valid racing license granted by the West Virginia Racing Commission pursuant to §19-23-1 *et seq*. of this code, which permits the racetrack as an agent of the commission for the limited purpose of operation of West Virginia Lottery table games in one or more designated gaming areas in one or more buildings owned by the licensed racetrack on the grounds where live pari-mutuel racing is conducted by the licensee.

(28) “Racetrack Table Games Fund” means the special fund in the State Treasury created in §29-22C-27 of this code.

(29) “Registration” means a registration to be employed at a racetrack licensed under this article to operate West Virginia Lottery table games when the employee works in a designated gaming area that has table games or performs duties in furtherance of or associated with the operation of table games at the licensed racetrack. ~~or~~

~~(29)~~ (30) “Significant influence” means the capacity of a person to affect substantially (but not control) either, or both, of the financial and operating policies of another person.

~~(30)~~ (31) “Supplier” means a person who the commission has identified under legislative rules of the commission as requiring a license to provide a racetrack table games licensee with goods or services to be used in connection with operation of table games.

~~(31)~~ (32) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

~~(32)~~ (33) “West Virginia Lottery table game” means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar in design or operation and expressly authorized by rule of the commission, including multiplayer electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.

~~(33)~~ (34) “Winnings” means the total cash value of all property or sums including currency, tokens, or instruments of monetary value paid to players as a direct result of wagers placed on West Virginia Lottery table games.

§29-22C-4. Commission duties and powers.

(a) *Duties*. — In addition to the duties set forth elsewhere in this article or in §29-22-1 *et seq.*, §29-22A-1 *et seq.,* §29-22B-1 *et seq.,* and §29-25-1 *et seq.* of this code, the commission shall:

(1) Establish minimum standards for gaming equipment, including, but not limited to, electronic and mechanical gaming equipment;

(2) Enter into licensing agreements with facilities eligible to operate West Virginia Lottery table games for the state, providing criteria and guidelines for preservation of the state’s ownership, operation, and control interests as provided by general law herein;

(3) Approve, modify, or reject game rules of play proposed by the licensee for West Virginia Lottery table games proposed to be operated at a licensed racetrack;

(4) Approve, modify, or reject minimum internal control standards proposed by the licensee governing racetrack table game operations, including the maintenance of financial records;

(5) Approve staff considered necessary by the director to oversee, inspect, and monitor the operation of table games at any racetrack licensed under this article and §29-22A-1 *et seq*. of this code, including, but not limited to, inspection of designated gaming areas, gaming equipment, and security equipment used in the operation of table games to assure continuous compliance with the provisions of this article, required license and registration conditions and terms, and applicable rules of the commission;

(6) Determine eligibility of a person to hold or continue to hold a license or registration issued under this article;

(7) Issue all licenses and registrations;

(8) Maintain a record of all licenses and registrations issued;

(9) Levy and collect the taxes imposed by this article and the fees, surcharges, and civil penalties authorized, required, or specified in this article or the legislative rules of the commission, and receive, accept, and pay all taxes, fees, surcharges, and civil penalties collected under this article into the Racetrack Table Games Fund, except as otherwise provided under this article; and

(10) Keep a public record of all commission actions and proceedings with respect to West Virginia Lottery table games.

(b) *Powers*. — In addition to the powers set forth elsewhere in this article or in articles §29-22-1 *et seq*., §29-22A-1 *et seq*., §29-22B-1 *et seq*., and §29-25-1 *et seq*. of this code, the commission may:

(1) Sue to enforce any provision of this article or any rule of the commission, whether by civil action or petition for injunctive relief;

(2) Hold hearings, administer oaths, and issue subpoenas for attendance of witnesses to testify or subpoenas duces tecum for the production of documents or other evidence;

(3) Enter a licensed racetrack with West Virginia Lottery table games at any time and without notice to ensure strict compliance with this article and with the rules of the commission;

(4) Bar, for cause, any person from:

