

## **WEST VIRGINIA**

### **CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE**

#### **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES**

§6B-2-7. Financial disclosure statement; contents.

The financial disclosure statement required under this article shall contain the following information:

(1) The name, residential and business addresses of the person filing the statement and all names under which the person does business.

(2) The name and address of each employer of the person.

(3) The identification, by category, of every source of income over five thousand dollars received during the preceding calendar year, in his or her own name or by any other person for his or her use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. This subdivision does not require a person filing the statement who derives income from a business, profession or occupation to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation, nor does this subdivision require a person filing the statement to report the source or amount of income derived by his or her spouse.

(4) If the person profited or benefited in the year prior to the date of filing from a contract for the sale of goods or services to a state, county, municipal or other local governmental agency either directly or through a partnership, corporation or association in which such person owned or controlled more than ten percent, the person shall describe the nature of the goods or services and identify the governmental agencies which purchased the goods or services.

(5) Each interest group or category listed below doing business in this state with which the person filing the statement did business or furnished services and from which the person received more than twenty percent of the person's gross income during the preceding calendar year. The groups or categories are electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, interstate transportation companies, intrastate transportation companies, oil or gas retail companies, banks, savings and loan associations, loan or finance companies, manufacturing companies, surface mining companies, deep mining companies, mining equipment companies, chemical companies, insurance companies, retail companies, beer, wine or liquor companies or distributors,

recreation related companies, timbering companies, hospitals or other health care providers, trade associations, professional associations, associations of public employees or public officials, counties, cities or towns, labor organizations, waste disposal companies, wholesale companies, groups or associations seeking to legalize gambling, advertising companies, media companies, race tracks and promotional companies.

(6) The names of all persons, excluding that person's immediate family, parents, or grandparents residing or transacting business in the state to whom the person filing the statement owes, on the date of execution of this statement in the aggregate in his or her own name or in the name of any other person more than twelve thousand five hundred dollars: Provided, That nothing herein shall require the disclosure of a mortgage on the person's primary and secondary residences or of automobile loans on automobiles maintained for the use of the person's immediate family, or of a student loan, nor shall this section require the disclosure of debts which result from the ordinary conduct of such person's business, profession, or occupation or of debts of the person filing the statement to any financial institution, credit card company, or business, in which the person has an ownership interest: Provided, however, That the previous proviso shall not exclude from disclosure loans obtained pursuant to the linked deposit program provided for in article one-a, chapter twelve of this code or any other loan or debt incurred which requires approval of the state or any of its political subdivisions.

(7) The names of all persons except immediate family members, parents and grandparents residing or transacting business in the state (other than a demand or savings account in a bank, savings and loan association, credit union or building and loan association or other similar depository) who owes on the date of execution of this statement, more, in the aggregate, than twelve thousand five hundred dollars to the person filing the statement, either in his or her own name or to any other person for his or her use or benefit. This subdivision does not require the disclosure of debts owed to the person filing the statement which debts result from the ordinary conduct of such person's business, profession or occupation or of loans made by the person filing the statement to any business in which the person has an ownership interest.

(8) The source of each gift having a value of over one hundred dollars, received from a person having a direct and immediate interest in a governmental activity over which the person filing the statement has control, shall be reported by the person filing the statement when such gift is given to said person in his or her name or for his or her use or benefit during the preceding calendar year: Provided, That gifts received by will or by virtue of the laws of descent and distribution, or received from one's spouse, child,

grandchild, parents or grandparents, or received by way of distribution from an inter vivos or testamentary trust established by the spouse or child, grandchild, or by an ancestor of the person filing the statement are not required to be reported. As used in this subdivision any series or plurality of gifts which exceeds in the aggregate the sum of one hundred dollars from the same source or donor, either directly or indirectly, and in the same calendar year, shall be regarded as a single gift in excess of that aggregate amount.

## CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS

### ARTICLE 10. HUMANE OFFICERS

§ §7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

(a) A humane officer shall take possession of any animal, including birds or wildlife in captivity, known or believed to be abandoned, neglected, deprived of necessary sustenance, shelter or medical care or cruelly treated or used, as defined in sections nineteen and nineteen-a, article eight, chapter sixty-one of this code.

(b) The owner, or person in possession, if his or her identity and residence is known, of any animal seized pursuant to subsection (a) of this section, shall be provided written notice of such seizure, their liability for the cost and care of the animal seized as herein provided, and the right to request a hearing before a magistrate in the county wherein the animal was seized. The magistrate court shall schedule any hearing so requested within ten working days of the receipt of the request. The failure of an owner or person in possession to request a hearing within five working days of the seizure shall be deemed prima facie evidence of the abandonment of said animal. At the hearing, if requested, the magistrate shall determine if probable cause exists to believe that such animal was abandoned, neglected or deprived of necessary sustenance, shelter or medical care, or otherwise treated or used cruelly as set forth herein.

(c) Upon finding of such probable cause, or if no hearing is requested, if the magistrate finds probable cause based upon the affidavit of the humane officer, the magistrate shall enter an order authorizing any humane officer to maintain possession of the animal pending further proceedings, appeal or the disposition of any criminal charges pursuant to chapter sixty-one of this code.

(d) Any person whose animal is seized and against whom a finding of probable cause is rendered pursuant to this section is liable for the costs of the care, medical treatment and provisions for such animal during any period it remains in the possession of the humane officer.

(e) If, after the humane officer takes possession of the animal pursuant to the finding of probable cause, it is determined by a licensed veterinarian that the animal should be humanely destroyed to end its suffering, the veterinarian may order the animal to be humanely destroyed according to acceptable humane standards and neither the humane officer nor the veterinarian may be subject to any civil or criminal liability as a result of any such determination.

(f) The provisions of this section do not apply to farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl, wildlife or game farm production and management, nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.

## CHAPTER 8. MUNICIPAL CORPORATIONS

### **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES**

#### **GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITES AGAINST MUNICIPALITIES**

#### **PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES**

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by (i) the constitution of this state, (ii) other provisions of this chapter, (iii) other general law, and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision (1); and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk

or crosswalk, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of such public hearing has been published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality:

Provided, That any such permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to such municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter, or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for such use or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his person any revolver or other pistol, dirk, bowie knife, razor, slungshot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character;

(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or under his control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to

grant such license unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have plenary power and authority, and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of such businesses;

(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading or overdriving, or willfully depriving of necessary sustenance, any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters, and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system, or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in said articles nineteen and twenty), within or without the corporate limits of the municipality, except that the municipality shall not erect any such system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed, and where such system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality shall have the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality, and to prevent injury to such system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any such system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate and regulate markets, and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots, or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use, and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;

(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia board of health and state department of health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitariums and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon such terms and conditions as to price and otherwise as may be determined by the governing body, and, in order to carry into effect such authority the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;

(46) Except as otherwise provided, to require and take such bonds from such officers, when deemed necessary, payable to the

municipality, in its corporate name, with such sureties and in such penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from such employees and contractors such bonds in such penalty, with such sureties and with such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality's inhabitants as the governing body may deem necessary or appropriate for the public interest;

(50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or such classes thereof as may be deemed advisable;

(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such municipality to be interviewed;

(54) To provide revenue for the municipality and appropriate the same to its expenses;

(55) To create and maintain an employee benefits fund, which shall not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which shall be set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs, and to expend moneys from such fund for such purposes;

(56) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for such purposes; and

(57) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties shall not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations.

## CHAPTER 15. PUBLIC SAFETY

### ARTICLE 1D. ACTIVE STATE SERVICE

§ 15-1D-12. Trespassing upon armories, etc.; interrupting, interfering with, etc., national guard; regulation of certain sales, gambling, etc., within certain limits of armories, etc.

a. Any person who shall, after due warning, trespass upon any armory, camp, range, or other facility of the national guard or other place where any force of the national guard is performing military duty, or who shall in any manner interrupt or molest the discharge of military duties by any member or force of the national guard, or who shall interrupt or prevent the passage of troops of the national guard, or who shall insult, by jeer or otherwise, any member of the national guard, or refuse to obey any lawful order of the military commander, may be placed in arrest by any officer of the force performing such military duty at the place where the offense is committed and delivered to the proper civil authorities.

b. The commanding officer of any force of the national guard performing military duty in or at any armory, arsenal, camp, range, base or other facility of the national guard or other place or area where such force is performing duty in the service of the state may prohibit persons from hawking, peddling, vending, selling, or auctioning goods, wares, merchandise, food products or beverages, and may prohibit all gambling, or the sale or use of spirituous beverages, or the establishment or maintenance of a disorderly place, within the limits of such armory, arsenal, camp, range, base or other facility of the national guard or other place or area where such force is performing duty, or within such limits not exceeding one mile therefrom as he may prescribe.

## CHAPTER 19. MISCELLANEOUS BOARDS AND OFFICERS

### ARTICLE 7. STATE AID FOR FAIRS

§ 19-7-8. Gambling devices and immoral shows prohibited; forfeiture of right to state aid; horse racing exempted.

No incorporated agricultural association which is the recipient of state aid under this article shall operate or permit to be operated in conjunction with the fair any gambling device or any indecent or immoral show. Any association violating the provisions of this section shall thereby forfeit all right to state aid for a period of three years. This section, however, shall not be so construed as to prevent horse racing or horse shows at any fair receiving state aid.

## **ARTICLE 23. HORSE AND DOG RACING**

§19-23-1. License required for horse and dog racing and pari-mutuel wagering in connection therewith; exception.

(a) No association shall hold or conduct any horse or dog race meeting at which horse or dog racing is permitted for any purse unless such association possesses a license therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of this article shall not be construed to prevent in any way the use without a license of any grounds, enclosure or racetrack owned and controlled by any association for any local, county or state fair, horse show or agriculture or livestock exposition, even though horse or dog racing be there conducted, if the pari-mutuel system of wagering upon the results of such horse or dog racing is neither permitted nor conducted with the knowledge or acquiescence of the association conducting such horse or dog racing.

§19-23-2. Permits required for horse and dog racetrack positions; residency requirements for employees of licensees.

(a) No person not required to be licensed under the provisions of section one of this article shall participate in or have anything to do with horse or dog racing for a purse or a horse or dog race meeting at any licensee's horse or dog racetrack, place or enclosure, where the pari-mutuel system of wagering upon the results of such horse or dog racing is permitted or conducted, as a horse owner, dog owner, jockey, apprentice jockey, exercise boy, kennel keeper, trainer, groom, plater, stable foreman, valet, veterinarian, agent, clerk of the scales, starter, assistant starter, timer, judge or pari-mutuel employee, or in any other capacity specified in reasonable rules and regulations of the racing commission unless such person possesses a permit therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(b) At least eighty percent of the individuals employed by a licensee at any horse or dog race meeting must be citizens and residents of this state and must have been such citizens and residents for at least one year. For the purpose of this subsection, citizens and residents of this state shall be construed to mean individuals who maintain a permanent place of residence in this state, and have been bona fide residents and citizens of this state for a period of one year immediately prior to the filing of their applications for employment. The provisions of this subsection shall not apply to individuals engaged in the construction of a horse or dog racetrack or in the equipping of same, nor to racing officials designated by the racing commission or racing officials designated by the executive officials of

a licensee.

## PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION --

### ORGANIZATION AND OPERATION.

#### §19-23-3. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

(2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

(3) "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle and shall not include any form of horse racing in which the horses are mounted by jockeys;

(4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;

(5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;

(6) "Purse" means any purse, stake or award for which a horse or dog race is run;

(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing commission" means the West Virginia racing commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and the reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) "Legitimate breakage" is the percentage left over in the division of a pool;

(22) "To the dime" means that wagers shall be figured and paid to the dime;

(23) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

(24) "Accredited thoroughbred horse" means a thoroughbred horse that is either: (a) Foaled in West Virginia; or (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days grace for the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. No thoroughbred horse qualifies under paragraph (c) of this subdivision after the first day of July, one thousand nine hundred ninety;

(25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia thoroughbred breeders association;

(26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;

(27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to

and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company.

Prior to the horse being shipped out of the state for sales, the raiser must notify the racing commission of his or her intentions;

(28) The "owner of an accredited West Virginia sire" is the owner of record at the time the offspring is conceived;

(29) The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided for in section thirteen-b of this article; and

(30) "Fund" means the West Virginia thoroughbred development fund established in section thirteen-b of this article.

§19-23-4. West Virginia racing commission continued as a public corporation; composition; terms; vacancies; qualifications, compensation and expenses of members; principal office; meetings; election of officers; quorum; inspection of records; annual report.

(a) The "West Virginia racing commission," heretofore created, shall continue in existence as a public corporation, and, as such, may contract and be contracted with, plead and be impleaded, sue and be sued and have and use a common seal.

(b) The racing commission shall consist of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor by and with the advice and consent of the Senate. The term of office for the members of such racing commission shall be four years, and until their successors have been appointed and have qualified, and members of the racing commission may serve any number of successive terms. The members of the racing commission in office on the effective date of this article shall, unless removed by the governor after the effective date of this article, continue to serve until their terms expire and until their successors have been appointed and have qualified. Any vacancy in the office of a member of the racing commission shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. No individual shall be eligible for appointment to or to serve upon the racing commission:

(1) Unless he is an actual and bona fide resident of this state, shall have resided in this state for a period of at least five years next preceding his appointment, shall be a qualified voter of this state and be not less than twenty-five years of age;

(2) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner whatever, in any racetrack where horse or dog race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(3) While serving as a member of the Legislature or as an elective officer of this state;  
or

(4) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony, or is a violation of article four, chapter sixty-one of this code.

(c) Each member of the racing commission shall receive a salary of five thousand dollars per annum to be paid in monthly installments and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the racing commission.

(d) The racing commission shall have its principal office at the seat of government, and shall meet annually at its principal office in the month of January, and at such other times and places as shall be designated by its chairman. At such annual meeting the racing commission shall elect from its membership a chairman and such other officers as may be desired. Other meetings of the racing commission may be called by the chairman on such notice to the other members as may be prescribed by the racing commission.

(e) A majority of the members of the racing commission shall constitute a quorum for the transaction of its business or the exercise of any of its powers and authority. No individual not a bona fide member of the racing commission shall vote upon or participate in the deliberations of the racing commission on any matter which may come before it. All racing commission records, except as otherwise provided by law, shall be open to public inspection during regular office hours.

(f) As soon as possible after the close of each calendar year, the racing commission shall submit to the governor a report of the transactions of the racing commission during the preceding calendar year.

### PART III. RACING SECRETARY AND OTHER PERSONNEL

#### AND EMPLOYEES OF RACING COMMISSION.

§19-23-5. Racing secretary and other personnel; qualifications; terms; powers and duties; compensation and expenses.

(a) The racing commission shall appoint a racing secretary to represent the racing commission and such racing secretary shall possess such powers and authority and perform such duties as the racing commission may direct or prescribe. The racing secretary shall preserve at the racing commission's principal office all books, maps, records, documents and other papers of the racing commission. The racing secretary shall, in addition to all other duties imposed upon him by the racing commission, serve in a liaison capacity between licensees and the racing commission. The racing commission may also employ, direct and define the duties of an assistant racing secretary and such stenographers, clerks and other office personnel as it may deem necessary to carry out the duties imposed upon it under the provisions of this article.

(b) In addition to the employees referred to above, the racing commission shall employ, direct and define the duties of a chief clerk, director of security, director of audit, chief chemist, stewards to represent the racing commission, supervisors of the pari-mutuel wagering conducted under the provisions of this article, veterinarians, inspectors, accountants, guards and all other employees deemed by the racing commission to be essential in connection with any horse or dog race meeting. The director of audit shall be a certified public accountant or experienced public accountant.

(c) No individual shall knowingly be employed or be continued in employment by the racing commission in any capacity whatever:

(1) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner whatever, in any racetrack where horse or dog race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(2) Who at the time is or has been within one year prior thereto a member of the Legislature or an elective officer of this state, unless he is experienced and qualified as a racing official; or

(3) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony, or is a violation of article four, chapter sixty-one of this code. Any steward employed by the racing commission or by a licensee shall be a person of integrity, and experienced and qualified for such position by the generally accepted practices and customs of horse or dog racing in the United States.

(d) The racing secretary and all other employees of the racing commission shall serve at the will and pleasure of the racing commission. The racing secretary and the other employees referred to in this section as employees of the racing commission shall receive such compensation as may be fixed by the racing commission within the limit of available funds, and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(e) All compensation and reimbursement for expenses of the members of the racing commission, the racing secretary and all other employees of the racing commission shall be paid from the funds in the hands of the state treasurer collected under the provisions of this article and shall be itemized in the budget in the same manner as all other departments of state government, but no reimbursement for expenses incurred shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

#### PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

§19-23-6. Powers and authority of racing commission.

The racing commission has full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons

involved in the holding or conducting of horse or dog race meetings and, in this regard, it has plenary power and authority:

(1) To investigate applicants and determine the eligibility of the applicants for a license or permit or construction permit under the provisions of this article;

(2) To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;

(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That in accordance with article three, chapter twenty-nine-a, the racing commission shall promulgate separate rules pertaining to the kinds of legal combination wagers which may be placed in connection with the pari-mutuel system of wagering authorized by this article;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

(6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

(9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person connected with or involved in any horse or dog racing or any horse or dog race meeting; and to

authorize stewards to rule off the grounds of any horse or dog racetrack any tout, bookmaker or other undesirable individual determined inimical to the best interests of horse and dog racing or the pari-mutuel system of wagering in connection therewith;

(10) To require at any time the removal of any racing official or racing employee of any licensee, for the violation of any provision of this article, any reasonable rule and regulation of the racing commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in any horse or dog race meeting, and to purchase all equipment and supplies considered necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse or dog race, the payment of any purse, pending a final determination of the results thereof;

(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's horse or dog racing activities in this state, together with a list of each licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of the licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

(16) To take any other action that may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article; and

(18) To mediate on site, upon request of a party, all disputes existing between the racetrack licensees located in this state and representatives of a majority of the horse owners and trainers licensed at the track which threaten to disrupt any scheduled racing event or events. The racing commission shall, upon the request of a party, mediate on site, all disputes existing between racetrack licensees and representatives of pari-mutuel clerks which threaten to disrupt any scheduled racing event or events. When a request for mediation

is made, the commission shall designate from among its members one person to act as mediator in each dispute that arises. Each opposing party involved in any dispute shall negotiate in good faith with the goal of reaching a fair and mutual resolution. The mediator may issue recommendations designed to assist each side toward reaching a fair compromise: Provided, That no owner or operator or any horse owner or trainer or any pari-mutuel clerk licensed at the track may be required to abide by any recommendation made by any mediator acting pursuant to this subsection.

The racing commission shall not interfere in the internal business or internal affairs of any licensee.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.

(a) Any racing association desiring to hold or conduct a horse or dog race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the racing commission an application for a license to hold or conduct such horse or dog race meeting. A separate application shall be filed for each separate license sought for each horse or dog race meeting which such applicant proposes to hold or conduct. The racing commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the racing commission and shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) The dates such applicant intends to hold or conduct such horse or dog race meeting (which shall be successive weekdays, excluding Sundays);

(5) The location of the horse or dog racetrack, place or enclosure where such applicant proposes to hold or conduct such horse or dog race meeting;

(6) Whether the applicant, any partner, member, officer or director has previously applied for a license under the provisions of this article or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked; and

(7) Such other information as the racing commission may reasonably require which may include information relating to any criminal

record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(b) Such application shall be verified by the oath or affirmation of the applicant for such license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be. When required by the racing commission, an applicant for a license shall also furnish evidence satisfactory to the racing commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials and other expenses incident to the horse or dog race meeting for which a license is sought. In the event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to pay such expenses and fees, the racing commission may require bond or other adequate security before the requested license is issued.

(c) Any person desiring to obtain a permit, as required by the provisions of section two of this article, shall make application therefor on a form prescribed by the racing commission. The application for any such permit shall be accompanied by the fee prescribed therefor by the racing commission. Each applicant for a permit shall set forth in the application such information as the racing commission shall reasonably require.

§19-23-7a. Applicants for licenses and permits to provide fingerprints.

(a) All new applicants for licenses issued by the racing commission, pursuant to section one of this article, shall be required to furnish fingerprints for examination by the criminal identification bureau of the division of public safety and the federal bureau of investigation. The fingerprints shall be furnished by all persons required to be named in the application pursuant to subsection (a) of section seven of this article and shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation.

(b) The racing commission may require any applicant seeking the renewal of a license or the issuance or renewal of a permit to furnish fingerprints for examination by the criminal identification bureau of the division of public safety and the federal bureau of investigation. The racing commission may require all or any part of the persons required to be named in an application pursuant to section seven of this article to provide fingerprints and the fingerprints shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license;

validity of permit.

(a) The racing commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the racing commission shall make and enter an order either approving or denying such application. The application shall be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the racing commission shall issue a license to conduct a horse or dog race meeting, and shall designate on the face of such license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which such horse or dog race meeting is to be held or conducted (which may be any weekdays, or weeknights, including Sundays), the location of the horse or dog racetrack, place or enclosure where such horse or dog race meeting is to be held or conducted and such other information as the racing commission shall deem proper. If an application for a permit is approved, the racing commission shall issue a permit and shall designate on the face of such permit such information as the racing commission shall deem proper.

(b) The racing commission shall deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal shall be final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, if the racing commission finds that the applicant (individually, if an individual, or the partners or members, if a partnership, firm or association, or the owners and directors, if a corporation):

(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;

(2) Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse or dog race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of such application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules and regulations of the racing commission;

(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the racing commission under the provisions of section seven of this article;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of such applicant.

(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the racing commission shall consider the horse racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this state are associated or contiguous to, and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and shall not permit the holding or conducting of a horse or dog race meeting at any horse or dog racetrack, place or enclosure not specified thereon. However, if the specified horse or dog racetrack, place or enclosure becomes unsuitable for the horse or dog race meeting because of flood, fire or other catastrophe, or cannot be used for any reason, the racing commission may, upon application, authorize the horse or dog race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place or enclosure available for that purpose, provided that the owner of such racetrack, place or enclosure willingly consents to the use thereof.

