

**ENGROSSED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 2718**

(By Delegates Swartzmiller, Beach, Caputo, Amores,  
Klempa, Schadler, Shook, Hutchins, Kominar and Wells)

(Originating in the Committee on Finance)

[February 12, 2007]

A BILL to amend and reenact §29-22-18, of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-10c of said code; to amend said code by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and to amend and reenact §29-25-1 of said code, all relating to authorization of West Virginia lottery table games; setting temporary percentage for Lottery Commission operation and administration expenses; providing recoupment criteria and changing the recoupment period for the capital reinvestment fund; authorizing West Virginia Lottery table games at licensed horse and dog racetracks; providing for legislative findings, declarations and intent; providing for Lottery Commission regulation of gaming activities; authorizing the Lottery Commission to promulgate rules; authorizing the Lottery Commission and Director to hire necessary staff; placing requirements and limitations on Lottery employees; providing for duties and powers and administrative expenses of the state Lottery Commission; requiring local option elections to approve licensure of West Virginia Lottery table games at racetrack facilities; providing for reconsideration elections after five years; providing for licenses to engage in activities related to operation of West Virginia Lottery table games at racetrack facilities; providing qualifications for applicant for license to operate West Virginia Lottery table games at a racetrack facility; providing floor plan requirements; authorizing management service contracts; coordination of licensed activities; providing license application requirements; establishing special fee for failure to construct certain facilities; racetrack table games licensee qualifications; establishing license fees; requirement for surety bond; issuance of licenses and prohibiting transfer, assignment, sale or pledge as collateral; requiring audits and reports of licensee; providing duties of racetrack table games licensees; preference in hiring for table games jobs; providing that the state owns right to conduct table games and may license West Virginia Lottery table games to qualified licensees; providing duties for racetrack table

games licensees; providing reporting requirements for table games licensees; establishing requirements for supplier licensees; establishing requirements of license for employees of operator of racetracks with West Virginia Lottery table games; establishing requirements for management services provider license; providing a prohibition of false statements on application for license; providing grounds for denial, revocation or suspension of license; establishing hearing procedures; providing for expiration and renewal of licenses; providing renewal fees; specifying information to be included on license; requiring display and availability of license; requiring notice of change of address; requiring commission approval of West Virginia Lottery table games rules of play; providing for method to determine betting limits and operations and services by racetrack licensee; requiring the posting of betting limits and other requirements relating to operations and services; establishing standards for offering complimentary goods and services; providing conditions for sale of alcohol; providing for contract agreements and cost for law-enforcement services; authorizing inspections and seizure of certain property; authorizing warrantless searches of person and property; imposing privilege tax on adjusted gross receipts of racetrack with West Virginia Lottery table games; providing for filing and payment of taxes; exempting racetrack licensees from certain taxes; creating State Racetrack Table Games Fund; providing for distribution of amounts in Fund; providing prohibited wagers and other activities; prohibiting wagers by certain persons; establishing criminal offenses and penalties; providing for forfeiture of certain property; providing civil penalties; providing for the preemption of certain local laws and rules; providing for exemption from certain federal laws relating to shipment of gambling devices; and revising legislative findings relating to authorization of West Virginia Lottery table games at a well established resort hotel.

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

That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22A-10c of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and that §29-25- 1 of said code be amended and reenacted, all to read as follows:

#### **ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-18. State Lottery Fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.**

(a) There is hereby continued a special revenue fund in the State Treasury which shall be designated and known as the "State Lottery Fund." The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the State Treasurer and placed into the "State Lottery Fund." The revenue shall be disbursed in the manner

provided in this section for the purposes stated in this section and shall not be treated by the Auditor and Treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the Commission or Lottery Fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses: *Provided*, That for the period beginning the first day of ~~January, two thousand two through the thirtieth day of June, two thousand three~~ the month following the first passage of a referendum election held pursuant to section seven, article twenty-two-c of this chapter and for eighteen months thereafter, not more than seventeen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the State Treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the School Building Debt Service Fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the Education, Arts, Sciences and Tourism Debt Service Fund in subsection (I) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, any and all remaining funds in the State Lottery Fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The Lottery Education Fund created in subsection (g) of this section; (2) the School Construction Fund created in section six, article nine-d, chapter eighteen of this code; (3) the Lottery Senior Citizens Fund created in subsection (j) of this section; and (4) the Division of Natural Resources created in section three, article one, chapter twenty of this code and the West Virginia Development Office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account, the Education, Arts, Sciences and Tourism Debt Service Fund, the economic development project fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article, may be made in any period of time in which a default exists in respect to debt service on bonds issued by the School Building Authority, the State Building Commission, the Economic Development Authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the school building debt service account and the Education, Arts, Sciences and Tourism Debt Service Fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the School Building Authority and the State Building Commission which are secured by net profits.

(g) There is hereby continued a special revenue fund in the State Treasury which shall be designated and known as the "Lottery Education Fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the Lottery Education Fund by the State

Treasurer. The Lottery Education Fund shall also consist of all interest earned from investment of the Lottery Education Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Education Fund from any source. The revenues received or earned by the Lottery Education Fund shall be disbursed in the manner provided below and may not be treated by the Auditor and Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Education Fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor may the total allocation of the net profits to be paid into the School Building Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the School Building Authority in favor of the bonds it issues which are secured by the net lottery profits.

When the school improvement bonds, secured by profits from the lottery and deposited in the school debt service fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the School Construction Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Education, Arts, Sciences and Tourism Debt Service Fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed one million dollars nor may the total allocation paid into the Education, Arts, Sciences and Tourism Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Education, Arts, Sciences and Tourism Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed fifteen million dollars annually, may be granted by the State Building Commission in favor of the bonds it issues which are secured by the net lottery profits.

When the bonds, secured by profits from the lottery and deposited in the Education, Arts, Sciences and Tourism Debt Service Fund, mature, the profits shall become available for debt service on additional bonds as a second priority from the net profits of the lottery.