(A) Entering a designated gaming area of a licensed racetrack with table games, or the grounds of a racetrack licensed under this article; or

(B) Participating in any capacity in the play of any West Virginia Lottery table game, or in the operation of West Virginia Lottery table games;

(5) Promulgate, or propose for promulgation, in accordance with the provision of §29A-3-1 *et seq*. of this code, any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article, and to amend or revoke any promulgated rule, in accordance with ~~provisions of~~ §29A-3-1 *et seq*. of this code, at the discretion of the commission; ~~Any rule proposed by the commission before September 1, 2007 may be promulgated as an emergency rule~~

(6) Upon the effective date of this article ~~and prior to promulgation of emergency rules~~, the commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses for: racetracks under §29-22C-8 of this code; suppliers under §29-22C-11 of this code; ~~racetrack employees under section twelve of this article~~ and providers of management services under §29-22C-13 of this code; ~~and~~

(7) Upon the effective date of this article and prior to promulgation of emergency rules, the commission may accept applications, evaluate qualifications of applicants, review, make final determinations on, and issue licenses or registrations for racetrack employees pursuant to the provisions of this article and §29-25-1 *et seq*. of this code; and

~~(7)~~ (8) Exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22C-6. Licenses or registrations required.

(a) No person may engage in any activity in connection with a racetrack with West Virginia Lottery table games in this state for which a license or registration is required by this article or rules of the commission unless all necessary licenses or registrations have been obtained in accordance with this article and rules of the commission.

(b) Licenses or registrations are required for the following purposes:

(1) For any person operating a racetrack West Virginia Lottery table game in the state;

(2) For any person supplying a racetrack table games licensee with gaming equipment or gaming equipment services;

(3) For any individual employed by a racetrack table games licensee in connection with the operation of West Virginia Lottery table games in the state; and

(4) For any person providing management services under a contract to a racetrack table games licensee.

(c) The commission may not grant a license or registration to an applicant until the commission determines that each person who has control of the applicant also meets all of the qualifications the applicant must meet to hold the license or registration for which application is made. The following persons are considered to have control of an applicant:

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

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

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

(d) Any license or registration required by this article or rules of the commission is in addition to all other licenses, registrations, or permits required by applicable federal, state, or local law.

§29-22C-13. ~~License~~ Registration to be employed in a racetrack with West Virginia Lottery table games.

(a) *~~Licenses~~* Registration. — The commission shall issue a ~~license~~ registration to be employed in the operation of racetrack table games to a person who meets the requirements of this section.

(b) *~~License~~ Registration qualifications*. — To qualify for a ~~license~~ registration to be employed in the operation of West Virginia Lottery table games, the applicant shall be an individual of good moral character, honesty, and integrity, and have been offered employment by the racetrack table games licensee contingent upon ~~licensure~~ registration pursuant to the provisions of this section. The commission by rule may establish different specific requirements for each job classification that may be created by the commission to recognize the extent to which a particular job classification has the ability to impact the proper operation of West Virginia Lottery table games.

(c) *~~License~~ Registration* *application requirements*. — An applicant for a ~~license~~ registration to be employed by a racetrack with West Virginia Lottery table games in a position or to perform duties for which a ~~license~~ registration is required under this article or rules of the commission shall:

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

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

(3) Pay to the commission a nonrefundable application fee for deposit into the Racetrack Table Games Fund in the amount of $100. The fee may be paid on behalf of an applicant by the employer.

(d) *Authorization*. — A ~~license~~ registration to be employed by a racetrack with West Virginia Lottery table games permits the ~~licensee~~ registrant to be employed in the capacity designated by the commission with respect to the ~~license~~ registration while the ~~license~~ registration is still active.

