

Senate Bill No. 48

(By Senators Tucker, Beach and Williams)

[Introduced January 8, 2014; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to repeal §29-25-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-9, §29-25-12, §29-25-15, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-24, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-34, §29-25-35, §29-25-37 and §29-25-38 of said code; and to amend said code by adding thereto two new sections, designated §29-25-22b and §29-25-22c, all relating to gaming facilities; authorizing gaming facilities; permitting a rural resort community as limited gaming facility; defining terms; creating the Rural Resort Community Fund and Rural Resort Community Human Resource Benefit Fund; providing for the regulation and control of a rural resort community; and repealing the local option provision of this article.

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

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3 be repealed; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6,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

10 **ARTICLE 25. AUTHORIZED GAMING FACILITY.**

11 **§29-25-1. Authorization of limited gaming facility; findings;**
12 **intent.**

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

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

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

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

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

1 the operations of video lottery and West Virginia Lottery table
2 games at ~~the~~ a licensed gaming facility under this article and the
3 operations of video lottery and table games at the pari-mutuel
4 racetracks licensed under articles twenty-two-a and twenty-two-c of
5 this chapter.

6 **§29-25-2. Definitions.**

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

9 (a) "Applicant" means any person or entity applying for a
10 license.

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

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

20 (d) "Background investigation" means a security, criminal and
21 credit investigation of an applicant who has applied for the
22 issuance or renewal ~~or~~ of a license pursuant to this article or a
23 licensee who holds a current license.

1 (e) "Controlling interest" means:

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

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

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

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

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

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

18 (i) "Director" means the Director of the State Lottery
19 Commission.

20 (j) "Erasable programmable read-only memory chips" or "EPROM"
21 means the electronic storage medium on which the operation software
22 for all games playable on a video lottery terminal resides and can
23 also be in the form of CD ROM, flash ROM or other new technology

1 medium that the commission may from time to time approve for use in
2 video lottery terminals. All electronic storage media are
3 considered to be property of the State of West Virginia.

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

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

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

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

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

22 (p) "Gross terminal income", as used in this article and as
23 used in article twenty-two-a of this chapter, means the total

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

6 (q) "Historic resort hotel" means a resort hotel registered
7 with the United States Department of the Interior as a national
8 historic landmark in its National Registry of Historic Places
9 having not fewer than five hundred guest rooms under common
10 ownership and having substantial recreational guest amenities in
11 addition to the gaming facility.

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

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

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

18 (u) "License" means a license issued by the commission,
19 including:

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

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

23 (3) A license to be employed in connection with the operation

1 of a gaming facility; or

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

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

7 (w) "Licensed gaming facility supplier" means a person who is
8 licensed by the commission to engage in the business of supplying
9 gaming devices and gaming supplies to a gaming facility.

10 (x) "Licensee" means a gaming licensee, a licensed gaming
11 facility supplier or a licensed gaming facility employee.

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

22 (z) "Net terminal income" means gross terminal income minus an
23 amount deducted by the commission to reimburse the commission for

1 its actual cost of administering video lottery at the licensed
2 gaming facility. No deduction for any or all costs and expenses of
3 a licensee related to the operation of video lottery games shall be
4 deducted from gross terminal income.

5 (aa) "Person" means any natural person, corporation,
6 association, partnership, limited partnership, limited liability
7 company or other entity, regardless of its form, structure or
8 nature.

9 (bb) "Premises of an existing historic resort hotel" means the
10 historic resort hotel, attachments of the historic resort hotel,
11 and the traditional, immediate grounds of the historic resort
12 hotel.

13 (cc) "Premises of a rural resort community" means the rural
14 resort community, attachments of the rural resort community and the
15 immediate grounds of the rural resort community.

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

20 (ee) "Rural resort community" means;

21 (1) A planned community with no less than one thousand planned
22 home sites occupying no less than one thousand contiguous acres
23 which includes;

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

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

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

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

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

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

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

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

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

23 (gg) "Rural Resort Community Human Resource Benefit Fund"

1 means 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
9 simulated game of chance which is displayed on a video lottery
10 terminal and 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
15 credits to be displayed on the video lottery terminal and, with
16 respect to which, each game play credits entitles a player to
17 choose one or more symbols or numbers or to cause the video lottery
18 terminal to 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;

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

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

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

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

19 **§29-25-3. Commission duties and powers.**

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

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

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

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

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

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

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

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

20 (8) Issue all licenses;