(j) There is hereby continued a special revenue fund in the State Treasury which shall be designated and known as the "Lottery Senior Citizens Fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the Lottery Senior Citizens Fund by the State Treasurer. The Lottery Senior Citizens Fund shall also consist of all interest earned from investment of the Lottery Senior Citizens Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Senior Citizens Fund from any source. The revenues received or earned by the Lottery Senior Citizens Fund shall be distributed in the manner provided below and may not be treated by the Auditor or Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Senior Citizens Fund to such any senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(k) The Division of Natural Resources and the West Virginia Development Office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the Division of Natural Resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

## **ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.**

### **§29-22A-10c. Surcharge; capital reinvestment fund.**

(a) For all fiscal years beginning on or after the first day of July, two thousand one, there shall be imposed a surcharge of ten percent against the excess of total net terminal income generated from a licensed racetrack for that fiscal year over total net terminal income from that licensed racetrack for the fiscal year ending the thirtieth day of June, two thousand one.

(b) A capital reinvestment fund is hereby created within the lottery fund. Forty-two percent of the surcharge amount attributable to each racetrack shall be retained by the commission and deposited into a separate capital reinvestment account for that licensed racetrack. For each dollar expended by a licensed racetrack for capital improvements at the racetrack, at the location of any amenity associated with the licensed racetrack's destination resort facility operations, and or at adjacent facilities owned by the licensee, having a useful life of fifteen or more years and placed in service after the first day of April, two thousand one, the licensed racetrack shall receive one dollar in recoupment from its capital reinvestment fund account: *Provided*, That in the case of thoroughbred horse tracks, four cents of every dollar in recoupment shall only be spent on capital improvements and upgrading in the barn area or other areas at the track ~~approved by~~ with the approval of the horsemen's benevolent and protective association acting on behalf of the horsemen and any moneys spent by the horseracing licensee on capital improvements and upgrading in the barn area or other areas at the track may not be allocated to these moneys by the licensee without the approval of the horsemen's benevolent and protective association acting on behalf of the horsemen: *Provided, however*, That in the case of greyhound race tracks, four cents of every dollar in recoupment shall be spent on capital improvements and upgrading in the kennel area or other areas at the track approved by the Racing Commission: *Provided*, That all moneys required by this section shall be spent only with the approval of the horsemen's benevolent and protective association. If a licensed racetrack's unrecouped capital improvements exceed its capital reinvestment fund account at the end of any fiscal year, the excess improvements may be carried

forward to ~~three~~ seven subsequent fiscal years.

(c) Fifty-eight percent of the surcharge amount plus any moneys remaining in a racetrack's capital reinvestment fund account at the end of any fiscal year shall be deposited in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

**ARTICLE 22C. RACETRACK LOTTERY TABLE GAMES ACT. §29-22C-1. Short title.**

This article shall be known and may be cited as the Racetrack Lottery Table Games Act.

**§29-22C-2. 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 table games and ancillary activities at a licensed racetrack and the playing of those West Virginia lottery table games at a licensed racetrack is not unlawful when conducted in accordance with the provisions of this article and rules of the Commission.

(b) Legislative findings and declarations. --

(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 the four existing 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 the tourism industry plays a critical role in the economy of this state and that a substantial state interest exists in protecting that industry.

(3) The Legislature finds that the state can own, control, operate and regulate West Virginia lottery table games under this article. The state limits the operation of authorized table games to no more than four existing racetracks in this state that hold racetrack video lottery licenses issued by the State Lottery Commission pursuant to article twenty-two-a of this chapter.

(4) The Legislature finds that the outcome of each of the West Virginia Lottery table games authorized by this article is determined predominately by chance, and thus these table games constitute lotteries as provided in section thirty-six, article VI of the constitution of this state.

(5) The Legislature finds that permitting the operation of West Virginia Lottery table games in accordance with the provisions of this article at racetracks licensed under article twenty-two-a of this chapter to operate video lottery terminals constitutes the operation of lottery games of chance owned, controlled, operated and regulated by the State of West Virginia within the purview of section thirty-six, article VI of the Constitution of this state.

(6) The Legislature finds that the table games authorized by this article are West Virginia lottery games and constitute intellectual property rights owned by the State of West Virginia, and that the Lottery Commission may, pursuant to this article, grant certain limited license rights in and to these state-owned lottery games to racetrack licensees.

(7) The Legislature finds that the commission may, pursuant to this article, operate its lottery games by and through its licensed agents, including racetrack licensees, who shall act as agents of the state in connection with the state's operation of table games at parimutuel racetracks.

(8) The Legislature finds that section thirty-six, article VI of the Constitution of this state grants to the

Legislature the authority to determine the manner in which the state shall own, operate, control and regulate lotteries, and the Legislature finds that the grant of licenses in and to the state's intellectual property rights to its lottery games, the state operation of West Virginia Lottery games through licensed agents of the commission, and the strict control and regulation of all aspects of table gaming activities pursuant to this article, constitute an appropriate exercise of the legislative power granted by the Constitution to authorize lotteries owned, operated, controlled and regulated by the state in the manner provided by general law.

(c) *Legislative intent.* --

(1) The Legislature declares that permitting the operation of West Virginia Lottery table games at no more than four existing licensed racetracks in accordance with the provisions of this article is intended to enhance the tourism market throughout the state, including, but not limited to, year-round recreational and tourism locations in the state. It further declares that permitting the operation of West Virginia Lottery table games at licensed racetracks in accordance with the provisions of this article is intended to preserve and protect existing racetrack video lottery revenues of the state.

(2) The Legislature declares that permitting the operation of West Virginia Lottery table games at licensed racetracks in accordance with the provisions of this article is intended to provide broad economic opportunities to the citizens of the state, including the creation of a significant number of year-round employment opportunities.

(3) The Legislature further declares that permitting the operation of West Virginia Lottery table games at licensed racetracks in accordance with the provisions of this article is intended to positively assist the state's racing industry and support programs intended to foster and promote horse and dog racing and breeding.

### **§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 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 pursuant to this article, or a licensee who holds a current license.

(5) "Commission" or "State Lottery Commission" means the West Virginia Lottery Commission created by article twenty-two of this chapter.

(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, 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

rulemaking.

(9) "Control" means the authority directly or indirectly to direct the management and policies of an applicant for a license issued under this article or the holder of a license 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 section six, article twenty-two of this chapter.