(e) *Renewal fee and form*. — Each ~~licensed~~ registered employee shall pay to the commission an annual ~~license~~ registration fee set by the commission by rule by June 30 of each year. The fee may vary based on the job classification of the applicant, but in no event shall it exceed $100. The fee may be paid on behalf of the ~~licensed~~ registered employee by the employer. In addition to a renewal fee, each ~~licensed~~ registered employee shall submit a renewal application on the form required by the commission.

§29-22C-14. License to be a provider of management services.

(a) *~~License~~ Registration*. — The commission may issue a ~~license~~ registration to a person providing management services under a management services contract to a racetrack table games licensee when the commission determines that the person meets the requirements of this section and any applicable rules of the commission.

(b) *~~License~~ Registration qualifications*. — Each applicant who is an individual and each individual who controls an applicant, as provided in §29-22C-6(c) of this code, shall be of good moral character, honesty, and integrity and shall have the necessary experience and financial ability to successfully carry out the functions of a management services provider. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept ~~licensing~~ registration by another jurisdiction, specifically determined by the commission to have similar ~~licensing~~ registration requirements, as evidence the applicant meets authorized management services provider ~~licensing~~ registration requirements.

(c) *Management service provider specifications*. — An applicant for a ~~license~~ registration to provide management services to a racetrack table games licensee shall demonstrate that the management services that the applicant plans to offer to the racetrack table games licensee conform or will conform to standards established by rules of the commission and applicable state law. The commission may accept management services provider approval by another jurisdiction, specifically determined by the commission to have management services, as evidence the applicant meets the standards established by the commission and applicable state law.

(d) *~~License~~ Registration application requirements*. — An applicant for a ~~license~~ registration to provide management services to a racetrack table games licensee shall:

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

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

(3) Pay to the commission a nonrefundable application and ~~license~~ registration fee for deposit into the Racetrack Table Games Fund in the amount of $100, which shall be in lieu of the first year’s ~~license~~ registration fee provided in subsection (f) of this section.

(e) *Authorization*. — A ~~license~~ registration to provide management services to a racetrack table games licensee authorizes the ~~licensee~~ registrant to provide management services to a racetrack with West Virginia Lottery table games while the ~~license~~ registration is active. The commission may by rule establish the conditions which constitute an emergency under which the commission may issue provisional ~~licenses~~ registrations pending completion of final action on an application.

(f) *Fees, expiration date, and renewal*. — A ~~licensed~~ registered provider of management services shall pay to the commission an annual ~~license~~ registration fee of $100 for an initial term beginning prior to the date of the provider’s first contract with a racetrack table games licensee and continuing through the end of the 12th month thereafter whenever the ~~licensee~~ registrant has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The commission shall renew a ~~license~~ registration to provide management services to a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games ~~licensee~~ registrant may continue to use the management services provided by the management services provider while that provider was ~~licensed~~ registered, notwithstanding the expiration of the provider’s ~~license~~ registration, unless the commission finds the services provided are not conforming to standards established by rule of the commission and applicable state law.

§29-22C-17. Hearing procedures.

(a) *Right to a hearing*. — Except as otherwise provided by law, before the commission takes any adverse action involving a licensee or registrant under the provisions of this article, it shall give the persons against whom the action is contemplated an opportunity for a hearing before the commission or a hearing examiner designated by the commission.

(b) *Notice of hearing and right to counsel*. — The commission shall give notice and hold the hearing in accordance with §29A-5-1 *et seq*. of this code. The notice shall be sent to the person by certified mail addressed to the last known address of the person at least 30 days before the hearing. The person may be represented at the hearing by legal counsel.

(c) *Failure to comply with subpoena*. — If a person fails to comply with a subpoena issued for purposes of this section, on petition of the commission, the circuit court may compel obedience to the subpoena. If after due notice the person against whom the action is contemplated fails or refuses to appear or provide the item or items for which a subpoena duces tecum was issued, the commission or the commission’s designated hearing examiner may hear and determine the matter.

(d) *Appeal*. — Any person aggrieved by a final order or decision of the commission in a contested case may file a petition for appeal in the circuit court of Kanawha County within 30 days after the person received notice of the final order or decision, as provided in §29A-5-4 of this code.