(e) No type of horse racing or dog racing shall be conducted by a licensee at any race meeting other than that type for which a license was issued.

(f) Each permit issued under the provisions of this section shall be for the period ending December thirty-first of the year for which it was issued, and shall be valid at all horse or dog race meetings during the period for which it was issued, unless it be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

#### PART V-A. SUNDAY RACING.

§19-23-8a. Applications for Sunday racing; local option election procedures; protest procedures against approval.

(a) A racing association licensed under the provisions of section one of this article and operating a horse or dog race track in a county may make application for permission to conduct horse or dog racing on Sunday, between the hours of one p.m. and six p.m., local time.

Such application shall be filed with the racing commission. The racing commission shall prescribe blank forms to be used in making such application.

The racing commission, if it finds such application to be in order, may grant tentative approval of such application and, if it grants tentative approval of the application, shall prepare and publish a notice to the public that the racing commission has granted tentative approval of the application, that the racing commission solicits public comment from the citizens of the county and will hold a public hearing in the county on a date specified in the notice in the county wherein the horse racing track or dog racing track is located, that the racing commission shall take such comment into consideration in deciding whether or not to grant or deny final approval, and that the racing commission will make final approval of such application at the expiration of sixty days from the date of the first publication of such notice, which date shall be specified in said notice, unless within that time in accordance with subsection (c) of this section, the county commission of the county in which such race track is located shall order an election. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the race track is located: Provided, That prior to granting final approval hereunder, the racing commission shall solicit public comment from the citizens of the county, and hold a public hearing in the county on a date specified in the hearing notice specified above, in the county wherein the horse racing track or dog racing track is located and shall take such comment into consideration in deciding whether or not to grant final tentative approval. If no such election is ordered, the racing commission shall proceed to consider final approval of the application.

(b) The county commission shall, upon the written petition of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, received within the period specified in subsection (a) of this section, which petition may be in any number of counterparts, order an election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county, which election shall be held at the next primary or general election held in such county. The racing commission shall permit such racing pending certification of the results of the election.

(c) If such election is ordered, the county commission shall give notice of such election by publication of such notice as a Class II-0 legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. Such notice shall be published within twenty-one consecutive days next preceding the date of said election.

(d) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve horse racing on Sundays between the hours of one p.m. and six p.m. in \_\_\_\_\_ County, West Virginia?"

// Yes // No

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

In a county in which dog racing is conducted, the term "dog racing" shall be substituted for "horse racing" on the ballot or ballot label.

(e) Each individual qualified to vote in said county shall be qualified to vote at such election. The votes in said election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such election and certify the results thereof to the racing commission, and shall transmit a certified copy of said results to the secretary of state.

(f) After the certification of the results of such election, the racing commission shall: (1) Grant final approval of an application for a license which contains racing dates which fall on Sunday if a majority of the voters voting at such election vote yes, and on such racing dates all racing and other activities authorized by this article shall be lawful, any other provisions of this code to the contrary notwithstanding; or (2) deny final approval of an application for a license which contains racing dates which fall on Sunday if less than a majority of the voters voting at such election vote yes.

(g) After an election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county, another election on such issue shall not be held for a period of five years.

(h) After five years from such final approval, it shall be the duty of the county commission upon a petition in writing of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, to order an election to determine whether it is the will of the voters of said county that racing on Sundays be discontinued in said county. The provisions of subsections (c) and (e) of this section shall govern said election. The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall racing of horses on Sunday in \_\_\_\_\_ County, West Virginia, be discontinued?"

// Yes // No

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

In a county in which dog racing is conducted, the word "dogs" shall be substituted for "horses" on the ballot or ballot label. If it be the will of a majority of the voters of said county that Sunday racing be discontinued in said county, it shall be the duty of the racing commission thereafter, for a period of at least five years and until a subsequent election shall otherwise direct, to deny applications to race on Sundays in said county.

(i) Upon the written petition of qualified voters residing within the county equal to at least thirty percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, presented to the racing commission within sixty days after the expiration of such publication protesting against such tentative approval, the approval may not become effective and another petition may not be filed for a period of five years. §19-23-8b. Horse or dog racing after six o'clock postmeridian on Sundays; application therefor; tentative approval; publication of notice; petition for local option election; local option election procedure; effect of such election.

(a) Notwithstanding any other provisions of this code to the contrary, a racing association licensed under the provisions of section one of this article and operating a horse or dog racetrack in a county in which Sunday racing has been approved under provisions of section eight-a of this article may make applications to the racing commission for permission to conduct horse or dog racing after the hour of six o'clock postmeridian on Sundays.

(b) The racing commission, if it finds such application to be in order, may grant tentative approval of such application and, if it grants tentative approval, shall prepare and publish a notice to the public and that the racing commission has granted tentative approval of the application and that the racing commission will make final confirmation of such application at the expiration of sixty days from the date of the first publication of such notice, which date shall be specified in said notice, unless within that time a petition for a local option election has been filed in accordance with subsection (c) of this section with the county commission of the county in which such racetrack is located. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the racetrack is located:

Provided, That prior to granting tentative approval hereunder, the racing commission shall solicit public comment from the citizens of the county wherein the horse racing track or dog racing track is located and shall take such comment into consideration in deciding whether or not to grant tentative approval.

(c) The county commission, upon the written petition of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, shall order an election to determine whether it is the will of the voters of said county that racing be permitted after the hour of six o'clock postmeridian on Sundays in the county.

(d) No election to determine whether it is the will of the voters of a county that racing be permitted after the hour of six o'clock postmeridian on Sundays in the county may be held at a general or primary election or within sixty days of any such election or in conjunction with any other election.

(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve horse racing on Sundays after the hour of six p.m. in \_\_\_\_\_ County, West Virginia?"

Yes  No

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

In a county in which dog racing is conducted, the term "dog racing" shall be substituted for "horse racing" on the ballot or ballot label.

(f) Each individual qualified to vote in the county is qualified to vote at the local option election. The votes in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to the county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission and shall transmit a certified copy of the results to the secretary of state.

(g) The racing commission shall, after the certification of the results of such local option election, thereafter approve an application for a license which contains racing dates which fall on Sunday for any hour or hours after six o'clock postmeridian if a majority of the voters voting at such local option election vote yes and on such racing dates all racing and other activities authorized by this article are lawful, any other provisions of this code to the contrary notwithstanding.

§19-23-8c. Local option election procedure; form of ballot or ballot labels; effect of such election.

(a) Notwithstanding any other provision of law to the contrary, no license for dog racing may be issued for dog racing in any county wherein horse racing has been conducted at any time during the fifteen years preceding the application for such license, unless first approved by the voters of the county in which the proposed dog racing track is to be located. The county commission of any county in which horse racing has been conducted at any time during such fifteen-year period and in which a proposed dog racing track is to be located is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to whether the racing commission may approve an application for a license for dog racing if the application and the applicant are otherwise in compliance with the provisions of this article and this code.

(b) The county commission may order an election to determine whether it is the will of the voters of said county that dog racing be permitted in said county.

(c) Any election to determine whether it is the will of the voters of said county that dog racing be permitted in said county shall be held at a general or primary election.

(d) The county commission shall give notice of such election by publication of such notice as a Class II-0 legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. Such notice shall be published within twenty-one consecutive days next preceding the date of said election.

(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve dog racing in \_\_\_\_\_ County, West

Virginia?

Yes  No

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

Each individual qualified to vote in said county shall be qualified to vote at the local option election. The votes in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to the county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission and shall transmit a certified copy of said results to the secretary of state.

(f) The racing commission may, after the certification of the results of such local option election, thereafter approve an application for a license for dog racing if a majority of the voters voting at such local option election vote yes.

(g) After an election to determine whether it is the will of the voters of the county that dog racing be permitted in said county, another election on such issue shall not be held for a period of five years.

(h) If at such election a majority of the voters of said county shall approve dog racing in said county, it is lawful for the county commission, after five years from such approval, and it shall be the duty of the county commission upon a petition in writing of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, to order an election to determine whether it is the will of the voters of said county that dog racing be discontinued in said county. The provisions of subsection (c), (d) and (e) of this section shall govern said election. The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall racing of dogs in \_\_\_\_\_ County, West Virginia be discontinued?

Yes  No

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

#### PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;

##### COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by the licensee within the confines of the licensee's horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming, shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are

determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission, as is mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders, awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of the pools; and (iv) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The remainder of the commission shall be retained by the licensee.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of the commission, as is mentioned in this paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December for pools involving

a combination of two winning horses shall be eight and twenty-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and seventy-five one-hundredths percent of the pari-mutuel pools; and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of the fund shall be eleven and twenty-five one-hundredths percent of the pari-mutuel pools; and which, out of pari-mutuel pools for each day during all other months, shall be ten and seventy-five one-hundredths percent of the pari-mutuel pools; (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders' awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of the pools; and (iv) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The remainder of the commission shall be retained by the licensee.

The commission deducted by the licensee under this subdivision may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. The reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the reduction shall be retained by the licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of this subdivision. The racing commission shall promulgate any reasonable rules and regulations that are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of the pari-mutuel pools for the day. Out of the commission the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article, and shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The

remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty one-hundredths percent of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent, by a combination of three winning dogs shall not exceed twenty percent, and by a combination of four or more winning dogs shall not exceed twenty-one percent of the total of such pari-mutuel pools for the day. The foregoing commissions are in effect for the fiscal years one thousand nine hundred ninety and one thousand nine hundred ninety-one. Thereafter, the commission shall be at the percentages in effect prior to the effective date of this article unless the Legislature, after review, determines otherwise. Out of the commissions, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article, and one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located. In addition, out of the commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the state road fund for use by the division of highways in accordance with the provisions of this subdivision. The remainder of the commission shall be retained by the licensee.

For the purposes of this section, "municipality" means and includes any Class I, Class II and Class III city and any Class IV town or village incorporated as a municipal corporation under the laws of this state prior to the first day of January, one thousand nine hundred eighty-seven.

Each dog racing licensee, when required by the provisions of this subdivision to pay a percentage of its commissions to the state road fund for use by the division of highways, shall transmit the required funds, in such manner and at such times as the racing commission shall by procedural rule direct, to the state treasurer for deposit in the state treasury to the credit of the division of highways state road fund. All funds collected and received in the state road fund pursuant to the provisions of this subdivision shall be used by the division of highways in accordance with the provisions of article seventeen-a, chapter seventeen of this code for the acquisition of

right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road in the state. If on the first day of July, one thousand nine hundred eighty-nine, any area encompassing a dog racetrack has incorporated as a Class I, Class II or Class III city or as a Class IV town or village, whereas such city, town or village was not incorporated as such on the first day of January, one thousand nine hundred eighty-seven, then on and after the first day of July, one thousand nine hundred eighty-nine, any balances in the state road fund existing as a result of payments made under the provisions of this subdivision may be used by the state road fund for any purpose for which other moneys in the fund may lawfully be used, and in lieu of further payments to the state road fund, the licensee of a racetrack which is located in the municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality. If no incorporation occurs before the first day of July, one thousand nine hundred eighty-nine, then payments to the state road fund shall thereafter continue as provided for under the provisions of this subdivision.