(12) "Disciplinary action" is an action by the Commission suspending or revoking a license, 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 article twenty-two-a of this chapter and article twenty-three, chapter nineteen 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;

(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; and

(D) 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 articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter.

(21) "Member" means a Commission member appointed to the West Virginia Lottery Commission under article twenty-two of this chapter.

(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, includes 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 article twenty-two-a of this chapter to operate racetrack video lottery terminals and holds a valid racing license granted by the West Virginia Racing Commission pursuant to the provision of article twenty-three, chapter nineteen 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 section twenty-seven of this article.

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

(32) "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, 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) "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 articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter, 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 article twenty-two-a of this chapter, 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 lease conditions and terms, and applicable rules of the Commission;
- (6) Determine eligibility of a person to hold or continue to hold a license issued under this article;
- (7) Issue all licenses;
- (8) Maintain a record of all licenses 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 twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter, 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 article three, chapter twenty-nine-a 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 article three, chapter twenty-nine-a of this code, at the discretion of the Commission. Any rule proposed by the Commission before the first day of September, two thousand seven may be promulgated as an emergency rule, which shall be effective when notice of the emergency rule is filed in the state register published by the Secretary of State.
- (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 section eight of this article; suppliers under section eleven of this article; racetrack employees under section twelve of this article; and providers of management services under section thirteen of this article.
- (7) Exercise any other powers that may be necessary to effectuate the provisions of this article and the rules of the Commission.

**§29-22C-5. Appointment of commission staff; conditions of employment.**

(a) The Director, with the approval of the Commission, may appoint any professional, clerical, technical and administrative personnel, who shall be state employees hired in accordance with article six, chapter twenty-nine of this code, which the Director considers necessary to carry out the provisions of this article. Prior to his or her appointment, each applicant for a position shall provide his or her fingerprints and shall undergo a thorough background investigation.

(b) No Commission employee may directly or indirectly hold an ownership or a financial interest in any racetrack table game licensee, or a supplier licensee, or a management services licensee, or in a holding company that owns the licensee, or in a business related to the licensee for federal income tax purposes, or in an applicant for any of these licenses.

(c) No Commission employee may knowingly wager or be paid any prize from any wager at any licensed racetrack with West Virginia Lottery table games within this state or at any facility outside this state or this country that is directly or indirectly owned or operated:

(1) By a racetrack table games licensee that is licensed pursuant to this article, or

(2) By any person who directly or indirectly owns the racetrack table games licensee.

**§29-22C-6. Licenses 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 is required by this article or rules of the Commission unless all necessary licenses have been obtained in accordance with this article and rules of the Commission.

(b) Licenses 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 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 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 non-corporate 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 required by this article or rules of the Commission is in addition to all other licenses or permits required by applicable federal, state or local law.

**§29-22C-7. Local option election.**

(a) No racetrack may be licensed under this article to lease West Virginia Lottery table games until a local option election is held in the county in which pari-mutuel wagers are received at a racetrack licensed under article twenty-three, chapter nineteen of this code and the voters of that county voting on the question approve having West Virginia Lottery table games at the racetrack.

(b) The county commission shall place the question on the ballot upon the receipt of a written notice from a licensed racetrack located within that county requesting that the question be placed on the

ballot.

(c) The county commission of the county in which table games would be located shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date at least thirty days preceding the day of the election.

(d) On the local option election ballot shall be printed the following:

Shall West Virginia Lottery table games be permitted at the [name of licensed racetrack]?

Yes

No

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

(e) The local option election shall be held in conjunction with the next primary or general election scheduled more than ninety days following receipt by the county commission of the notice required by this section, or at a special election: *Provided*, That upon written request by the licensed racetrack that a special election be called, the county commission shall order a special election to be held on the question within ninety days after the receipt by the county commission of that request. The county commission may require the licensed racetrack to pay the entire cost incurred by the county to hold the special election. Approval shall be by a majority of the voters casting votes at the election on the question of approval or disapproval of West Virginia Lottery table games at a licensed racetrack.

(f) If the majority votes against allowing table games at a licensed racetrack, no election on the issue shall be held for a period of one hundred four weeks. A local option election may thereafter be held in the manner provided in this section. The process to hold another election on the question shall start anew, as if no prior request for an election on the question had been filed with county commission and as if there had been no prior election on the question.

(g) If the majority votes for allowing West Virginia Lottery table games at a licensed racetrack facility in a county, another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts. The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident within the county of \_\_\_\_\_, do hereby petition that a special election be held within the county of \_\_\_\_\_ upon the following question: Shall West Virginia Lottery table games be permitted at the [name of racetrack]?

Name

Address

Date

(Post office or street address)

**§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.**

(a) Racetrack table games licenses. -- The Commission may issue up to four racetrack table games licenses to operate West Virginia Lottery table games in accordance with the provisions of this article. The Legislature intends that no more than four licenses to operate a racetrack with West Virginia Lottery table games in this state shall be permitted in any event.

(b) Grant of license. -- Upon the passage of a local option election in a county in accordance with the provisions of section seven of this article, the commission shall forthwith grant a West Virginia Lottery table games license, and a license for the right to conduct West Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee to conduct West Virginia table games at the licensed pari-mutuel racetrack identified on the local option election ballot, provided that racetrack holds a valid racetrack video lottery license issued by the Commission pursuant to article twenty-two-a of this chapter and a valid racing license granted by the West Virginia Racing Commission pursuant to the provision of article twenty-three, chapter nineteen of this code and has otherwise met the requirements for licensure under the provisions of this article and the rules of the Commission. A racetrack applying for a table games license must present to the commission evidence of the existence of an agreement regarding allocation of stalls or kennels; the relationship between the licensee and representative of a majority of horse owners and breeders or dog owners and breeders licensed at the racetrack: *Provided*, That any dispute arising between the licensee and the representative of the majority of horse owners and breeders or dog owners and breeders licensed at the racetracks which cannot be mutually resolved by the parties shall be referred to the West Virginia Racing Commission for resolution which shall not be restricted in resolving any dispute by the provisions of article twenty-three, chapter nineteen of this code: *Provided, however*, That any person adversely affected by a decision of the Racing Commission pursuant to this section shall be entitled to a judicial review thereof in accordance with section seventeen, article twenty, chapter nineteen of this code.