§29-22C-18. Notice of license or registration expiration and renewal.

At least two months before any license or registration issued under this article expires, the commission shall send to the licensee or registrant, by mail addressed to the last known address of the licensee or registrant, a renewal application form and notice that states:

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

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

(3) The amount of the renewal fee.

§29-22C-19. Miscellaneous license or registration provisions.

(a) The commission shall include on each license or registration that it issues:

(1) The type of license or registration;

(2) The identity and address of the licensee or registrant;

(3) The effective date of the license or registration;

(4) For employee ~~licenses~~ registrations, the picture of the ~~licensee~~ registrant; and

(5) Any other information the commission considers appropriate.

(b) Each racetrack table games licensee, licensed supplier of a racetrack with West Virginia Lottery table games, or a ~~licensed~~ registered management services provider shall display the license or registration conspicuously in its place of business or have the license or registration readily available for inspection at the request of any agent of the commission or of a state, local, or municipal law-enforcement agency.

(c) Each holder of a ~~license~~ registration to be employed by a racetrack with West Virginia Lottery table games shall carry the ~~license~~ registration on his or her person at all times when present in a racetrack with West Virginia Lottery table games and, if required by rules adopted by the commission with respect to the particular capacity in which the ~~licensee~~ registrant is employed, have some indicia of ~~licensure~~ registration prominently displayed on his or her person in accordance with the rules of the commission.

(d) Each person licensed or registered under this article shall give the commission written notice of any change of address or any change of any other information provided in the licensee’s or registrant’s application for a license or registration or for renewal of a license or registration, as soon as the effective date of the change is known to the licensee or registrant but not later than 30 days after the change occurs.

§29-22C-29. Offenses and penalties.

(a) A racetrack table games licensee is guilty of unlawful operation when:

(1) The licensee operates a West Virginia Lottery table game without authority of the commission to do so;

(2) The licensee operates a West Virginia Lottery table game in any location that is not a designated gaming area approved by the commission;

(3) The licensee knowingly conducts, carries on, operates, or exposes for play or allows to be conducted, carried on, operated or exposed for play any table game or other device, equipment or material that has in any manner been tampered with or placed in a condition or operated in a manner, the result of which is designed to deceive the public;

(4) The licensee employs an individual in a position or to perform duties, for which a ~~license~~ registration is required by this article or rules of the commission and the employee does not have a ~~license~~ registration issued under the provisions of this article or the licensee continues to employ the individual in a position or to perform duties, for which a ~~license~~ registration is required by this article or rules of the commission, after the employee’s ~~license~~ registration expired, was revoked by the commission, or not renewed by the commission;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in a West Virginia Lottery table game at the licensed racetrack;

(6) The licensee knowingly permits an individual under the age of 21 years of age to enter or remain in a designated gaming area or to play racetrack video lottery terminals or West Virginia Lottery table games at a licensed racetrack authorized under this article to act as the commission’s agent in operating the West Virginia Lottery table games; or

(7) The licensee exchanges tokens, chips, electronic media, or other forms of credit to be used for wagering at a licensed racetrack authorized under this article to operate West Virginia Lottery table games, for anything of value except in exchange for money or credits to a player’s account.

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

(1) The person knowingly makes a false statement on any application for a license or registration under this article or on an application for renewal of a license or registration issued under this article;

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

(3) The person works or is employed in a position requiring a ~~license~~ registration under the provisions of this article without having the ~~license~~ registration required by this article.