A dog racing licensee, before deducting the commissions authorized by this subdivision, shall give written notification to the racing commission not less than thirty days prior to any change in the percentage rates for the commissions. The racing commission shall prescribe blank forms for filing the notification. The notification shall disclose the following: (A) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple bettings; (B) the dates to be included in the revised betting; (C) such other information as may be required by the racing commission.

The licensee shall establish a special fund to be used only for capital improvements or long-term debt amortization or both: Provided, That any licensee, heretofore licensed for a period of eight years prior to the effective date of the amendment made to this section during the regular session of the Legislature held in the year one thousand nine hundred eighty-seven, shall establish the special fund to be used only for capital improvements or physical plant maintenance, or both, at the licensee's licensed facility or at the licensee's commonly owned racing facility located within this state. Deposits made into the funds shall be in an amount equal to twenty-five percent of the increased rate total over and above the applicable rate in effect as of the first day of January, one thousand nine hundred eighty-seven, of the pari-mutuel pools for the day. Any amount deposited into the funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not expended shall be transferred immediately into the state general fund after expiration of the two-year period.

The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the licensee's commissions for each day shall be three and seventy-five one-hundredths percent of the pari-mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; the funds shall be in an amount equal to five percent over and above the applicable rates in effect as of the first day of January, one thousand nine hundred eighty-seven, of the total pari-mutuel pools for the day.

The racing commission shall prepare and transmit annually to the governor and the Legislature a report of the activities of the racing commission under this subdivision. The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the division of highways dog racing fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization, and a certified statement of the financial condition of any licensee depositing into the fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the racing commission may consider appropriate for review.

The racing commission shall report to the governor, president of the Senate, speaker of the House and the Legislature on or before the thirty-first day of December, one thousand nine hundred ninety-three, on the effects of the amendments to this article by the acts of the Legislature, regular session, one thousand nine hundred eighty-seven, on dog racing licensees and pari-mutuel taxation for use by the Legislature in review of the amendments.

(c) In addition to any commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from the breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of the breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.

(d) The director of audit, and any other auditors employed by the racing commission who are also certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also,

for the same purposes only, have full and free access to all records and papers pertaining to the pari-mutuel system of wagering, and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that the individual is under the age of eighteen years.

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund; (iii) the licensee shall pay one half of the remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the licensee shall retain the amount remaining after making the payments required in this subsection.

(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the commission a surety bond in an amount to be determined by the commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

#### PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day.

Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at two percent of the pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at one and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at one percent of the pool; for fiscal year one thousand nine hundred ninety, seven tenths of one percent, and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter be calculated at four tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at three and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at three and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at three percent of the pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at two and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at two percent of the pool; for fiscal year one thousand nine hundred ninety, be calculated at one and seven-tenths percent of the pool; and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter, be calculated at one and four-tenths percent of the pool: Provided, That out of the amount realized from the three tenths of one percent decrease in the tax effective for fiscal year one thousand nine hundred ninety-one and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate (i) one half of the realized amount for capital

improvements in its barn area at the track, subject to the racing commission's prior approval of the plans for the improvements, and (ii) the remaining one half of the realized amount for capital improvements as the licensee may determine appropriate at the track. The term "capital improvement" shall be as defined by the Internal Revenue Code: Provided, however, That any racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of two hundred eighty thousand dollars or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding three hundred thousand dollars the daily pari-mutuel pool tax shall be one thousand dollars plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of three hundred thousand dollars: Provided further, That upon the effective date of the reduction of the daily pari-mutuel pool tax to one thousand dollars from the former two thousand dollars, the association or licensee shall daily deposit five hundred dollars into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to ten races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: And provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: And provided further, That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia thoroughbred development fund for more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or

made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the racing commission to be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding and racing of greyhounds in the state through awards and purses to resident owners of accredited West Virginia whelped greyhounds. In order to be eligible to receive an award or purse through the fund, the owner of the accredited West Virginia whelped greyhound must be a resident of this state. The moneys shall be expended by the racing commission for purses for stake races, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules and regulations promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules and regulations promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the owner of an accredited greyhound or, if the greyhound is leased, the owner may choose to designate a percentage of the purse earned directly to the lessor as agreed to via a written purse distribution form on file with the racing commission.

The owner of accredited West Virginia whelped greyhounds that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of purses earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements.

The owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the racing commission for a percentage of his or her dog's earnings to be paid directly to the lessor of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.

In no event shall purses earned at a meet held at a track which did not make contributions to the West Virginia greyhound breeder's development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of fifty thousand dollars per annum, to be paid in equal quarterly installments of twelve thousand five hundred dollars per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on the first day of July, one thousand nine hundred ninety-three, and ending the thirtieth day of June, one thousand nine hundred ninety-six. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: Provided, That each pari-mutuel track shall have one juvenile and one open stake race annually. The racing commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the racing commission and placed in a special revenue account hereby created in the state treasury called the "administration, promotion and educational account". The racing commission is authorized to expend the moneys deposited in the administration, promotion and educational account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: Provided, That beginning with fiscal year one thousand nine hundred ninety-five and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year's expenditures and projected expenditures for the next year.

The racing commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

PART VII. TAXATION OF HORSE AND DOG RACING AND  
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-11. Revenues from horse racing and dog racing to be paid into a special account to fund commission expenses.

All revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pools taxes on horse racing and dog racing shall be paid by the racing commission to the state treasurer who shall deposit the revenues in a special account to be denominated by him or her. The revenues in the special account shall first be available to the commission to pay salaries and other budgeted expenses for the commission, not to exceed the amounts appropriated for such purposes in the budget bill for each fiscal year. Revenues in excess of the budgeted expenses of the commission shall be accumulated and transferred to the general revenue fund. The racing commission shall remit all collected revenues to the state treasurer at least one time during each thirty-day period of each racing season, and a final remittance as to any particular horse race or dog race meeting shall be made within thirty days from and after the close of each horse race or dog race meeting.

§19-23-12. License to be in lieu of all other license, etc., taxes; exception.

The license tax imposed in section ten of this article shall be in lieu of all other license, income, excise, special or franchise taxes of this state, and no county or municipality or other political subdivision of this state shall be empowered to levy or impose any license, income, pari-mutuel, excise, special or franchise tax on any racing association engaged in the business of conducting a horse or dog race meeting at which horse or dog races are run for purses under the jurisdiction of and being licensed by the racing commission, or on the operation or maintenance of the pari-mutuel system of wagering, or on the sale of any commodity during a horse or dog race meeting at which horse or dog races are run, or at any such horse or dog racetrack nor shall there be, hereafter, any imposition of tax pursuant to articles twelve, thirteen or fifteen of chapter eleven of this code on the income or receipts of owners, trainers or jockeys directly arising from their services which are essential to the effective conduct of a horse or dog racing meeting: Provided, That the foregoing provisions of this section shall in no way affect, abridge or abolish the authority of a municipality to impose the license tax authorized by the provisions of section eight, article thirteen, chapter eight of this code.

#### PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;

##### COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

(1) Notwithstanding any other provisions of this code, a racing association licensed in this state to conduct race meetings may, with

the consent of the racing commission and the written approval of the authorized representative of a majority of the owners and trainers who hold the permit required by section two of this article at the horse racetrack, contract with any legal wagering entity in this or any other state to accept wagers on any race or races conducted by such legal wagering entity. Unless the wager becomes part of the host licensee's pari-mutuel pool, such wagering shall be conducted within the confines of such licensee's racetrack or at a hotel as defined in section three, article six, chapter sixteen of this code, controlled by such licensee and contiguous to the licensee's property, subject to the following requirements:

(a) That such hotel contain at least one hundred rooms and be in existence on the effective date of this section;

(b) That the licensee shall have invested at least one million dollars in the hotel; and

(c) That such hotel is within one-half mile of the licensee's racetrack surface.

(2) Such horse association shall retain a basic commission not to exceed seventeen and twenty-five one-hundredths percent of all money wagered, plus an additional amount equal to one and seventy-five one-hundredths percent of the amount wagered each day on all multiple wagers determined by a combination of two winning horses, including, but not limited to, the daily double, quinella and perfecta or plus an additional amount equal to seven and seventy-five one-hundredths percent of the amount wagered each day on all trifecta wagers or any other multiple wager which involves a single betting interest on three or more horses. Breakage shall be calculated and distributed in the manner provided by subsection (c), section nine of this article.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing shall not exceed sixteen and one-fourth percent of the total of such pari-mutuel pools for the day.

(4) Out of the commission retained or deducted by a licensee under the provisions of subsections (2) and (3) of this section, the licensee shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipality's general fund.

(5) The association shall pay each day a pari-mutuel pools tax calculated under the provisions of section ten of this article.

(6) After deducting the county or municipal share provided for in subsection (4) of this section and the pari-mutuel pools tax required by subsection (5) of this section, and the amount required to be paid under the terms of the contract with the legal wagering entity of this or another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b), subsection (1), section nine of this article.

(7) All of the provisions of the "Federal Interstate Horseracing Act of 1978," also known as Public Law 95-515, section 3001-3007 of title 15, U.S. Code, shall be instructive as the intent of this section.

(8) For the purposes of this section the words "legal wagering entity" shall be limited to any person engaged in horse racing or dog racing pursuant to a license or other permission granted by the state in which such person's racetrack is situated and conducting race meetings, with a pari-mutuel wagering system permitted under that state's laws and in which the participants are wagering with each other and not the operator.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at other racetracks in this state or at racetracks outside of this state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article; and

(2) "Host racing association" means any person who, pursuant to a license or other permission granted by the host governmental entity, conducts the horse or dog race upon which wagers are placed.

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state racing commission, contract with any legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers on races conducted by the legal wagering entity: Provided, That at those thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less than two hundred ten live racing dates for each horse race meeting: Provided, however, That at those thoroughbred racetracks that have participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, the licensee may apply for not less than one hundred fifty-nine live racing dates during the calendar year of one thousand nine hundred ninety-seven. If, thereafter, for reasons beyond the licensee's control, related to adverse weather conditions, unforeseen casualty occurrences or a shortage of thoroughbred horses eligible to compete for purses, the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the racing commission to reduce the authorized live racing days. Upon receipt of the request the racing commission shall within seventy-two hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track and the representative of the majority of the mutuel

clerks at the requesting track that such request has been received and that if no objection to the request is received within ten days of the notification the request will be approved: Provided further, That the commission shall give consideration to whether there existed available unscheduled potential live racing dates following the adverse weather or casualty and prior to the end of the race meeting which could be used as new live racing dates in order to maintain the full live racing schedule previously approved by the racing commission. If an objection is received by the commission within the time limits, the commission shall, within thirty days of receipt of such objection, set a hearing on the question of reducing racing days, which hearing shall be conducted at a convenient place in the county in which the requesting racetrack is located. The commission shall hear from all parties concerned and, based upon testimony and documentary evidence presented at the hearing, shall determine the required number of live racing days: And provided further, That the commission shall not reduce the number of live racing days below one hundred eighty-five days for a horse race meeting unless the licensee requesting such reduction has: (i) Filed with the commission a current financial statement, which shall be subject to independent audit; and (ii) met the burden of proving that just cause exists for such requested reduction in live racing days. The telecasts may be received and wagers accepted at any location authorized by the provisions of section twelve-a of this article. The contract must receive the approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article at the receiving thoroughbred racetrack.