(c) Location. -- A racetrack table games license authorizes the operation of West Virginia Lottery table games on the grounds of the particular licensed facility identified in the racetrack video lottery license issued pursuant to article twenty-two-a and the license to conduct horse racing issued pursuant to article twenty-three, chapter nineteen of this code of this chapter.

(d) Floor plan submission requirement. -- Prior to commencing the operation of any table games in a designated gaming area, a racetrack table games licensee shall submit to the Commission for its approval a detailed floor plan depicting the location of the designated gaming area in which table games gaming equipment will be located and its proposed arrangement of the table games gaming equipment. Any floor plan submission that satisfies the requirements of the rules promulgated by the Commission shall be considered approved by the Commission unless the racetrack table games licensee is notified in writing to the contrary within one month of filing a detailed floor plan.

(e) Management service contracts. --

(1) Approval. -- A racetrack table games licensee may not enter into any management service contract that would permit any person other than the licensee to act as the commission's agent in operating West Virginia Lottery table games unless the management service contract is: (A) With a person licensed under this article to provide management services; (B) is in writing; and (C) the contract has been approved by the Commission.

(2) Material change. -- The licensed racetrack table games licensee shall submit any material change in a management service contract previously approved by the Commission to the Commission for its approval or rejection before the material change may take effect.

(3) Prohibition on assignment or transfer. -- A management services contract may not be assigned or

transferred to a third party.

(4) Other Commission approvals and licenses. -- The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted or transferred to a third party to perform without the prior approval of the Commission. Third parties must be licensed under this article before providing service. The Commission may by rule clarify application of this subdivision and provide exceptions to its application. The Commission shall license and require the display of West Virginia Lottery game logos on appropriate game surfaces and other gaming items and locations as the Commission deems appropriate.

(f) Coordination of licensed activities. -- In order to coordinate various licensed activities within racetrack facilities, the following provisions apply to licensed racetrack facilities:

(1) The provisions of this article and of article twenty-two-a of this chapter shall be interpreted to allow West Virginia Lottery table games and racetrack video lottery operations under those articles to be harmoniously conducted in the same designated gaming area.

(2) On the effective date of this article, the provisions of section twenty-three of this article apply to all video lottery games conducted within a racetrack facility, notwithstanding any inconsistent provisions contained in article twenty-two-a of this chapter to the contrary.

(3) On and after the effective date of this article, vacation of the premises after service of beverages ceases is not required, notwithstanding to the contrary any inconsistent provisions of this code or inconsistent rules promulgated by the Alcohol Beverage Control Commissioner with respect to hours of sale of those beverages, or required vacation of the premises.

(g) Fees, expiration date and renewal. --

(1) An initial racetrack table games license fee of one million five hundred thousand dollars shall be paid to the Commission at the time of issuance of the racetrack table games license, regardless of the number of months remaining in the license year for which it is issued. All licenses expire at the end of the day on the thirtieth day of June each year.

(2) The Commission shall annually renew a racetrack table games license as of the first day of July of each year provided the licensee:

(A) Successfully renews its racetrack video lottery license under article twenty-two-a of this chapter before the first day of July;

(B) Pays to the Commission the annual license renewal fee of two million five hundred thousand dollars required by this section at the time it files its application for renewal of its license under article twenty-two-a of this chapter; and

(C) During the current license year, the licensee complied with all provisions of this article, all rules adopted by the Commission and all final orders of the Commission applicable to the licensee.

(3) Annual license surcharge for failure to construct hotel on premises - It is the intent of the Legislature that each racetrack for which a racetrack table games license has been issued be or become a destination tourism resort facility. To that end, it is important that each racetrack for which a racetrack table games license has been issued operate a hotel with significant amenities. Therefore, in addition to all other taxes and fees required by the provisions of this article, there is hereby imposed, upon each racetrack for which a racetrack table games license has been issued that does not operate a hotel on its racing property that contains at least one hundred fifty guest rooms with significant amenities within three years of the passage of the local option election in its county authorizing table games at the racetrack, an annual license surcharge, payable to the Commission in the amount of two million five hundred thousand dollars. The surcharge shall be paid upon each renewal of its racetrack table games license made after the expiration of the three year period until the racetrack opens a qualifying hotel.

(4) If the licensee fails to apply to renew its license under articles twenty-two-a and twenty-three, chapter nineteen of this code until after the license expires, the Commission shall renew its license under this article at the time it renews its license under article twenty-two-a of this chapter provided the

licensee has paid the annual license fee required by this section and during the preceding license year the licensee complied with all provisions of this article, all rules adopted by the Commission and all final orders of the Commission applicable to the licensee.

(h) Facility qualifications. -- A racetrack table games licensee shall demonstrate that the racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state and local laws; and (3) meet any other qualifications specified in rules adopted by the Commission.

(i) Surety bond. -- A racetrack table games licensee shall execute a surety bond to be given to the state to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the Commission. The surety bond shall be:

(1) In the amount determined by the Commission to be adequate to protect the state against nonpayment by the licensee of amounts due the state under this article;

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

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

(j) Authorization. -- A racetrack table games license authorizes the licensee act as an agent of the commission in operating an unlimited amount of West Virginia Lottery table games while the license is active, subject to subsection (d) of this section. A racetrack table games license is not transferable or assignable and cannot be sold or pledged as collateral.

(k) Audits. -- When applying for a license and annually thereafter prior to license renewal, a racetrack table games licensee shall submit to the Commission an annual audit, by a certified public accountant, of the financial transactions and condition of the licensee's total operations. The audit shall be made in accordance with generally accepted accounting principles and applicable federal and state laws.

(l) Commission office space. -- A racetrack table games licensee shall provide to the Commission, at no cost to the Commission, suitable office space at the racetrack facility for the Commission to perform the duties required of it by this article and the rules of the Commission.

#### **§29-22C-9. State ownership of table games.**

All table games authorized by this article shall be West Virginia lottery games owned by the state of West Virginia. A racetrack table games license granted to a pari-mutuel racetrack by the Commission pursuant to this article shall include the transfer by the Commission to the racetrack limited license rights in and to the Commission's intellectual property ownership of the West Virginia lottery games which includes granting licensees limited lawful authority relating to the conduct of lottery table games for consideration, within the terms and conditions established pursuant to this article and any rules promulgated thereunder.