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

23 (i) Receive, accept and pay the specified percentage of taxes

1 collected under sections twenty and twenty-one of this article into
2 the Historic Resort Hotel Fund or the Rural Resort Community Fund;
3 and

4 (ii) Receive, accept and pay the specified percentage of taxes
5 collected under sections twenty and twenty-one of this article into
6 the Human Resource Benefit Fund or the Rural Resort Community Human
7 Resource Benefit Fund;

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

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

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

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

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

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

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

23 (4) To bar, for cause, any person from entering or

1 participating in any capacity in the operation of a gaming
2 facility; and

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

5 **§29-25-5. Rules.**

6 The commission shall propose for promulgation legislative
7 rules in accordance with the provisions of article three, chapter
8 twenty-nine-a of this code as are necessary to provide for
9 implementation and enforcement of the provisions of this article.
10 Any legislative rules proposed by the commission before September
11 1, ~~2009~~ 2014, may be by emergency rule.

12 **§29-25-6. Law enforcement.**

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

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

1 expense.

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

6 **§29-25-9. License to operate a gaming facility.**

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

19 (b) *Applicant qualifications.* - The applicant shall be the
20 actual operator of the gaming facility to be located on the
21 premises of an existing historic resort hotel or a rural resort
22 community. The applicant may be the owner of the existing historic
23 resort hotel or a rural resort community or a person that leases

1 well-defined spaces on the premises of the historic resort hotel or
2 a rural resort community in order to operate a gaming facility as
3 defined by this article. ~~The resort hotel shall be located within~~
4 ~~the jurisdiction of a county approving the operation of a gaming~~
5 ~~facility in accordance with section seven of this article.~~ The
6 applicant shall meet the qualifications and requirements set forth
7 in this article and rules adopted by the commission. In
8 determining whether to grant a license to operate a gaming facility
9 to an applicant, the commission shall consider:

10 (1) The character, reputation, experience and financial
11 integrity of the applicant and any controlling person of the
12 applicant;

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

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

19 (4) The plan submitted by the applicant regarding employment
20 levels and the extent to which the submitted plan demonstrates an
21 ability on the part of the applicant to create at least one hundred
22 full-time equivalent jobs with a salary and benefit package
23 commensurate with existing employees at the historic resort hotel

1 or rural resort community.

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

17 (d) *Management service contracts.* -

18 (1) *Approval.* - A gaming facility may not enter into any
19 management service contract that would permit any person other than
20 the licensee to act as the commission's agent in operating West
21 Virginia Lottery table game unless the management service contract:
22 (A) Is with a person licensed under this article to provide
23 management services; (B) is in writing; and (C) the contract has

1 been approved by the commission.

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

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

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

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

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

22 (A) Information concerning the applicant and of any
23 controlling person of the applicant sufficient to serve as a basis

1 for a thorough background check;

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) In an amount determined by the commission to be adequate
23 to protect the state against nonpayment by the licensee of amounts

1 due the state under this article;

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

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

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

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

21 (l) *Annual license renewal fee.* - For the second year that it
22 is licensed, ~~the~~ a licensed gaming facility shall pay to the
23 commission a license renewal fee of \$250,000. For the third year

1 that it is licensed, ~~the~~ a licensed gaming facility shall pay to
2 the commission a license renewal fee of \$500,000. For every year
3 after the third year that it is licensed, ~~the~~ a licensed gaming
4 facility shall pay to the commission a license renewal fee that is
5 calculated by determining the annual average gross receipts of the
6 West Virginia pari-mutuel racetracks with table games licenses for
7 the last full fiscal year of adjusted gross receipts available, and
8 dividing that number into the licensed gaming facility operator's
9 adjusted gross receipts for the same full fiscal year of adjusted
10 gross receipts to obtain a percentage, and by multiplying the
11 resulting percentage by \$2,500,000: *Provided*, That the amount
12 required to be paid by the licensed gaming facility shall be not
13 less than \$500,000, nor more than \$2,500,000.

14 (m) ~~The~~ A licensed gaming facility shall provide to the
15 commission, at no cost to the commission, suitable office space at
16 the gaming facility to perform the duties required of it by the
17 provisions of this article.

18 **§29-25-12. License to be employed by operator of gaming facility.**

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

22 (b) *License qualifications.* - To qualify for a license to be
23 employed in a gaming facility, the applicant shall be an individual

1 of good moral character and reputation and have been offered
2 employment by ~~the~~ a gaming facility contingent upon licensure
3 pursuant to the provisions of this section. The commission, by
4 rule, may specify additional requirements to be met by applicants
5 based on the specific job classification in which the applicant is
6 to be employed.