(c) The commission may allow the licensee to commingle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack and must be distributed in a manner agreed to between the licensee and the sending racetrack. For the televised racing services it provides, the host racing association shall receive a fee to be paid by the receiving licensee racetrack which shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing association.

(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall

assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) (1) From the licensee commissions authorized by subsection (c) of this section, the licensee shall pay one tenth of one percent of each commission into the general fund of the county, in which the racetrack is located and at which the wagering occurred and there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less, the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. The calculation of the total pari-mutuel pool for purposes of this subsection shall include only one half of all wagers placed at a licensed racetrack in this state on televised races conducted at another licensed racetrack within this state. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(2) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivision (1) of this subsection, the licensee shall pay, for each televised racing day, one fourth of one percent of the total pari-mutuel pools for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission and to be used for payments into the pension plan for all employees of the licensed racing association.

(3) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivisions (1) and (2) of this subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for each televised racing day on or after the first day of July, one thousand nine hundred ninety-seven, an additional five and one-half percent of net simulcast income into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article: Provided, That no licensee qualifying for the alternate tax provisions of subsection (b), section ten of this article shall be required to make the payments unless the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred

ninety-two. For the purposes of this section, the term "net simulcast income" means the total commission deducted each day by the licensee from the pari-mutuel pools on simulcast horse or dog races, less direct simulcast expenses, including, but not limited to, the cost of simulcast signals, telecommunication costs and decoder costs.

(f) After deducting the tax and other payments required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the host racing association and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article. After deducting the tax and other payments required by subsection (e) of this section, dog racetracks shall pay an amount equal to two tenths of one percent of the daily simulcast pari-mutuel pool to the "West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund".

(g) The provisions of the "Federal Interstate Horseracing Act of 1978", also known as Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in determining the intent of this section. §19-23-12c. Interstate simulcasts by licensed racetracks.

(a) Any licensed racing association may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state, which legal wagering entities located outside this state shall not be subject to the provisions of subsection (e), section twelve-b of this article: Provided, That as consideration for the televised racing services it provides, the host racing association shall receive a signal transmission fee to be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the receiving legal wagering entity and the host racing association. All broadcasts of horse races shall be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978", also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

(b) One percent of the total signal transmission fee provided in subsection (a) of this section shall be paid into a special fund to be established by the racing commission for and on behalf of all employees of the licensed racing association to be used for payments into the pension plan for all employees of the licensed racing association, and any thoroughbred horse racetrack which has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two shall pay seven and one-half percent of the signal transmission fee into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article. After

deducting: (i) The amounts required to be placed into the pension plan for all employees of the licensed racing association under this section; (ii) the amounts, if any, required to be paid into the West Virginia thoroughbred development fund under this section; and (iii) the direct costs necessary to send a live audio and visual signal of horse races or dog races from any racetrack licensed under the provisions of section one of this article to any legal wagering entities outside this state for the purpose of pari-mutuel wagering, which direct costs shall include the cost of satellite equipment necessary to transmit the signal, a satellite operator and the satellite time necessary to broadcast the signal and the cost of telecommunication and facsimile services needed to communicate necessary information to all legal wagering entities for the purpose of pari-mutuel wagering, thoroughbred horseracing associations shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account -- Unredeemed Pari-Mutuel Tickets". Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published within fifteen days following the receipt of said moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in this subsection. The racing commission shall maintain separate accounts for each licensee and shall record therein the moneys turned over by such licensee and the amount expended at such licensee's track for the purposes set forth in this subsection. The moneys in the "West Virginia Racing Commission Special Account -- Unredeemed Pari-Mutuel Tickets" shall be expended as follows:

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he filed a personal income tax return in this state for the previous two years and that he owned real or personal property in this state and paid taxes in this state on said property for the previous two years, he shall be presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare foaled in this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare which foaled such winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by such horse; and

(4) To those horse racing licensees not participating in the thoroughbred development fund authorized in section thirteen-b of this article the unexpended balance of such licensee's account not expended as provided in subdivisions (1), (2) and (3) of this subsection:

Provided, That all moneys distributed under this subdivision shall be expended solely for capital improvements at the licensee's track:

Provided, however, That such capital improvements must be approved, in writing, by the West Virginia racing commission before funds are expended by the licensee for that capital improvement; and

(5) When the moneys in the special account, known as the "West Virginia Racing Commission Special Account -- Unredeemed Pari-Mutuel Tickets" will more than satisfy the requirements of subdivisions (1), (2), (3) and (4) of this subsection, the West Virginia

racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks: Provided, That during the fiscal year beginning on the first day of July, one thousand nine hundred ninety-six, but not thereafter, and subject to availability of funds, the commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied, transfer three hundred thousand dollars of such excess moneys into a separate account to be used for promotional activities and purses for stakes races for the West Virginia thoroughbred breeders classics, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings: Provided, however, That beginning with the fiscal year beginning on the first day of July, one thousand nine hundred ninety-seven, and subject to the availability of funds, the commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied:

(i) Transfer annually two hundred thousand dollars to the "West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund"; and

(ii) Transfer annually two hundred thousand dollars into a separate account to be used for stakes races for West Virginia bred greyhounds at dog racetracks.

(6) Notwithstanding any limitations on use of funds pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-seven, those funds deposited into the separate account previously dedicated solely to the West Virginia thoroughbred breeders classics shall thereafter be allocated as follows:

(A) For each fiscal year, the first eight hundred thousand dollars deposited in the separate account, together with any balance remaining in the separate account on the thirtieth day of June, one thousand nine hundred ninety-seven, shall be used by the commission for promotional activities, advertising, administrative costs and purses for the West Virginia thoroughbred breeders classics, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings.

(B) For each fiscal year, the next two hundred thousand dollars deposited into the separate account shall be used by the

commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia derby to be held at a thoroughbred racetrack which does not participate in the West Virginia thoroughbred development fund.

(C) For each fiscal year, once the amounts provided in paragraphs (A) and (B) of this subdivision have been deposited into the separate account for use in connection with the West Virginia thoroughbred breeders classics and the West Virginia derby, the commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:

(i) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the "West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund".

(ii) At those thoroughbred racetracks that have participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be equally divided between the West Virginia thoroughbred breeders classics and the West Virginia thoroughbred development fund.

(iii) At those thoroughbred horse racetracks which do not participate in the West Virginia thoroughbred development fund, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia derby as provided in paragraph (B) of this subdivision.

(iv) All expenditures which are funded under this subdivision (6) must be approved in writing by the West Virginia racing commission before the funds are expended for any of the purposes authorized by this subdivision.

The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures and unobligated balance in the special account created by this section known as the "West Virginia Racing Commission Special Account -- Unredeemed Pari-Mutuel Tickets".

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under section thirteen-b of this article.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools' tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

§19-23-13a. West Virginia bonus race fund.

An association licensed by the West Virginia racing commission to conduct horse race meetings may establish at its track a special fund to be known as the "Bonus Race Fund," in the manner hereinafter provided by this section.

The fund shall be established only if written approval is given by the duly authorized representative of a majority of the owners and trainers who hold the permit required by section eight of this article at the horse racetrack and by the authorized agent of the association.

The association shall deposit each day, into the fund hereby established, an amount equal to one tenth of one percent of the total daily pari-mutuel pool or pools, which sum shall be appropriated from the special purse fund established in subsection (b) (1), section nine of this article. In addition thereto, the association shall, from the commission retained by the association under the provisions of said section nine of this article, deposit into the "Bonus Race Fund" the following sums: Each day an amount equal to four one hundredths of one percent of the total daily pari-mutuel pool during the fiscal year beginning the first day of July, one thousand nine hundred eighty-two and each year thereafter; an additional three one hundredths of one percent of the total daily pari-mutuel pools for the fiscal year beginning the first day of July, one thousand nine hundred eighty-three and each year thereafter; and an additional three one hundredths of one percent of the total daily pari-mutuel pools for the fiscal year beginning the first day of July, one thousand nine hundred eighty-four and each year thereafter.

To be eligible to participate in purses to be paid from the proceeds of this fund, each horse must be registered with the West Virginia thoroughbred breeders association. To qualify for such registration the said horse must have been foaled in the state of West Virginia or sired by a stallion standing in the state of West Virginia or both foaled in West Virginia and sired by a stallion standing in West Virginia.

(a) A horse is bred where it is foaled. The breeder is the owner of the dam at the time of foaling.

(b) Any owner or breeder may appeal from the refusal of the West Virginia thoroughbred breeders association to register a horse under this rule to the West Virginia racing commission, and the decision of the commission shall be final.

(c) To be considered a West Virginia stallion, it is required that he be in the state of West Virginia for at least one full breeding season, commonly understood to be the first six months of a year, or if the stallion is brought in subsequent to the start of the breeding season, he must be approved as a West Virginia stallion by the West Virginia thoroughbred breeders association.

At each horse racetrack at which such fund is created, the funds shall be administered by a committee comprised of the following members: Two elected members of the West Virginia thoroughbred breeders association, one elected member of the local horsemen's benevolent protective association, the general manager of the local track or his representative and a member of the West Virginia racing commission or someone designated by the racing commission.

The powers and authority of the racing commission established under the provisions of section six of this article are extended to supervision of the fund created by this section and to the promulgation of reasonable rules and regulations for implementing and making effective the provisions of this section.

#### PART IX. DISPOSITION OF PERMIT FEES,

##### REGISTRATION FEES AND FINES.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account -- West Virginia Thoroughbred Development Fund". Notice of the amount, date and place of the deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of October, one thousand nine hundred ninety-two: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state treasury called the "administration and promotion account". The racing commission is authorized to expend the moneys

deposited in the administration and promotion account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development year in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year's expenditures and projected expenditures for the next year.

The funds shall be established immediately and operate on an annual basis.

(a) Funds will be expended for awards and purses in the following manner:

(i) Fifteen percent of the fund shall be available for distribution for events taking place between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of December, one thousand nine hundred eighty-five;

(ii) Fifty percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-six, and the thirty-first day of December, one thousand nine hundred eighty-six;

(iii) Seventy-five percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-seven, and the thirty-first day of December, one thousand nine hundred eighty-seven;

(iv) One hundred percent of the fund shall be available thereafter; and

(v) After the first day of July, one thousand nine hundred ninety-one, and after the thirty-first day of December, one thousand nine hundred ninety-one, and annually thereafter, the first one hundred thousand dollars of the fund shall be available for distribution for a maximum of four stakes races. One of these races shall be the West Virginia futurity and the second shall be the Frank Gall memorial stakes. The remaining races may be chosen by the committee set forth in subsection (b) of this section.