#### **§29-22C-10. Duties of racetrack table games licensee.**

(a) General. -- All racetrack table games licensees shall:

(1) Promptly report to the Commission any facts or circumstances related to the operation of a racetrack with West Virginia Lottery table games which constitute a violation of state or federal law;

(2) Conduct all table games activities and functions in a manner which does not pose a threat to the public health, safety or welfare of the citizens of this state and which does not adversely affect the security or integrity of the operation of West Virginia Lottery table games;

(3) Hold the Commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a racetrack licensee, the Commission, the state or employees thereof, arising from the licensee's actions or omission while acting as an agent of the commission by operation of West Virginia Lottery table games pursuant to this article;

(4) Assist the Commission in maximizing table games revenues;

(5) Give preference in hiring to existing employees who have expressed an interest in transferring to an entry level West Virginia Lottery Table games job and who have demonstrated the potential to succeed in that job. To enable these employees to develop the skills necessary to fill an entry level West Virginia Lottery table games position, a licensee shall provide customary industry training for entry level West Virginia Lottery table games jobs. The dates, times, place and manner of providing such training, the appropriate qualifications and certifications, the number of existing employees to be trained, the determination of standards for evaluating successful performance in live auditions for such positions and the determination of who shall be given West Virginia Lottery table game jobs shall be within the sole business discretion of licensee's management, provided that among equally qualified applicants, as determined by the licensee, length of service shall be the determining factor.

(6) Maintain all records required by the Commission;

(7) Upon request by the Commission, provide the Commission access to all records and the physical premises where the licensee's table games activities and related activities occur, for the purpose of monitoring or inspecting the licensee's activities and the table games, gaming equipment and security equipment; and

(8) Keep current in all payments and obligations to the Commission.

(9) Conduct no less than two hundred twenty live racing days per year, each day having a minimum of ten carded races, and otherwise keep in good standing, all licenses and permits granted by the racing commission pursuant to section six, article twenty-tree, chapter nineteen of this code, and any rules promulgated thereunder.

(b) Specific. -- All racetrack table games licensees shall:

(1) Acquire West Virginia Lottery table games and gaming equipment by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the table games and gaming equipment;

(2) Permit no person to tamper with or interfere with the operation of any West Virginia Lottery table game;

(3) Ensure that West Virginia Lottery table games are within the sight and control of designated employees of the licensed racetrack with West Virginia Lottery table games and under continuous observation by security equipment in conformity with specifications and requirements of the Commission;

(4) Ensure that West Virginia Lottery table games are placed and remain placed in the specific locations within designated gaming areas at the licensed racetrack which have been approved by the Commission. West Virginia Lottery table games at a licensed racetrack shall only be relocated in accordance with the rules of the Commission;

(5) Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or other electronic media;

(6) Install, post and display conspicuously at locations within or about the licensed racetrack with West Virginia Lottery table games, signs, redemption information and other promotional material as required by the Commission; and

(7) Assume liability for stolen money from any table game.

#### **§29-22C-11. Reports by a racetrack table games licensee.**

A racetrack table games licensee shall maintain daily records showing the gross receipts and adjusted gross receipts of the racetrack from West Virginia Lottery table games and shall timely file with the Commission any additional reports required by rule promulgated by the Commission, or as may be required by other provisions of this code.

#### **§29-22C-12. License to supply a racetrack with gaming equipment or services.**

(a) License. -- The Commission may issue a license to a person to supply a racetrack licensed under this article with gaming equipment or services when the Commission determines that the person meets the requirements of this section and any applicable rules of the Commission.

(b) License qualifications. -- Each applicant who is an individual and each individual who controls an applicant, as defined in subsection (c) section six of this article, 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 West Virginia Lottery table games supplier. The Commission may adopt rules establishing additional requirements for a West Virginia Lottery table games supplier. The Commission may accept licensing by another jurisdiction, specifically determined by the Commission to have similar licensing requirements, as evidence the applicant meets West Virginia Lottery table games supplier licensing requirements.

(c) Supplier specifications. -- An applicant for a license to supply gaming equipment or services to a racetrack table games licensee shall demonstrate that the gaming equipment or 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 gaming equipment or services approval by another jurisdiction, specifically determined by the Commission to have similar equipment standards, as evidence the applicant meets the standards established by the Commission and applicable state law.

(d) License application requirements. -- An applicant for a license to supply a racetrack table games licensee shall:

(1) Submit an application to the Commission in the form 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 license 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 fee for deposit into the Racetrack Table Games Fund in the amount of one hundred dollars, which shall be in lieu of the first year's license fee provided in subsection (g) of this section.

(e) Authorization. -- A license to supply a racetrack table games licensee authorizes the licensee to sell or lease gaming equipment or offer services to a racetrack with West Virginia Lottery table games while the license is active. The Commission may by rule establish the conditions which constitute an emergency under which the Commission may issue provisional licenses pending completion of final action on an application.

(f) Inventory. -- A licensed table games supplier shall submit to the Commission a list of all gaming equipment and services sold, delivered to or offered to a racetrack with West Virginia Lottery table games in this state when required by the Commission.

(g) Fees, expiration date and renewal. -- A licensed table games supplier shall pay to the Commission an annual license fee of one hundred dollars for an initial term beginning prior to the date of the supplier's first sale to a racetrack table games licensee and continuing through the end of the twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The Commission shall renew a license to supply a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games licensee may continue to use supplies acquired from a licensed table games supplier while that supplier was licensed, notwithstanding the expiration of the supplier's license, unless the Commission finds a defect in those gaming supplies.

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

(a) Licenses. -- The Commission shall issue a license to be employed in the operation of racetrack table games to a person who meets the requirements of this section.

(b) License qualifications. -- To qualify for a license 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 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 application requirements. -- An applicant for a license to be employed by a racetrack with West Virginia Lottery table games in a position or to perform duties for which a license 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 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 one hundred dollars. The fee may be paid on behalf of an applicant by the employer.

(d) Authorization. -- A license to be employed by a racetrack with West Virginia Lottery table games permits the licensee to be employed in the capacity designated by the Commission with respect to the license while the license is still active.