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

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

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

23 (3) Pay to the commission a nonrefundable application fee in

1 the amount of \$100 to be retained by the commission as
2 reimbursement for the licensing process. This fee may be paid on
3 behalf of the applicant by the employer.

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

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

14 **§29-25-15. Expiration date and renewal of gaming license.**

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

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

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

22 (2) The date by which the commission must receive the renewal
23 application for the renewal to be issued and mailed before the

1 existing license expires; and

2 (3) The amount of the renewal fee.

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

5 (1) Otherwise is entitled to be licensed;

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

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

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

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

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

19 (4) Submits to the commission evidence satisfactory to the
20 commission of the gaming facility operator's compliance with the
21 plan described in subdivision (4), subsection (b), section nine of
22 this article to create at least one hundred full-time equivalent
23 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
7 who 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
15 premises where gaming equipment is manufactured, sold, distributed
16 or serviced or any premises in which any records of the activities
17 are 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;

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

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

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

13 **§29-25-19. Consent to presence of law-enforcement officers;**
14 **wagering limits; operations and services; posting**
15 **of betting limits.**

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

22 (b) *Commission discretion in gaming operations.* - Video
23 lottery terminals operated at ~~the~~ a gaming facility may allow

1 minimum and maximum wagers on a single game the amounts determined
2 by the license in the exercise of its business judgment subject to
3 the approval of the commission.

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

7 (A) Maximum and minimum wagers;

8 (B) Advertising and promotional activities;

9 (C) Hours of operation;

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

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

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

20 (1) Minimum and maximum payout percentages;

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

23 (3) Limitations on the types and amounts of financial

1 transactions, including extension of credit to a patron, which a
2 gaming facility can enter into with its patrons.

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

11 **§29-25-20. Accounting and reporting of gross terminal income;**
12 **distribution.**

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

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

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

23 (b) The licensed gaming facility shall also submit seventeen

1 percent of the gross terminal income from video lottery games at
2 the licensed gaming facility to the commission through electronic
3 funds transfer to be deposited:

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

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

10 (c) Each of these The submissions required by this section
11 shall be made to the commission weekly. The gaming licensee shall
12 furnish to the commission all information and bank authorizations
13 required to facilitate the timely transfer of moneys to the
14 commission. The gaming licensee shall provide the commission
15 thirty days' advance notice of any proposed account changes in
16 order to assure the uninterrupted electronic transfer of funds.

17 **§29-25-21. Taxes on games other than video lottery games.**

18 (a) *Imposition and rate of limited gaming profits tax.* - There
19 is hereby levied and shall be collected a privilege tax against a
20 gaming license in an amount to be determined by the application of
21 the rate against adjusted gross receipts of the licensed gaming
22 facility. The rate of tax is thirty-five percent. Of that
23 thirty-five percent:

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

7 (2) If the licensed gaming facility is located in a rural
8 resort community, thirty percent shall be directly deposited by the
9 commission into the Rural Resort Community Fund created in section
10 twenty-two-b of this article and the remaining five percent shall
11 be directly deposited by the commission into the Rural Resort
12 Community Fund created in section twenty-two-b of this article.

13 ~~For purposes of calculating the amount of tax due under this~~
14 ~~section, the licensee shall use the accrual method of accounting.~~
15 ~~This tax is in addition to all other taxes and fees imposed:~~
16 ~~Provided, That the consumers sales and service tax imposed pursuant~~
17 ~~to article fifteen, chapter eleven of this code may not apply to~~
18 ~~the proceeds from any wagering with respect to a West Virginia~~
19 ~~Lottery table game pursuant to this article.~~

20 (b) *Computation and payment of tax.* - For purposes of
21 calculating the amount of tax due under this section, the licensee
22 shall use the accrual method of accounting. This tax is in
23 addition to all other taxes and fees imposed: Provided, That the

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

21 (c) *Negative adjusted gross receipts.* - When adjusted gross
22 receipts for a week is a negative number because the winnings paid
23 to patrons wagering on ~~the~~ a gaming facility's West Virginia

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

16 (d) *Prohibition on credits.* - Notwithstanding any other
17 provision of this code to the contrary, no credits may be allowed
18 against any tax imposed on any taxpayer by this code for an
19 investment in gaming devices and supplies, for an investment in
20 real property which would be directly utilized for the operation of
21 a gaming facility or for any jobs created at a gaming facility.
22 Notwithstanding any other provision of this code to the contrary,
23 the tax imposed by this section may not be added to federal taxable

1 income in determining West Virginia taxable income of a taxpayer
2 for purposes of article twenty-four, chapter eleven of this code.