(b) Awards and purses will be distributed as follows:

(i) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the races by all accredited race horses for that year

as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. Of the funds available for distribution in any one year to breeders/raisers, neither the breeders as a group nor the raisers as a group shall, until the first day of January, one thousand nine hundred ninety-four, qualify for more than sixty and one-tenth percent of the funds. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(ii) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio purses earned by the progeny of accredited West Virginia stallions in the races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(iii) The owner of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(iv) In no event shall purses earned at a meet held at a track which did not make a contribution to the thoroughbred development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this section.

(v) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall: (1) Be utilized to

fund the races established in subsection (d) of this section; and (2) revert back into the general account of the fund for distribution in the next year.

Distribution shall be made on the fifteenth day of each February for the preceding year's achievements.

(c) The remainder, if any, of the fund that is not available for distribution in the program provided for in this subsection in any one year is reserved for regular purses, marketing expenses and for capital improvements in the amounts and under the conditions provided in this subsection. Fifty percent of the remainder shall be reserved for payments into the regular purse fund established in subsection (b), section nine of this article. Up to five hundred thousand dollars per year shall be available for: (1) Capital improvements at the eligible licensed horse racing tracks in the state; and (2) marketing and advertising programs above and beyond two hundred fifty thousand dollars for the eligible licensed horse racing tracks in the state: Provided, That moneys shall be expended for capital improvements or marketing and advertising purposes as described in this subsection only in accordance with a plan filed with and receiving the prior approval of the racing commission, and on a basis of fifty percent participation by the licensee and fifty percent participation by moneys from the fund, in the total cost of approved projects: Provided, however, That funds approved for one track may not be used at another track unless the first track ceases to operate or is viewed by the commission as unworthy of additional investment due to financial or ethical reasons.

(d) Each pari-mutuel thoroughbred horse track shall provide at least the following restricted races in accordance with the following time schedules:

(i) From the first day of July, one thousand nine hundred eighty-four, to the thirty-first day of December, one thousand nine hundred eighty-four -- one restricted race per eight racing days;

(ii) From the first day of January, one thousand nine hundred eighty-five, to the thirty-first day of December, one thousand nine hundred eighty-five -- one restricted race per seven racing days;

(iii) From the first day of January, one thousand nine hundred eighty-six, to the thirty-first day of December, one thousand nine hundred eighty-six -- one restricted race per six racing days;

(iv) From the first day of January, one thousand nine hundred eighty-seven, to the thirty-first day of December, one thousand nine hundred eighty-seven -- one restricted race per five racing days;

(v) From the first day of January, one thousand nine hundred eighty-eight, to the thirty-first day of December, one thousand nine hundred eighty-eight -- one restricted race per four racing days;

(vi) From the first day of January, one thousand nine hundred eighty-nine, to the thirty-first day of December, one thousand nine

hundred eighty-nine -- one restricted race per three racing days; and thereafter.

The restricted races established in this subsection shall be administered by a three-member committee consisting of: (A) The racing secretary; (B) a member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and (C) a member appointed by a majority of the thoroughbred breeders. The purses shall be twenty percent larger than the purses for similar type races at each track. Restricted races shall be funded by each racing association from:

(1) Moneys placed in the general purse fund up to a maximum of one hundred fifty thousand dollars per year.

(2) Moneys as provided in subdivision (v), subsection (b) of this section shall be placed in a special fund called the "West Virginia accredited race fund". The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia racing commission.

(e) No association or licensee qualifying for the alternate tax provision of subsection (b), section ten of this article is eligible for participation in any of the provisions of this section: Provided, That the provisions of this subsection shall not apply to a thoroughbred race track at which the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

§19-23-14. Disposition of permit fees, registration fees and fines.

All permit fees, fees paid for the registration of colors or assumed names and fines imposed by the stewards, starters or other racing officials shall be paid into a relief fund and paid out on the order of the racing commission for hospitalization, medical care and funeral expenses occasioned by injuries or death resulting from an accident sustained by any permit holder while in the discharge of his duties under the jurisdiction of the racing commission. No payment shall be made, however, for any hospitalization, medical care or funeral expenses as to any permit holder who is covered under the workers' compensation fund of this state, or any insurance policy providing payments for hospitalization, medical care or funeral expenses. Any balance in said relief fund at any time in excess of five thousand dollars, less any relief obligations then outstanding, shall thereupon be transferred by the racing commission to the state treasurer for deposit to the credit of the general revenue fund of this state.

§19-23-15. Investigation by racing commission; suspension or revocation of license or permit.

(a) The racing commission may conduct an investigation to determine whether any provisions of this article or any of its reasonable rules and regulations have been or are about to be violated by a licensee or permit holder. The racing commission may suspend or

revoke a license or permit if the licensee or permit holder, as the case may be:

(1) Is convicted of an offense which, under the law of this state, of any other state or of the United States of America, shall

constitute a felony or a crime involving moral turpitude;

(2) Is, if a corporation, dissolved under the law of this state or ceases to be qualified to do business within this state; or

(3) Has a license or permit to which such licensee or permit holder is not lawfully entitled.

(b) The racing commission may also suspend or revoke a license or permit of a licensee or permit holder, as the case may be, if it finds the existence of any ground upon which the license or permit could have been refused, or any ground which would be cause for refusing a license or permit to such licensee or permit holder were such licensee or permit holder then applying for the same.

(c) A majority of the stewards at any horse or dog race meeting may suspend or revoke a permit for any reason for which the racing commission may suspend or revoke a permit, as specified in subsections (a) and (b) of this section, or for any other reason authorized by reasonable rules and regulations promulgated by the racing commission.

(d) Whenever a licensee fails to keep the bond required, if any, under the provisions of section seven of this article in full force and effect, the license of such licensee shall automatically be suspended unless and until a bond or other security, if required, is furnished to the racing commission, in which event the suspension shall be vacated.

(e) Any suspension of a license or permit shall continue for the period specified in the order of suspension, or until the cause therefor has been eliminated or corrected, as set forth in the order of suspension. Revocation of a license or permit shall not preclude application for a new license or permit, which application shall be processed in the same manner and the application approved or denied and the license or permit issued or refused on the same grounds as any other application for a license or permit is processed, considered and passed upon, except that any previous suspension and the revocation may be given such weight in deciding whether to approve or deny such application and issue or refuse such license or permit as is meet and proper under all of the circumstances.

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

(a) Whenever the racing commission shall deny an application for a license or a permit or shall suspend or revoke a license or a permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant, licensee or permit holder, as the case may be, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order

shall state the grounds for the action taken, and, in the case of an order of suspension or revocation, shall state the effective date of such suspension or revocation.

(b) Whenever a majority of the stewards at any horse or dog race meeting shall suspend or revoke a permit, such suspension or revocation shall be effective immediately. The stewards shall, as soon as thereafter practicable, make and enter an order to that effect and serve a copy thereof on the permit holder, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken.

(c) Any person adversely affected by any such order shall be entitled to a hearing thereon if, within twenty days after service of a copy thereof if served in any manner in which a summons may be served as aforesaid or within twenty days after receipt of a copy thereof if served by certified mail as aforesaid, such person files with the racing commission a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license, but a demand for hearing shall not operate to stay or suspend the execution of any order suspending or revoking a permit. The racing commission may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against such person and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a written demand for such hearing, the racing commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the racing commission upon its own motion or for good cause shown by the person demanding the hearing.

(e) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(f) Any such hearing shall be conducted by a quorum of the racing commission. For the purpose of conducting any such hearing, any member of the racing commission shall have the power and authority to issue subpoenas and subpoenas duces tecum as provided for in section six of this article. Any such subpoenas and subpoenas duces tecum shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(g) At any such hearing the person who demanded the same may represent such person's own interests or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the racing commission, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission at any such hearing.

(h) After any such hearing and consideration of all of the testimony, evidence and record in the case, the racing commission shall render its decision in writing. The written decision of the racing commission shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(i) The decision of the racing commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section seventeen of this article.

§19-23-17. Judicial review; appeal to supreme court of appeals; legal representation for racing commission.

Any person adversely affected by a decision of the racing commission rendered after a hearing held in accordance with the provisions of section sixteen of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section, except that execution of a decision of suspension or revocation of a license shall be stayed or suspended pending a final judicial determination, and except that execution of a decision of suspension or revocation of a permit shall not be stayed or suspended pending a final judicial determination.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the racing commission in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission at any such appeal proceedings.

## PART XI. CONSTRUCTION AND ESTABLISHMENT OF HORSE

AND DOG RACETRACKS.

§19-23-18. Horse and dog racetrack construction permits; application therefor.

(a) No person shall construct and establish a horse or dog racetrack where horse or dog race meetings are to be held or conducted and the pari-mutuel system of wagering permitted or conducted without a construction permit issued by the racing commission in accordance with the provisions of this article.

(b) Any person desiring to obtain a construction permit shall file with the racing commission an application therefor. The racing commission shall prescribe blank forms to be used in making such application. Such application shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) Whether the applicant, any partner, member, officer or director has previously applied for a construction permit under the provisions of this article or for a similar construction permit in this or any other state, and if so, whether such construction permit was issued or refused;

(5) The name and address of any person who has agreed to lend the applicant money for use in connection with such proposed horse or dog racetrack;

(6) The name and address of any other person who is financially interested in the proposed horse or dog racetrack;

(7) The county where the proposed horse or dog racetrack is to be constructed and established, and if such proposed horse or dog racetrack is to be constructed and established across county lines, the identification of each such county;

(8) Plans showing, in such detail as the racing commission may require, the proposed horse or dog racetrack and all buildings and improvements to be used in connection therewith; and

(9) Such other information as the racing commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(c) Such application shall be verified by the oath or affirmation of the applicant for such construction permit, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be.

(d) No application for a construction permit for the construction and establishment of a dog racetrack shall be received or acted upon by or a construction permit issued by the racing commission for the construction and establishment of a dog racetrack which is to be located within fifty-five air miles of an existing horse racetrack: Provided, That nothing herein contained shall be construed to prohibit establishment of a dog racetrack in conjunction with harness racetrack facilities existing on and operating as a harness racetrack the first day of February, one thousand nine hundred seventy-four, if such facilities are or can be made suitable: Provided, That nothing in this section exempts any such county from the local option provisions of this article.

§19-23-19. Tentative approval of application for construction permit; denial of application; publication of notice.

(a) Upon the basis of the application and all other information before it, the racing commission shall make and enter an order granting tentative approval of the application if it finds:

(1) That the applicant intends to proceed in good faith to construct and establish a horse or dog racetrack complying in all particulars with the law of this state, the provisions of this article and any reasonable rules and regulations of the racing commission;

(2) That the plans for such proposed horse or dog racetrack are adequate and have been prepared with due regard to the safety of all persons who will use such horse or dog racetrack;

(3) That the applicant is financially able to complete such horse or dog racetrack in accordance with the plans submitted with such application; and

(4) That the construction and establishment of such proposed horse or dog racetrack would be in the best interests of horse or dog racing within this state.