(e) Renewal fee and form. -- Each licensed employee shall pay to the Commission an annual license fee set by the Commission by rule by the thirtieth day of June of each year. The fee may vary based on the job classification of the applicant, but in no event shall it exceed one hundred dollars. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee shall submit a renewal application on the form required by the Commission.

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

(a) License. -- The Commission may issue a license 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 qualifications. -- Each applicant who is an individual and each individual who controls an applicant, as defined in subsection (c) section six of this article, 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 by another jurisdiction, specifically determined by the Commission to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) Management service provider specifications. -- An applicant for a license 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 application requirements. -- An applicant for a license 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 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 fee for deposit into the Racetrack Table Games Fund in the amount of one hundred dollars, which shall be in lieu of the first year's license fee provided in subsection (f) of this section.

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

(f) Fees, expiration date and renewal. -- A licensed provider of management services shall pay to the Commission an annual license fee of one hundred dollars 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 twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The Commission shall renew a license to provide management services to a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games licensee may continue to use the management services provided by the management services provider while that provider was licensed, notwithstanding the expiration of the provider's license, unless the Commission finds the services provided are not conforming to standards established by rule of the Commission and applicable state law.

#### **§29-22C-15. License prohibitions.**

(a) The Commission may not grant any license pursuant to the provisions of this article if evidence satisfactory to the Commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the Commission;

(2) Has been suspended from operating a gambling game, gaming device or gaming operation, or had a license revoked by any governmental authority of a state of the United States having responsibility for the regulation of gambling or gaming activities; or

(3) Has been convicted of a crime of moral turpitude, a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order;

(b) In the case of an applicant for a license to supply a racetrack with West Virginia Lottery table games, the Commission may deny a license to any applicant, reprimand any licensee or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the Commission financial

responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the Commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for a racetrack table games license, the Commission may deny a license to any applicant, reprimand any licensee or suspend or revoke a license:

(1) If the applicant or licensee knowingly employs an individual in a job classification which includes West Virginia Lottery table games management duties who has been convicted of a crime of moral turpitude, a gambling-related offense, or a theft or fraud offense under the laws of this state, another state, the United States or a territory of the United States or knowingly employs any individual in a job classification which includes West Virginia Lottery table games management duties who has had a license relating to the operation of a gaming activity revoked by this state or any other state; or

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation, which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the Commission to have met the qualifications of a licensee under this article, unless the sale has been approved in advance by the Commission.

#### **§29-22C-16. License denial, revocation, suspension and reprimand.**

(a) Notwithstanding any provision of subsection (b), section thirteen of this article to the contrary, the Commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee, or any person having control of the applicant or licensee:

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

(2) Fraudulently or deceptively uses a license;

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

(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 gambling related activity.

(b) Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the Commission may impose a civil penalty under section thirty-one of this article.

#### **§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 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 article five, chapter twenty-nine-a 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 thirty 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 thirty days after the person received notice of the final order or decision, as provided in section four, article five, chapter twenty-nine-a of this code.

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

(a) At least two months before any license issued under this article expires, the Commission shall send to the licensee, by mail addressed to the last known address of the licensee, 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.

**§29-22C-19. Miscellaneous license provisions.**

(a) The Commission shall include on each license that it issues:

(1) The type of license;

(2) The identity and address of the licensee;

(3) The effective date of the license;

(4) For employee licenses, the picture of the licensee; 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 management services provider 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 a state, local or municipal law-enforcement agency.

(c) Each holder of a license to be employed by a racetrack with West Virginia Lottery table games shall carry the license 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 is employed, have some indicia of licensure prominently displayed on his or her person in accordance with the rules of the Commission.

(d) Each person licensed 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 application for a license or for renewal of a license, as soon as the effective date of the change is known to the licensee but not later than thirty days after the change occurs.

**§29-22C-20. Game rules of play; disputes.**

(a) Each racetrack licensed as an agent of the commission authorized to operate West Virginia Lottery table games shall have written rules of play for each table game it operates that are approved by the Commission before the table game is offered to the public. Rules of play proposed by a racetrack table games licensee may be approved, amended or rejected by the Commission.

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

(c) Each racetrack table game licensee shall make available in printed form to any patron, upon request of the patron, the complete text of the rules of play of any West Virginia Lottery table game in operation at its racetrack facility, pay-offs of winning wagers, and any other advice to the player required by the Commission.

(d) Patrons are deemed to have agreed that the determination of whether the patron is a valid winner is subject to the game play rules and, in the case of any dispute, will be determined by the commission. The determination by the commission shall be final and binding upon all patrons and shall not be

subject to further review or appeal.

**§29-22C-21. Betting limits; operations and services.**

(a) Notwithstanding anything to the contrary contained elsewhere in this article, a racetrack licensee may, as agent of the commission, in the exercise of its business judgment, determine and establish with the approval of the commission, with respect to West Virginia lottery table games, the following:

(1) Minimum and maximum wagers;

(2) Advertising and promotional activities, and the offering of any complimentary to a player, subject to the standards provided in section twenty-three of this article and rules of the Commission;

(3) Hours of operation;

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

(5) Currency denominations accepted by any mechanical or electronic bill acceptors.

(b) Notwithstanding anything to the contrary contained elsewhere in this chapter, the Commission may establish the following parameters for any Commission regulated lottery game of any kind which is played at a licensed racetrack:

(1) Minimum and maximum payout percentages;

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

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

**§29-22C-22. Posting of betting limits.**

A racetrack table game licensee shall conspicuously post a sign at each West Virginia Lottery table game indicating the permissible minimum and maximum wagers pertaining at that table. A racetrack table games licensee may not require any wager to be greater than the stated minimum or less than the stated maximum. However, any wager actually made by a patron and not rejected by a racetrack table games licensee prior to the commencement of play shall be treated as a valid wager.