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

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

(2) The person solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a racetrack with West Virginia Lottery table games, pursuant to an understanding or arrangement in fact or implied from the circumstances, with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a West Virginia Lottery table game or to influence official action of the commission; or

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

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

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

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

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

(E) In obtaining an advantage at playing any West Virginia Lottery table game at a licensed racetrack authorized under this article to operate West Virginia Lottery table games;

(4) The person manufactures, sells, or distributes any card, chip, die, game, or device, by whatever name called, that is intended by that person to be used to violate any provision of this article or the table gaming laws of any other state;

(5) The person places a bet after unlawfully acquiring knowledge of the outcome of the West Virginia Lottery table game that is the subject of the bet or aids a person in acquiring that knowledge for the purpose of placing a bet contingent on the outcome of a West Virginia Lottery table game authorized under this article;

(6) The person claims, collects, takes, or attempts to claim, collect, or take anything of value into or from a racetrack with West Virginia Lottery table games, with intent to defraud, without having made a wager contingent on winning a West Virginia Lottery table game or knowingly claims, collects, or takes an amount of money or thing of value of greater value than the amount won;

(7) The person knowingly uses chips, electronic media, or tokens that are counterfeit to place a wager at a racetrack with West Virginia Lottery table games;

(8) The person knowingly uses any medium to place a wager at a racetrack licensed under this article other than tokens, chips, electronic cards, or other electronic media, or other method of credit approved by the commission and issued by the racetrack licensed under this article at which the wager is placed on a West Virginia Lottery table game;

(9) The person, not a licensed racetrack under this article or an employee or agent of a racetrack licensed under this article acting in furtherance of the licensee’s interest, has in his or her possession on grounds owned by the racetrack licensed under this article or on grounds contiguous to the licensed racetrack, any device, by whatever name called, intended to be used to violate a provision of this article or a rule of the commission implementing or explaining a provision of this article; or

(10) The person, not a licensee or employee or agent of a licensee acting in furtherance of the racetrack table games licensee’s interests, has in his or her possession any key or device designed for the purpose of opening, entering, or affecting the operation of a West Virginia Lottery table game, drop box, or an electronic or mechanical device connected with or used in connection with a West Virginia Lottery table game in a licensed racetrack or for removing bills, tokens, chips, or other contents therefrom.

(d) Any person who violates any provision of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and ~~committed to a state correctional facility~~ confined in jail for not more than six months, except that in the case of a person other than a natural person, the amount of the fine imposed may not be more than $25,000.

(e) Any person who violates any provision of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000 and ~~committed to~~ imprisoned in a state correctional facility ~~for a term of imprisonment~~ not less than one year nor more than five years.

(f) With regard to subdivision (3), subsection (c) of this section, each racetrack table games licensee shall post notice of this prohibition and the penalties of this section in a manner determined by the commission.

§29-22C-31. Civil penalties.

(a) The commission may impose on any person who violates the provisions of this article a civil penalty not to exceed $50,000 for each violation, whether or not the person is licensed or registered under this article.

(b) The provisions of §29A-5-1 *et seq*. of this code apply to any civil penalty imposed pursuant to the provisions of this section.

Article 25. Authorized Gaming Facility.

§29-25-2. Definitions.

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

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

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

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

(d) “Background investigation” means a security, criminal, and credit investigation of an applicant who has applied for the issuance or renewal or a ~~license~~ registration pursuant to this article or a ~~licensee~~ registrant who holds a current ~~license~~ registration.

(e) “Controlling interest” means:

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

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

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

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

(g) “Commission” means the State Lottery Commission created in §29-22-4 of this code.

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

(i) “Director” means the Director of the State Lottery Commission.

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

(k) “Fringe benefits” means sickness and accident benefits and benefits relating to medical and pension coverage.

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

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

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

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

(p) “Gross terminal income”, as used in this article and as used in §29-22A-1 *et seq*. of this code, means the total amount of cash, vouchers, or tokens inserted into the video lottery terminals operated by a licensee, minus promotional credits played, and minus the total value of coins and tokens won by a player and game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(q) “Historic resort hotel” means a resort hotel registered with the United States Department of the Interior as a national historic landmark in its National Registry of Historic Places having not fewer than 500 guest rooms under common ownership and having substantial recreational guest amenities in addition to the gaming facility.