(b) Otherwise, the racing commission shall deny the application and refuse to grant tentative approval thereof. The racing commission shall make and enter an order to that effect and all of the provisions of section sixteen pertaining to the denial of any application for a license and an order in connection therewith and the provisions of section seventeen pertaining to judicial review of a decision of the racing commission shall govern and control. The denial and refusal shall be final and conclusive unless a hearing thereon shall be demanded pursuant to the provisions of section sixteen of this article considered in pari materia with the preceding sentence of this subsection (b).

(c) If the racing commission grants tentative approval of such application, it shall prepare and publish a notice to the public that the racing commission has granted tentative approval of the application and that the racing commission will confirm such tentative approval

and issue a construction permit to the applicant at the expiration of sixty days from the date of the first publication of such notice (which date shall be specified in said notice), unless within said time a petition for a local option election shall have been filed, in accordance with the provisions of this article, with the county commission of the county in which any integral part of said horse or dog racetrack is proposed to be constructed and established. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any integral part of such proposed horse or dog racetrack is to be constructed and is established.

§19-23-20. Petition for local option election.

A petition for a local option election on the question of the proposed construction and establishment of a horse or dog racetrack must be signed by qualified voters residing within the county equal to at least fifteen percent of the qualified voters within said county at the last general election. Said petition may be in any number of counterparts, but must be filed with the county commission prior to the expiration of the sixty-day period specified in the notice published by the racing commission in accordance with the provisions of section nineteen of this article. Said petition shall be sufficient if in substantially the following form: "PETITION FOR LOCAL OPTION ELECTION CONCERNING THE PROPOSED CONSTRUCTION AND ESTABLISHMENT OF A (HORSE OR

DOG) RACETRACK IN \_\_\_\_\_ COUNTY, WEST VIRGINIA.

"Each of the undersigned certifies that he or she is an individual residing in \_\_\_\_\_ County, West Virginia, and is a qualified voter in said county under the laws of this State, and that his or her name, address and the date of signing this petition are correctly set forth below.

"The undersigned petition the county commission to call and hold a local option election as required by article twenty-three, chapter nineteen of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, upon the following question: 'Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a (horse or dog) racetrack where (horse or dog) race meetings may be held or conducted and the pari-mutuel system of wagering permitted and conducted in \_\_\_\_\_ County, West Virginia?'

Name	Address	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Each individual signing must specify either his post-office address or his street name and number.)"

§19-23-21. Local option election procedure; form of ballots or ballot labels.

(a) Upon the timely filing of a proper petition for a local option election in accordance with the provisions of section twenty of this article, the county commission of the county in which all or any integral part of a proposed horse or dog racetrack is to be constructed and established is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to the construction and establishment of all or any integral part of such horse or dog racetrack within said county. Upon the timely filing of a proper petition as aforesaid, the county commission shall enter an order calling for a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. A copy of the order so entered by the county commission shall be served upon the racing commission and the racing commission shall take no further action in connection with the issuance of such construction permit until said local option election shall be held. Said county commission shall give notice of such local option election by publication of such 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 such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding the date of said election.

(b) The local option election ballots, or ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a (horse or dog) racetrack where (horse or dog) race meetings may be held or conducted and the pari- mutuel system of wagering permitted and conducted?

// Yes // No (Place a cross mark in the square opposite your choice.)"

(c) Each individual qualified to vote in said county at a primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The votes in said local option election shall be counted and returns made by the election officers, the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of this state relating to primary and general elections insofar as the same

are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission.

§19-23-22. Issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of construction permit.

(a) The racing commission shall, after the certification of the results of such local option election, issue such construction permit if a majority of the legal votes cast at such election were in favor of the issuance of a construction permit. If a majority of the legal votes cast at such election were opposed to the issuance of a construction permit, the commission shall not issue a construction permit.

(b) A construction permit issued as aforesaid shall remain valid only for a three-month period, except that if the racing commission is satisfied that the construction permit holder has in good faith started and is continuing construction of the proposed horse or dog racetrack, the racing commission may extend the construction permit for additional successive three-month periods, but in no event shall the aggregate time of such construction permit exceed a period of twenty-four months from the date of the issuance of the construction permit.

(c) No construction permit which may be or has been issued under provisions of this article or the former provisions of this article shall be transferred or assigned in any manner whatever without the written consent of the racing commission.

§19-23-23. Further elections restricted.

When a local option election in accordance with the provisions of this article or the former provisions of this article shall have been held in a county, another such election shall not be held in said county for a period of five years, and within that time the racing commission shall not accept or act upon any application for any other construction permit within said county, except that if an election be held seeking the approval of a permit for the construction of a horse racetrack another election may be held within such five-year period seeking the approval of a permit for the construction of a dog racetrack, and the reverse shall also be true. In the event a horse or dog racetrack shall be constructed in a county pursuant to a construction permit issued by the racing commission in accordance with the provisions of this article, no local option election shall thereafter be held as to any horse or dog racetrack constructed and established pursuant to such construction permit: Provided, That a local option election has been held for the type of racing to be conducted.

§19-23-24. §§19-23-18 to 19-23-23 inapplicable to horse racetracks already constructed and established.

Nothing contained in sections eighteen through twenty-three of this article shall apply to any horse racetrack heretofore constructed and established in this state and at which horse race meetings have been held or conducted by the owners or operators thereof under and pursuant to licenses issued by the racing commission in accordance with the provisions of this article or the former provisions of this article. The construction and establishment of any new or additional horse racetrack within a county in which a horse racetrack has heretofore been constructed and established and operated under licenses issued by the racing commission, whether by the persons owning and operating such existing horse racetrack or others, shall be subject to all of the provisions of this article.

#### PART XII. INJUNCTIVE RELIEF.

§19-23-25. Application to enjoin violations.

Whenever it appears to the racing commission that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the racing commission, the racing commission may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section twenty-six of this article.

Upon application by the racing commission, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated hereunder and all orders and final decisions of the racing commission. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The racing commission shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings

in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission in any such proceedings.

### PART XIII. OFFENSES AND PENALTIES.

#### §19-23-26. Offenses and penalties.

(a) Any person holding or conducting, or assisting, aiding or abetting in the holding or conducting, of any horse or dog race meeting at which horse or dog racing and the pari-mutuel system of wagering on the same is permitted or conducted, without a license issued by the racing commission, which license remains unexpired, unsuspended and unrevoked, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one thousand dollars for each day of such unauthorized horse or dog race meeting, or by imprisonment in jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That no conviction shall be had or punishment imposed upon any licensee, whose license has been suspended or revoked, for holding or conducting a horse or dog race meeting while execution of the order of suspension or revocation is stayed or suspended as provided in this article.

(b) Any person violating any provision of section four or section five of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in jail for not less than six months nor more than one year, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said section four or section five carries out any duties of, or performs any work for, the racing commission, which constitute the basis of the charge or complaint.

(c) Any person violating any provision of subsection (b), section two of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in jail for not less than one month nor more than two months, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said subsection (b) carries out any duties of, or performs any work for, the racing commission, which constitute the basis of the charge or complaint.

(d) False swearing before the racing commission on the part of any witness shall be deemed perjury and shall be punished as such.

§19-23-27. Repealer.

All acts, whether general or local, public or private, inconsistent with the provisions of this article are hereby repealed to the extent of their inconsistency.

§19-23-28. Effect of article on existing rules and regulations, licenses and permits.

All rules and regulations promulgated by the racing commission and in effect on the effective date of this article shall remain in full force and effect until superseded, or except as amended or repealed, in accordance with the provisions of this article.

Any license or permit issued by the racing commission under the former provisions of article twenty-three of this chapter, which has not expired and which has not been suspended or revoked prior to the effective date of this article, shall be governed by the provisions of this article and shall remain valid until the expiration thereof, unless such license or permit is sooner suspended or revoked in accordance with the provisions of this article.

#### PART XV. SEVERABILITY.

§19-23-29. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

§19-23-30. Termination of the racing commission.

Pursuant to the provisions of article ten, chapter four of this code, the racing commission shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

### CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS

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

§29-22-1. Short title.

This article shall be known and may be cited as the "State Lottery Act."

§29-22-2. Legislative findings and intent.

The Legislature finds and declares that the purpose of this article is to establish and implement a state-operated lottery under the supervision of the state lottery commission and the director of the state lottery office who shall be appointed by the governor and hold broad authority to administer the system in a manner which will provide the state with a highly efficient operation.

§29-22-3. Definitions.

(a) "State lottery commission" or "commission" means the state lottery commission created by this article.

(b) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(c) "Lottery" means the public gaming systems or games established and operated by the state lottery office.

(d) "Lottery tickets" or "tickets" means tickets or other tangible evidence of participation used in lottery games or gaming systems.

§29-22-4. State lottery commission created; composition; qualifications; appointment; terms of office; chairman's removal; vacancies; compensation and expenses; quorum; oath and bond.

(a) There is hereby created a state lottery commission which shall consist of seven members, all residents and citizens of the state, one who shall be a lawyer, one who shall be a certified public accountant, one who shall be a computer expert, one who shall have not less than five years experience in law enforcement and one who shall be qualified by experience and training in the field of marketing. The two remaining members shall be representative of the public at large. The commission shall carry on a continuous study and investigation of the lottery throughout the state and advise and assist the director of the state lottery. The commission members shall be appointed by the governor, by and with the advice and consent of the Senate, no later than the first day of July, one thousand nine hundred eighty-five. The terms of members first appointed expire as designated by the governor at the time of appointment: One at the end of one year; two at the end of two years; one at the end of three years; two at the end of four years; and one at the end of five years. Upon the effective date of this section, as vacancies occur, appointments to fill vacancies shall be made so that at least two members are appointed from each congressional district existing as of the first day of January, one thousand nine hundred ninety-three. No more than four members of such commission shall belong to the same political party. Members serve overlapping terms of five years and are eligible for successive appointments to the commission. On the first day of July of each year, the commission shall select a chairman from its membership. The governor may remove any commission member for cause, notwithstanding the provisions of section four, article six, chapter six of this code. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of the term. No person convicted of a felony or crime involving moral turpitude shall be eligible for appointment nor appointed as a commissioner.

(b) The board shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties: Provided, That the per mile rate to be reimbursed shall be the same rate as authorized for members of the Legislature. All such payments shall be made from the state lottery fund.

(c) At least one meeting per month shall be held by the commission. Additional meetings may be held at the call of the chairman, director or majority of the commission members.

(d) A majority of the members constitutes a quorum for the transaction of business, and all actions require a majority vote of the members present.

(e) Before entering upon the discharge of the duties as commissioner, each commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of the office. The executed oath and bond shall be filed in the office of the secretary of state.

§29-22-5. State lottery commission; powers and duties; cooperation of other agencies.