**§29-22C-23. Complimentary service, gift, cash or other item.**

(a) No racetrack table games licensee may offer or provide any complimentary service, gift, cash or other item of value to any person unless:

(1) The complimentary consists of room, food, beverage or entertainment expenses provided directly to the patron and his or her guests by the racetrack table games licensee or indirectly to the patron and his or her guests on behalf of the licensee by a third party;

(2) The complimentary consists of documented transportation expenses provided directly to the patron and his or her guests on behalf of a racetrack table games licensee by a third party, provided that the licensee complies with the rules promulgated by the Commission to ensure that a patron's and his or her guests' documented transportation expenses are paid for or reimbursed only once; or

(3) The complimentary consists of coins, tokens, cash or other complimentary items or services provided through any complimentary distribution program, the terms of which shall be filed with the Commission upon implementation of the program or maintained pursuant to Commission rule. Any change in the terms of a complimentary program shall be filed with the Commission upon implementation of the change.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, a racetrack table games licensee may offer and provide complimentary cash or non-cash gifts that are not otherwise included in that subsection to any person: *Provided*, That any complimentary cash or non-cash gifts in excess of an amount per trip to be set by interpretive rule of the Commission, are supported by documentation regarding the reason the gift was provided to the patron and his or her guests, including where applicable a patron's player rating. The documentation shall be maintained by a racetrack table games licensee in accordance with Commission rules. For purposes of this subsection, all gifts presented to a patron and a patron's guests directly by the racetrack table games licensee or indirectly on behalf of the licensee by a third party within any five-day period shall be considered to have been made during a single trip.

**§29-22C-24. Law enforcement.**

(a) Generally. -- Notwithstanding any provision of this code to the contrary, the Commission may by contract or cooperative agreements with state law-enforcement agencies arrange for those law-enforcement services that are necessary to enforce the provisions of this article.

(b) Costs. -- The cost of services provided by a State Law-Enforcement Agency pursuant to a contract or cooperative agreement shall be paid by the Commission as an administrative expense.

**§29-22C-25. Inspection and seizure.**

As a condition of licensure, to inspect or investigate for criminal violations of this article or violations of the rules promulgated by the Commission, the Commission's agents and the State Police may each without notice and without warrant:

(1) Inspect and examine all premises of the racetrack with West Virginia Lottery table games; or gaming devices; or 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 racetrack 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 racetrack table games licensee's operation;

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

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

**§29-22C-26. Tax on privilege of operating West Virginia Lottery table games.**

(a) Imposition and rate of tax. -- For the privilege of holding a license under this article to operate table games, there is levied and shall be collected from the racetrack table games licensee the annual privilege tax imposed by this section. The tax shall be thirty-five percent of the licensee's adjusted gross receipts from the operation of West Virginia Lottery table games. For purposes of calculating the amount of tax due under this section, the licensee shall use the accrual method of accounting.

(b) Tax returns and payment of tax. --

(1) The annual tax levied by subsection (a) of this section is due and payable to the Commission in weekly installments on or before the Wednesday of the calendar week following the week in which the adjusted gross receipts were received and the tax accrued.

(2) The racetrack table games licensee shall, on or before Wednesday of each week, make out and submit by electronic communication to the Commission, a return for the preceding week, in the form prescribed by the Commission, showing:

(A) The total gross receipts and adjusted gross receipts from operation of West Virginia Lottery table games during that week;

(B) The amount of tax for which the racetrack table games licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax required by the Commission.

(3) The amount of tax shown to be due on the return shall be remitted by electronic funds transfer simultaneously with the filing of the return. All payments received pursuant to this section shall be deposited in the Racetrack Table Games Fund in accordance with the provisions of section twenty-

seven of this article.

(4) When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the racetrack's West Virginia Lottery table games exceeds the racetrack's gross receipts from the purchase of table game tokens, chips or electronic media by patrons, the Commission shall allow the licensee to, pursuant to rules of the Commission, carry over the negative amount of adjusted gross receipts to returns filed for subsequent weeks. The negative amount of adjusted gross receipts may not be carried back to an earlier week and the Commission is not required to refund any tax received by the Commission, except when the licensee surrenders its license to act as agent of the commission in operating West Virginia lottery table games under this article and the licensee's last return filed under this section shows negative adjusted gross receipts. In that case, the Commission shall multiply the amount of negative adjusted gross receipts by the applicable rate of tax and pay the amount to the licensee, in accordance with rules of the Commission.

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

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

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

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

(d) Prohibition on credits. -- Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the tax imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment, or for any investment in real property, or in improvements to the real property, that is used in the operation of West Virginia Lottery table games.

#### **§29-22C-27. Racetrack Table Games Fund; Community Based Service Fund; State Debt Reduction Fund; distribution of funds.**

(a)(1) There is created and established a special fund in the state treasury to be known as the Racetrack Table Games Fund. All moneys received by the Commission from licensees, applicants and others under this article, except as provided in subdivision (2) of this subsection, and all tax collected under this article shall be deposited with the State Treasurer and placed in the Racetrack Table Games Fund. Expenditures from the Fund shall be administered by the Commission in accordance with the provisions of this article. All interest or other return earned on the money of the fund shall be credited to and deposited in the Fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the Commission pursuant to section eight of this article shall be deposited into the Community Based Service Fund, which is hereby created in the state treasury. Monies of the Fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the

purpose of enabling the aged and disabled citizens of this state to maintain their residency in the community setting through the provision of home and community based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the Commission shall:

(1) Retain an amount for the administrative expenses of the Commission as determined by the Commission in accordance with subsection (d) of this section;

(2) Transfer six percent to the special funds established by each of the racetrack table games licensees for the payment of regular racetrack purses. The total amount under this subdivision shall be allocated pro rata to the special fund of each racetrack table games licensee based on adjusted gross receipts from each racetrack with West Virginia Lottery table games;

(3) Two percent of the adjusted gross receipts from each licensed racetrack participating in the Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code shall be deposited into the contributing racetrack's thoroughbred development fund. Two percent of the adjusted gross receipts from each licensed racetrack participating in the Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code shall be deposited into the contributing racetrack's greyhound breeding development fund. No portion of the amounts transferred to these funds may be allocated for any person or activity at or associated with a racetrack that is not a racetrack table games licensee; and

(4) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Fund, in accordance with the provisions of subsection (c) of this section.