(r) “Historic Resort Hotel Fund” means the special fund in the State Treasury created in §29-22-1 *et seq*. of this code.

(s) “Human Resource Benefit Fund” means the special fund in the State Treasury created in §29-22A-1 *et seq*. of this code.

(t) “Human Resource Benefit Advisory Board” or “board” means the advisory board created in §29-22A-1 *et seq*. of this code.

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

(1) A license to operate a gaming facility;

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

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

~~(4)~~ (3) A license to provide management services under a contract to a gaming facility under this article.

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

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

~~(x)~~ (w) “Licensee” means a gaming licensee, a licensed gaming facility supplier or a licensed gaming facility employee.

~~(y)~~ (x) “Manufacturer” means any person holding a license granted by the commission to engage in the business of designing, building, constructing, assembling, or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed gaming facility in West Virginia and who contracts directly with the licensee for the sale, lease, or other assignment to a licensed gaming facility in West Virginia.

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

~~(aa)~~ (z) “Person” means any natural person, corporation, association, partnership, limited partnership, limited liability company, or other entity, regardless of its form, structure, or nature.

~~(bb)~~ (aa) “Premises of an existing historic resort hotel” means the historic resort hotel, attachments of the historic resort hotel, and the traditional, immediate grounds of the historic resort hotel.

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

(cc) “Licensed gaming facility employee” means any individual registered to be employed by a gaming licensee in connection with the operation of a gaming facility.

(dd) “Registration” means a registration to be employed in connection with the operation of a gaming facility.

~~(dd)~~ (ee) “Video lottery game”, as used in this article and as used in §29-22A-1 *et seq*. of this code, means a commission-approved, -owned, and -controlled electronically simulated game of chance which is displayed on a video lottery terminal and which:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Issue all licenses and registrations;

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

(i) Receive, accept, and pay the specified percentage of taxes collected under §29-25-20 and §29-25-21 of this code into the Historic Resort Hotel Fund; and

(ii) Receive, accept, and pay the specified percentage of taxes collected under §29-25-20 *et seq.* and §29-25-21 of this code into the Human Resource Benefit Fund;

(10) Maintain a record of all licenses or registrations issued;

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

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

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

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

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

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

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

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

§29-25-8. Licenses or registrations required.

(a) No person may engage in any activity in connection with a gaming facility in this state for which a license or registration is required by subsection (b) of this section unless that person has been licensed or registered by the commission in accordance with this article.

(b) Licenses are required for the following purposes:

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

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

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

~~(4)~~ (3) For any person providing management services under a contract to a gaming facility.

(c) Registration is required for any individual employed by a gaming licensee in connection with the operation of a gaming facility in the state.

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

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

(a) *~~Licenses~~ Registrations. —* The commission shall issue a l~~icense~~ registration to each applicant for a l~~icense~~ registration to be employed in the operation of a gaming facility who meets the requirements of this section.

(b) *~~License~~ Registration qualifications. —* To qualify for a l~~icense~~ registration to be employed in a gaming facility, the applicant shall be an individual of good moral character and reputation and have been offered employment by the gaming facility contingent upon l~~icensure~~ registration pursuant to the provisions of this section. The commission, by rule, may specify additional requirements to be met by applicants based on the specific job classification in which the applicant is to be employed.

(c) *~~License~~ Registration* *application requirements. —* An applicant for a l~~icense~~ registration to be employed in the operation of a gaming facility shall:

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

(2) Submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a l~~icense~~ registration or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and

(3) Pay to the commission a nonrefundable application fee in the amount of $100 to be retained by the commission as reimbursement for the l~~icensing~~ registration process. This fee may be paid on behalf of the applicant by the employer.

(d) *Authorization of l~~icensee~~ registrant. —* A l~~icense~~ registration to be employed by a gaming facility authorizes the l~~icensee~~ registrant to be so employed in the capacity designated by the commission with respect to the l~~icense~~ registration while the l~~icense~~ registration is effective.