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

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

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

1 municipal sales and service tax and use tax authorized by article
2 thirteen-c of said chapter.

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

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

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

1 (c) A Rural Resort Community Modernization Fund is hereby
2 created within the Rural Resort Community Fund. For all fiscal
3 years beginning on or after July 1, 2014, the commission shall
4 deduct two and one-half percent from gross terminal income received
5 by the commission under section twenty of this article for the
6 fiscal year and deposit these amounts into a separate facility
7 modernization account maintained within the Rural Resort Community
8 Modernization Fund for each rural resort community. For each dollar
9 expended by a rural resort community for video lottery or table
10 gaming facility modernization improvements at the rural resort
11 community, having a useful life of three or more years and placed
12 in service after July 1, 2014, the rural resort community shall
13 receive \$1 in recoupment from its facility modernization account.
14 For purposes of this section, the term "video lottery or table
15 gaming facility modernization improvements" include acquisition of
16 computer hardware and software, communications and Internet access
17 equipment, security and surveillance equipment, video lottery
18 terminals and other electronic equipment or other equipment
19 designed to modernize the facility.

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

22 (1) Sixty-four percent of the Rural Resort Community Fund net
23 income shall be paid into the General Revenue Fund to be

1 appropriated by the Legislature;

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

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

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

11 (5) The municipality where the gaming facility is located or
12 the municipality closest to the gaming facility by paved road
13 access as of the effective date of the reenactment of this section
14 by the 2014 regular session of the Legislature shall receive two
15 and one-half percent of the Rural Resort Community Fund net income;

16 (6) The municipalities within the county where the gaming
17 facility is located, except for the municipality receiving funds
18 under subdivision (5) of this subsection, shall receive equal
19 shares of two and one-half percent of the Rural Resort Community
20 Fund net income, if no other municipality is located within the
21 county where the gaming facility is located as of the effective
22 date of the reenactment of this section by the 2013 regular session
23 of the Legislature then the equal shares shall be received by the

1 county's board of education;

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

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

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

23 (f) With the exception of the license fees and license renewal

1 fees received by the commission pursuant to section nine of this
2 article, all revenues received from licensees and license
3 applicants under this article shall be retained by the commission
4 as reimbursement for the licensing process.

5 **§29-25-22c. Rural Resort Community Human Resource Benefit Fund.**

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

17 (b) For each dollar expended by a rural resort community for
18 fringe benefits for the employees of the rural resort community,
19 the commission shall transfer to the rural resort community \$1 of
20 recoupment from the Rural Resort Community Human Resource Benefit
21 Fund: *Provided*, That the rural resort community is not entitled to
22 recoupment for money spent on fringe benefits beyond the amount of
23 money available to be expended from the Rural Resort Community

1 Human Resource Benefit Fund at the time the request for recoupment
2 is made by the rural resort community.

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

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

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

14 (A) One member shall be a representative of the collective
15 bargaining unit that represents a majority of the employees of the
16 rural resort community or if no collective bargaining unit has been
17 established then the employees of the rural resort community shall
18 elect a representative who will represent the majority of the
19 employees;

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

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

23 (2) The members shall be appointed or elected by the entity or

1 persons that they represent. Establishment of terms for members
2 shall be determined by the entity or persons that they represent,
3 if the entity or persons choose to set terms.

4 (3) A majority of members constitutes a quorum for the
5 transaction of business.

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

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

12 (6) The board shall operate in an advisory capacity. Its
13 functions include, but are not limited to, reviewing and verifying
14 financial audits of the Rural Resort Community Human Resource
15 Benefit Fund conducted by the commission and its employees and
16 reviewing source documents associated with disbursements from the
17 Rural Resort Community Human Resource Benefit Fund.

18 (7) Within thirty days of any board meeting, the board shall
19 report to the commission its findings and any recommendations it
20 may have. The report to the commission shall be made at a
21 commission meeting that is open to the public.

22 (e) In the event that an audit conducted by the commission, or
23 suggested changes to the audit submitted by the board and adopted

1 by the commission, reveals that the rural resort community has
2 acted improperly or negligently in its claim for money from the
3 Rural Resort Community Human Resource Benefit Fund, the commission
4 may impose a civil penalty against the rural resort community of up
5 to one hundred percent of the improperly claimed amount. Any civil
6 penalty imposed on the rural resort community by the commission
7 under this subsection shall be deposited by the commission into the
8 Rural Resort Community Fund.