(c) From the net amounts in the Racetrack Table Games Fund, the Commission shall:

(1) Transfer seventy-nine percent to the State Debt Reduction Fund, which is hereby created in the state treasury. Monies of the Fund shall be expended solely for the purpose of accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall be expended or transferred only upon appropriation of the Legislature;

(2) Transfer one percent, to be divided on a prorata based on relative adjusted gross receipts from the individual licensed racetracks with West Virginia Lottery table games, to the special accounts established by the Racing Commission to be used for payment into the pension plan for all employees of each licensed racing association of those racetracks;

(3) Transfer five percent to the county commissions of counties where racetracks with West Virginia Lottery table games are located. The five percent transferred under this subdivision shall be allocated among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from those racetracks;

(4) Transfer five percent to the governing bodies of municipalities located within each county where racetracks with West Virginia Lottery table games are located. The portion of the five percent transferred under this subdivision that is allocated to the municipalities within each county where racetracks with West Virginia Lottery table games are located shall be based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks, and the total amount allocated to the municipalities within the county shall be divided among each municipality based on its population determined at the most recent United States decennial census of population: *Provided, That,* for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the West Virginia Lottery table games are located shall be considered;

(5) Transfer five percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision (3) of this subsection; and

(6) Transfer five percent, to be divided and paid in equal shares, to the governing body of each municipality in the state that is not eligible to receive a distribution under subdivision (4) of this subsection.

(d) All expenses of the Commission incurred in the administration and enforcement of this article shall

be paid from the allocation of administrative expenses described in subsection (a) of this section, including reimbursement of state law- enforcement agencies for services performed at the request of the Commission pursuant to this article. At no time may the Commission's expenses associated with a particular racetrack with West Virginia Lottery table games under this article exceed three percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the Commission shall transfer at least one hundred thousand dollars but not more than five hundred thousand dollars, as determined annually by the Commission into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.

**§29-22C-28. Prohibition on unauthorized wagering.**

(a) A racetrack table games licensee may receive wagers only from an individual physically present in a designated gaming area at a licensed racetrack with West Virginia Lottery table games.

(b) All racetracks with West Virginia Lottery table games shall use a method of wagering whereby the table game player's money for wagering on table games is, at the request of the player, converted to tokens, electronic cards or other electronic media, or chips at the table or elsewhere at the licensed racetrack.

(1) The tokens, electronic cards or other electronic media, or chips issued by a licensee racetrack with West Virginia Lottery table games can only be used for wagering at that racetrack.

(2) Wagering on West Virginia Lottery table games may not be conducted with money or other negotiable currency, or with tokens, electronic cards or other electronic media, or chips not issued by the racetrack where the table games will be played.

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

(4) The licensee may not charge a fee for converting a player's money to an acceptable media for play at a gaming table, or charge a fee for converting the acceptable media for wagering at a gaming table back to money.

(c) No licensed racetrack employee may place a wager on any table game at the employer's racetrack.

**§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 is required by this article or rules of the Commission and the employee does not have a license 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 is required by this article or rules of the Commission, after the employee's license 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 twenty-one 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 under this article or on an application for renewal of a license 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;

(3) The person works or is employed in a position requiring a license under the provisions of this article without having the license 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 an 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 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 one thousand dollars and committed to a state correctional facility 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 twenty-five thousand dollars.

(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 five thousand dollars nor more than ten thousand dollars and committed to 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-30. Forfeiture of property.**

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

(1) As a bribe intended to affect the outcome of a West Virginia Lottery table game in a licensed racetrack; or

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

(b) The Legislature finds and declares that the seizure and sale of items under the provisions of this section is not contemplated to be a forfeiture as that term is used in section 5, article XII of the West Virginia Constitution and, to the extent that a seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article are not part of net proceeds as it is contemplated by section 5, article XII of the West Virginia Constitution.

(c) If the forfeited property includes the racetrack real property and all of its improvements and related

personal property, the Commission may take control of and operate the racetrack and all related functions until the forfeited property is sold or is returned to the licensee as a result of due process proceedings.

(d) Subsection (a) of this section does not apply if the act or omission that gives rise to the forfeiture is committed or omitted without the actual or reasonably implied knowledge or consent of the owner of the property to be forfeited.

**§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 fifty thousand dollars for each violation, whether or not the person is licensed under this article.

(b) The provisions of article five, chapter twenty-nine-a of this code apply to any civil penalty imposed pursuant to the provisions of this section.

**§29-22C-32. Preemption.**

No local law or rule providing any penalty, disability, restriction, regulation or prohibition for operating a racetrack with West Virginia Lottery table games or supplying a licensed racetrack may be enacted, and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this article.

**§29-22C-33. Exemption from federal law.**

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

**§29-22C-34. Shipment of gambling devices.**

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

**ARTICLE 25. AUTHORIZED GAMING FACILITY.**

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

(a) *Operation of authorized games of chance.* -- Notwithstanding any provision of law to the contrary, the operation of West Virginia lottery games permitted by this article and the related operation of a gaming facility and ancillary activities is not unlawful when conducted under the terms specified in this article.

(b) *Legislative findings.* -- The Legislature finds and declares that the tourism industry plays a critical role in the economy of this state and that a substantial state interest exists in protecting that industry. It further finds and declares that the authorization of the operation of a gaming facility at no more than one well-established historic resort hotel in this state as provided in this article will serve to protect and enhance the tourism industry, and indirectly other segments of the economy of this state, by providing a resort hotel amenity which is becoming increasingly important to many actual and potential resort hotel patrons.

The Legislature finds and declares that ~~except for~~ video lottery operations pursuant to subsection (c), section three of this article and the operation of the other authorized games of chance permitted by this article ~~does not~~ constitute the operation of lotteries ~~or gift enterprises~~ within the purview of section thirty-six, article VI of the Constitution of this state. ~~With respect to video lottery games contemplated hereunder, the Legislature restates and reaffirms the findings and declarations set forth in section two, article twenty-two a of this chapter~~

(c) *Legislative intent.* -- It is the intent of the Legislature in the enactment of this article to promote tourism and year-round employment in this state. It is expressly not the intent of the Legislature to promote gaming. As a consequence, it is the intent of the Legislature to allow limited gaming as

authorized by this article with all moneys gained from the operation of the gaming facility, other than those necessary to reimburse reasonable costs of operation, to inure to the benefit of the state.