(e) *Annual l~~icense~~ registration* *renewal fee. —* Each l~~icensed~~ registered employee shall pay to the commission an annual l~~icense~~ registration renewal fee set by the commission, which renewal fee may vary based on the capacity designated with respect to the l~~icensee~~ registrant but in no event to exceed $100. The fee may be paid on behalf of the l~~icensed~~ registered employee by the employer.

§29-25-14. Licenses or registrations; availability for inspection; change of address.

(a) The commission shall include on each license or registration that the commission issues:

(1) The type of license or registration;

(2) The identity and address of the licensee or registrant;

(3) The effective date of the license or registration; and

(4) Any other information the commission considers appropriate.

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

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

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

Regarding licenses to operate a gaming facility:

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

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

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

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

(3) The amount of the renewal fee.

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

(1) Otherwise is entitled to be licensed;

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

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

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

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

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

(4) Submits to the commission evidence satisfactory to the commission of the gaming facility operator’s compliance with the plan described in §29-25-9(b)(4) of this code to create at least 100 full-time equivalent positions with a salary and benefit package commensurate with existing employees at the historic resort hotel. Notwithstanding any provision of subsection (d) of this section, the failure to substantially comply with the plan, as determined by the commission, may constitute grounds for the denial of the renewal of the license.

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

§29-25-16. License denial, revocation, and reprimand.

(a) The commission may deny a license or registration to any applicant, reprimand any licensee or registrant, or suspend or revoke a license or registration if the applicant, ~~or~~ licensee, registrant, or any controlling person of the applicant, ~~or~~ licensee, or registrant:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or registration for the applicant, ~~or~~ licensee, registrant, or for another;

(2) Fraudulently or deceptively uses a license or registration;

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

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

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

(b) Instead of or in addition to reprimanding a licensee or registrant or suspending or revoking a license or registration, the commission may impose a civil penalty under §29-25-27 of this code.

§29-25-17. Hearing procedures.

(a) *Right to a hearing*. — Except as otherwise provided by law, before the commission takes any action involving a licensee or registrant under the provisions of this article, it shall give the persons against whom the action is contemplated an opportunity for a hearing before the commission.

(b) *Notice of hearing and right to counsel*. — The commission shall give notice and hold the hearing in accordance with §29A-5-1 *et seq*. of this code. The notice shall be given to the person by certified mail to the last known address of the person at least 30 days before the hearing. The person may be represented at the hearing by counsel.

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

(d) *Appeal*. — Any person aggrieved by a final decision of the commission in a contested case may file a petition for appeal in the circuit court of Kanawha County within 30 days after the person received notice of the final order or decision, as provided in §29A-5-4 of this code.

§29-25-18. Inspection and seizure.

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

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

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

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

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

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

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

§29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license or registration fees.

(a) There is hereby created a special fund in the State Treasury which shall be designated and known as the Historic Resort Hotel Fund. Thirty-six percent of the gross terminal income received by the commission under §29-25-20 of this code and 30 percent of the adjusted gross receipts received by the commission under §29-25-21 of this code shall be deposited with the State Treasurer and placed in the Historic Resort Hotel Fund. The fund shall be an interest-bearing account with interest to be credited to and deposited in the Historic Resort Hotel Fund.

(b) All expenses of the commission shall be paid from the Historic Resort Hotel Fund, including reimbursement of the State Police for activities performed at the request of the commission in connection with background investigations or enforcement activities pursuant to this article. At no time may the commission’s expenses under this article exceed 15 percent of the total of the annual revenue received from the licensee or registrant under this article, including all license or registration fees, taxes, or other amounts required to be deposited in the Historic Resort Hotel Fund.