9 **§29-25-24. Individual gaming restrictions.**

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

13 (1) ~~Is~~ If the designated gaming area is located within the
14 historic resort hotel, then the individual must be either;

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

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

22 (C) A member of a homeowner or facility association that
23 entitles members to substantial privileges at the historic resort

1 hotel on whose premises the gaming facility is located or an
2 overnight guest of such a member: *Provided*, That the association
3 was in existence as of April 1, 2009;

4 (2) The individual is at least twenty-one years of age;

5 (3) The individual is not visibly intoxicated;

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

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

13 (b) Notwithstanding any provisions of this code to the
14 contrary, no employee of the commission or rural resort community
15 or any member of his or her immediate household may wager at the
16 gaming facility, and no licensed limited gaming facility employee
17 may wager on any table game at the limited 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

1 inconsistency between any of the provisions of this article and the
2 provisions of article twenty-two-a of this chapter. In that event,
3 the provisions of this article shall supersede any conflicting or
4 inconsistent provisions contained in article twenty-two-a of this
5 chapter.

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

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

17 (b) A manufacturer may not sell or lease a video lottery
18 terminal for placement at ~~the~~ a gaming facility unless the terminal
19 has been approved by the commission. Only manufacturers with
20 licenses may apply for approval of a video lottery terminal or
21 associated equipment. The manufacturer shall submit two copies of
22 terminal illustrations, schematics, block diagrams, circuit

1 analysis, technical and operation manuals and any other information
2 requested by the commission for the purpose of analyzing and
3 testing the video lottery terminal or associated equipment.

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

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

16 (2) The manufacturer shall pay the cost of transportation of
17 two video lottery terminals to lottery headquarters. The
18 commission shall conduct an acceptance test to determine terminal
19 functions and central system compatibility. If the video lottery
20 terminal fails the acceptance test conducted by the commission, the
21 manufacturer shall make all modifications required by the
22 commission.

23 (d) After each test has been completed, the commission shall

1 provide the terminal manufacturer with a report containing
2 findings, conclusions and pass/fail results. The report may
3 contain recommendations for video lottery terminal modification to
4 bring the terminal into compliance with the provisions of this
5 article. Prior to approving a particular terminal model, the
6 commission may require a trial period not to exceed sixty days for
7 a licensed gaming facility to test the terminal. During the trial
8 period, the manufacturer may not make any modifications to the
9 terminal model unless modifications are approved by the commission.

10 (e) The video lottery terminal manufacturer and licensed
11 gaming facility are jointly responsible for the assembly and
12 installation of all video lottery terminals and associated
13 equipment. The manufacturer and licensed gaming facility shall not
14 change the assembly or operational functions of a terminal licensed
15 for placement in West Virginia unless a request for modification of
16 an existing video terminal prototype is approved by the commission.
17 The request shall contain a detailed description of the type of
18 change, the reasons for the change and technical documentation of
19 the change.

20 (f) Each video lottery terminal approved for placement at ~~the~~
21 a gaming facility shall conform to the exact specifications of the
22 video lottery terminal prototype tested and approved by the
23 commission. If any video lottery terminal or any video lottery

1 terminal modification, which has not been approved by the
2 commission, is supplied by a manufacturer and operated by ~~the~~ a
3 gaming facility, the commission shall seize and destroy all of that
4 licensed gaming facility's and manufacturer's noncomplying video
5 lottery terminals and shall suspend the license and permit of the
6 licensed gaming facility and manufacturer.

7 **§29-25-30. Video lottery terminal hardware and software**
8 **requirements; hardware specifications; software**
9 **requirements for randomness testing; software**
10 **requirements for percentage payout; software**
11 **requirements for continuation of video lottery**
12 **game after malfunction; software requirements for**
13 **play transaction records.**

14 (a) The commission may approve video lottery terminals and in
15 doing so shall take into account advancements in computer
16 technology, competition from nearby states and the preservation of
17 jobs at the historic resort hotel or rural resort community. In
18 approving video lottery terminals licensed for placement in this
19 state the commission shall insure that the terminals meet the
20 following hardware specifications:

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

1 (2) A surge protector shall be installed on the electrical
2 power supply line to each video lottery terminal. A battery or
3 equivalent power back-up for the electronic meters shall be capable
4 of maintaining accuracy of all accounting records and terminal
5 status reports for a period of one hundred eighty days after power
6 is disconnected from the terminal. The power back-up device shall
7 be located within the locked logic board compartment of the video
8 lottery terminal.

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

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

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

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

22 (7) The main logic boards and all erasable programmable
23 read-only memory chips ("EPROMS") are considered to be owned by the

1 commission and shall be located in a separate locked and sealed
2 area within the video lottery terminal.

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

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

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

19 (i) The number of credits accrued;

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

22 (iii) Time of day and date;

23 (iv) Validation number; and

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

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

5 (i) Manufacturer of the video lottery terminal;

6 (ii) Serial number of the terminal; and

7 (iii) Model number of the terminal.

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

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

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

1 number within a single game play.

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

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

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

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

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

3 (2) Number of credits wagered;

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

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

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

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

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

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

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

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

15 (f) No video lottery terminal may have any mechanism which
16 allows the electronic accounting meters to clear automatically.
17 Electronic accounting meters may not be cleared without the prior
18 approval of the commission. Both before and after any electronic
19 accounting meter is cleared, all meter readings shall be recorded
20 in the presence of a commission employee.

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

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

12 **§29-25-31. The specific video lottery duties required of a gaming**
13 **facility.**

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

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

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

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

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

6 (e) Ensure that video lottery terminals are within the sight
7 and control of designated employees of ~~the~~ a licensed gaming
8 facility;

9 (f) Ensure that video lottery terminals are placed and remain
10 placed in the specific locations within ~~the~~ a gaming facility that
11 have been approved by the commission. No video lottery terminal or
12 terminals at ~~the~~ a gaming facility ~~shall~~ may be relocated without
13 the prior approval of the commission;

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

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

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

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

1 (k) Report promptly to the manufacturer and the commission all
2 video lottery terminal malfunctions and notify the commission of
3 the failure of a manufacturer or service technician to provide
4 prompt service and repair of such terminals and associated
5 equipment;

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

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

11 **§29-25-32. Surcharge; Capital Reinvestment Fund.**

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

16 (b) The Capital Reinvestment Fund is hereby created within the
17 Lottery Fund. The surcharge amount attributable to the historic
18 resort hotel or rural resort community shall be retained by the
19 commission and deposited into a separate capital reinvestment
20 account for ~~the historic resort hotel~~ each contributing licensed
21 gaming facility. For each dollar expended by ~~the historic resort~~
22 ~~hotel~~ a licensed gaming facility for capital improvements at the
23 ~~historic resort hotel~~ licensed gaming facility, of any amenity

1 associated with the historic resort hotel's or rural resort
2 community's destination resort facility operations, or at adjacent
3 facilities owned by the historic resort hotel or rural resort
4 community having a useful life of seven or more years and placed in
5 service after April 1, 2009, ~~the~~ a licensed gaming facility shall
6 receive \$1 in recoupment from its Capital Reinvestment Fund
7 account: If a historic resort hotel's or rural resort community's
8 unrecouped capital improvements exceed its Capital Reinvestment
9 Fund account at the end of any fiscal year, the excess improvements
10 may be carried forward to seven subsequent fiscal years.

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

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

19 **§29-25-34. State ownership of West Virginia Lottery table games.**

20 All West Virginia Lottery table games authorized by this
21 article shall be West Virginia lottery games owned by the State of
22 West Virginia. A gaming facility license granted to a historic
23 resort hotel or rural resort community by the commission pursuant

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

9 **§29-25-35. Preemption.**

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

17 **§29-25-37. Game rules of play; disputes.**

18 (a) As an agent of the commission authorized to operate West
19 Virginia Lottery table games, ~~the~~ a gaming facility licensee shall
20 have written rules of play for each West Virginia Lottery table
21 game it operates that are approved by the commission before the
22 West Virginia Lottery table game is offered to the public. Rules
23 of play proposed by the gaming facility may be approved, amended or

1 rejected by the commission.

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

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

1 the manufacturer or dealer thereof in accordance with Chapter 1194,
2 64 Stat. 1134, 15 U. S. C. §1171 to §1178, are legal shipments of
3 gambling devices into the State of West Virginia.

NOTE: The purpose of this bill is to authorize a rural resort community as a limited gaming facility. The bill also repeals §29-25-7 relating to local options.

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

§29-25-22b and §29-25-22c are new; therefore, strike-throughs and underscoring have been omitted.