(c) An Historic Resort Hotel Modernization Fund is hereby created within the Historic Resort Hotel Fund. For all fiscal years beginning on or after July 1, 2011, the commission shall deduct two and one-half percent from gross terminal income received by the commission under §29-25-20 of this code for the fiscal year and deposit these amounts into a separate facility modernization account maintained within the Historic Resort Hotel Modernization Fund for each historic resort hotel. For each dollar expended by a historic resort hotel for video lottery or table gaming facility modernization improvements at the historic resort hotel, having a useful life of three or more years and placed in service after April 1, 2011, the historic resort hotel shall receive $1 in recoupment from its facility modernization account. For purposes of this section, the term “video lottery or table gaming facility modernization improvements” include acquisition of computer hardware and software, communications, and Internet access equipment, security, and surveillance equipment, video lottery terminals, and other electronic equipment, or other equipment designed to modernize the facility.

(d) The balance of the Historic Resort Hotel Fund shall become net income and shall be divided as follows:

(1) Sixty-four percent of the Historic Resort Hotel Fund net income shall be paid into the General Revenue Fund to be appropriated by the Legislature;

(2) Nineteen percent of the Historic Resort Hotel Fund net income shall be paid into the State Debt Reduction Fund established in §29-22C-27 of this code to be appropriated by the Legislature;

(3) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the Historic Resort Hotel Fund net income;

(4) The county where the gaming facility is located shall receive four percent of the Historic Resort Hotel Fund net income;

(5) The municipality where the gaming facility is located or the municipality closest to the gaming facility by paved road access as of the effective date of the reenactment of this section by the 2009 regular session of the Legislature shall receive two and one-half percent of the Historic Resort Hotel Fund net income;

(6) The municipalities within the county where the gaming facility is located, except for the municipality receiving funds under subdivision (5) of this subsection, shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income;

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

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

(e) Notwithstanding any provision of this article to the contrary, all limited gaming facility license fees and license renewal fees received by the commission pursuant to §29-25-9 of this code shall be deposited into the Community-Based Service Fund created in §29-22C-27 of this code.

(f) With the exception of the license fees and license renewal fees received by the commission pursuant to §29-25-9 of this code, all revenues received from licensees or registrants and license or registration applicants under this article shall be retained by the commission as reimbursement for the licensing or registration process.

§29-25-25. Offenses and penalties.

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

(1) The licensee operates a West Virginia Lottery table game or places a video lottery game or video lottery terminal in any location that is not a designated gaming area approved by the commission;

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

(3) The licensee knowingly permits an individual under the age of 21 years of age to enter or remain in a designated gaming area or to play video lottery terminals or West Virginia Lottery table game at a licensed gaming facility;

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

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

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

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

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

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

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

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

(4) A licensee who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated, or exposed for play any video lottery game, video lottery terminal, or other device, equipment, or material which has in any manner been tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal random selection of characteristics or the normal chance of the video lottery game.

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

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

(2) The person solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a gaming facility, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a West Virginia Lottery table game or to influence official action of the commission;

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

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

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

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

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

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

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

(5) The person manufacturers, sells, or distributed any cards, chips, dice, game, or device which is intended to be used to violate any provision of this article or the table gaming laws of any other state;

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

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

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

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

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

(11) The person, not a gaming licensee or employee or agent of a gaming facility licensed under this article acting in furtherance of the gaming licensee’s interests, has in his or her possession on grounds owned by the gaming facility licensed under this article, or on grounds contiguous to the gaming facility, any device, by whatever name called, intended to be used to violate a provision of this article or a rule of the commission implementing or explaining a provision of this article; or

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

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

(e) Any person who violates the provisions of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000 and ~~committed to~~ imprisoned in a state correctional facility ~~for a term of imprisonment of~~ not less than one year nor more than five years.

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

§29-25-27. Civil penalties.

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

The provisions of §29A-5-1 *et seq*. of this code shall apply to any civil penalty imposed pursuant to the provisions of this section.

NOTE: The purpose of this bill is to change the licensing requirement for certain casino employees from a licensure to a registration.

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