(a) The commission shall have the authority to:

(1) Promulgate rules in accordance with chapter twenty-nine-a of this code: Provided, That those rules promulgated by the commission that are necessary to begin the lottery games selected shall be exempted from the provisions of chapter twenty-nine-a of this code in order that the selected games may commence as soon as possible;

(2) Establish rules for conducting lottery games, a manner of selecting the winning tickets and manner of payment of prizes to the holders of winning tickets;

(3) Select the type and number of public gaming systems or games, to be played in accordance with the provisions of this article;

(4) Contract, if deemed desirable, with the educational broadcasting authority to provide services through its microwave interconnection system to make available to public broadcasting stations servicing this state, and, at no charge, for rebroadcast to commercial broadcasting stations within this state, any public gaming system or games drawing;

(5) Enter into interstate lottery agreements with other states;

(6) Adopt an official seal;

(7) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided;

(8) Prescribe a schedule of fees and charges;

(9) Sue and be sued;

(10) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights of any property, real or personal, consistent with the objectives of the commission as set forth in this article;

(11) Designate one of the deputy directors to serve as acting director during the absence of the director;

(12) Hold hearings on any matter of concern to the commission relating to the lottery, subpoena witnesses, administer oaths, take testimony, require the production of evidence and documentary evidence and designate hearing examiners and employees to so act;  
and

(13) To make and enter into all agreements and do all acts necessary or incidental to the performance of its duties and the exercise of its powers under this article.

(b) Departments, boards, commissions or other agencies of this state shall provide assistance to the state lottery office upon the request of the director.

(c) Upon the request of the deputy director for the security and licensing division in conjunction with the director, the attorney general, department of public safety and all other law-enforcement agencies shall furnish to the director and the deputy director such information as may tend to assure the security, honesty, fairness and integrity in the operation and administration of the lottery as they may have in their possession, including, but not limited to, manual or computerized information and data. The director is to designate such employees of the security and licensing division as may be necessary to act as enforcement agents. Such agents are authorized to investigate complaints made to the commission or the state lottery office concerning possible violation of the provisions of this article and determine whether to recommend criminal prosecution. If it is determined that action is necessary, an agent, after approval of the director, is to make such recommendation to the prosecuting attorney in the county wherein the violation occurred or to any appropriate law-enforcement agency.

§29-22-6. Lottery director; appointment; qualifications; oath and bond; salary.

(a) There is hereby created the position of the lottery director whose duties include the management and administration of the state lottery office. The director shall be qualified by training and experience to direct the operations of the lottery, and shall be appointed, within ninety days of the effective date of this article, by the governor and shall serve at the will and pleasure of the governor. No person shall be appointed as lottery director who has been convicted of a felony or crime involving moral turpitude.

(b) The director serves on a full-time basis and may not be engaged in any other profession or occupation.

(c) The director:

(1) Shall have a good reputation, particularly as a person of honesty and integrity, and shall favorably pass a thorough background investigation prior to appointment;

(2) The director shall not hold political office in the government of the state either by election or appointment while serving as director;

(3) The director shall be a citizen of the United States and must become a resident of the state within ninety days of appointment;

(4) The director shall receive an annual salary as provided for by the governor; and

(5) The director and his or her executive secretary are ineligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code.

(d) Before entering upon the discharge of the duties as director, the director shall take and subscribe to the oath of office prescribed in section 5, article IV of the constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of the office. The executed oath and bond shall be filed in the office of the secretary of state.

§29-22-7. Divisions of the state lottery office.

There shall be established within the state lottery office a security and licensing division; a personnel, data processing, accounting and administration division; and a marketing, education and information division. Each division shall be under the supervision of a deputy director who shall administer and coordinate the operation of authorized activities in the respective division. Each deputy director shall have had three years management experience in areas pertinent to his prospective responsibilities and an additional three years of experience in the same field.

§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.

(a) The director shall have the authority to:

(1) Appoint, with the approval of the commission, a deputy director for each of the divisions established in this article. The deputy directors appointed shall serve at the will and pleasure of the director at an annual salary established by the commission. Deputy directors shall not be eligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code;

(2) The director shall hire, pursuant to the approval of the commission, such professional, clerical, technical and administrative personnel as may be necessary to carry out the provisions of this article. No person shall be employed by the lottery who has been

convicted of a felony or other crime involving moral turpitude. Each person employed by the commission shall execute an authorization to allow an investigation of that person's background;

(3) Designate the number and types of locations at which tickets may be sold.

(b) Effective the first day of July, one thousand nine hundred eighty-six, all employees of the commission, except as otherwise provided herein, shall be in the classified service under the provisions of article six, chapter twenty-nine of this code.

(c) The director shall, pursuant to the approval of the commission, prepare and submit the annual proposed appropriations for the commission to the governor.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

(a) The commission shall initiate operation of the state lottery on a continuous basis at the earliest feasible and practical time, first initiating operation of the preprinted instant winner type lottery. The lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good.

Other state government departments, boards, commissions, agencies and their officers shall cooperate with the lottery commission so as to aid the lottery commission in fulfilling these objectives.

(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery:

Provided, That:

(1) No lottery may use the results of any amateur or professional sporting event, dog race or horse race to determine the winner.

(2) Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry.

(3) In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

(4) No lottery utilizing a machine may use machines which dispense coins or currency.

(5) A lottery game which utilizes an electronic computer and a video screen to operate a lottery game and communicate the results thereof, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player, may only be made available by the commission in (A) private clubs licensed in accordance with the provisions of article seven,

chapter sixty of this code, (B) retail licensees licensed in accordance with the provisions of article three-a of said chapter sixty, and (C) in the facilities of class A licensees which are licensed in accordance with the provisions of section nine, article sixteen, chapter eleven of this code, in which facility at least seventy-five percent of the nonintoxicating beer sold by the class A licensee in the preceding year was sold for consumption on the premises: Provided, That if sales information is not available for the preceding year, the commission in its discretion may base any issuance or denial of an annual license upon a reasonable projection of the volume of sales of nonintoxicating beer for consumption on the premises as a percentage of the total sales of nonintoxicating beer.

(6) Selection of the winner must be predicted totally on chance.

(7) Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

(8) All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

(9) The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the purchase of annuities for prizes payable in installments.

(10) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid more than once, and, in the event of a binding determination by the commission that more than one person is entitled to a particular prize, the sole remedy of the claimants shall be the award to each of them of an equal share in the single prize.

(11) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery, or the estimated odds of winning such prizes shall be printed on any lottery ticket, where feasible, or in descriptive materials, and shall be available at the offices of the commission.

(12) No prizes shall be paid which are invalid and not contemplated by the prize structure of the lottery involved.

(13) By purchasing a ticket or participation in a lottery, a participant agrees to abide by, and be bound by, the lottery rules which apply to the lottery or game play involved. An abbreviated form of such rules may appear on tickets and shall appear on descriptive materials and shall be available at the offices of the commission. A participant in a lottery agrees that the determination of whether the participant is a valid winner is subject to the lottery or game play rules and the winner validation tests established by the commission.

The determination of the winner by the commission shall be final and binding upon all participants in a lottery and shall not be subject to review or appeal.

(14) The commission shall institute such security procedures as it deems necessary to ensure the honesty and integrity of the winner selection process for each lottery. All such security and validation procedures and techniques shall be, and remain, confidential, and shall not be subject to any discovery procedure in any civil judicial, administrative or other proceeding, nor subject to the provisions of article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(c) The commission shall proceed with operation of such additional lottery games, including the implementation of games utilizing a variety of existing or future technological advances at the earliest feasible date. The commission may operate lottery games utilizing electronic computers and electronic computer terminal devices and systems, which systems must include a central site system of monitoring the lottery terminals utilizing direct communication systems, or other technological advances and procedures, ensuring honesty and integrity in the operation of the lottery.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic

distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following:

(1) The commission shall issue its annual license to the lottery sales agents for each lottery outlet and for such fee as is established by the commission to cover its costs thereof, but not to exceed one thousand dollars. Application for licensing as a lottery sales agent shall be on forms to be prescribed and furnished by the director.

(2) No licensee may engage in business exclusively as a lottery sales agent.

(3) The commission shall ensure geographic distribution of lottery sales agents throughout the state.

(4) Before issuance of a license to an applicant, the commission shall consider factors such as the financial responsibility, security, background, accessibility of the place of business or activity to the public, public convenience and the volume of expected sales.

(5) No person under the age of twenty-one may be licensed as an agent. No licensed agent may employ any person under the age of eighteen for sales or dispensing of lottery tickets or materials or operation of a lottery terminal.

(6) A license is valid only for the premises stated thereon.

(7) The director may issue a temporary license when determined necessary.

(8) A license is not assignable or transferable.

(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner to be determined by the director, or shall provide such other security, in an amount, form and manner determined by the director, as will ensure the performance of the agent's duties and responsibilities as a licensed lottery agent or the indemnification of the commission.

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations; parks and recreation commissions or similar authorities; senior citizen centers, state-owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages; political subdivisions or their agencies or departments, state agencies, commission-operated agencies; persons licensed under the provisions of article twenty-three, chapter nineteen of this code, and religious, charitable or seasonal businesses.

(11) Licensed lottery sales agents shall receive six and one quarter percent of gross sales as commission for the performance of their duties: Provided, That a portion of the commission not to exceed one and one quarter percent of gross sales may be paid from unclaimed prize moneys accumulated under section sixteen of this article. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission.

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made.

(13) No person or entity or subsidiary, agent or subcontractor thereof may receive or hold more than twenty-five percent of the licenses to act as licensed lottery sales agent in any one county or municipality nor more than five percent of the licenses issued throughout this state: Provided, That the limitations of twenty-five percent and five percent in this subdivision do not apply if it is determined by the commission that there are not a sufficient number of qualified applicants for licenses to comply with these requirements.

(b) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter

twenty-nine-a of this code, specifying the terms and conditions for contracting with lottery retailers for sale of preprinted instant type lottery tickets and may provide for the dispensing of such tickets through machines and devices. Tickets may be sold or dispensed in any public or private store, operation or organization, without limitation. The commission may establish an annual fee not to exceed fifty dollars for such persons, per location or site, and shall issue a certificate of authority to act as a lottery retailer to such persons. The commission shall establish procedures to ensure the security, honesty and integrity of the lottery and distribution system. The commission shall establish the method of payment, commission structure, methods of payment of winners, including payment in merchandise and tickets, and may require prepayment by lottery retailers, require bond or security for payment and require deposit of receipts in accounts established therefor. Retailers shall prominently display the certificate of authority issued by the commission on the premises where lottery sales are made.

§29-22-11. Prohibited acts; restrictions on sales agents and retailers; unauthorized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal penalties for prohibited acts.

(a) No person may sell lottery tickets or materials unless authorized by the commission to so act. No person may perform the functions of a licensed lottery sales agent unless licensed by the commission. No person may perform the functions of a lottery retailer unless authorized therefor by the commission. No person may sell a lottery ticket or material at a price greater than that established by the commission; except, that nothing in this section may be construed to prevent any person from giving a lottery ticket or material to another as a gift or bonus. No person other than a licensed lottery sales agent or an employee thereof, while acting within the scope of such employment, shall sell lottery tickets, and then only on the premises stated on the license.

(b) No ticket shall be sold to any person under the age of eighteen years. This section does not prohibit the purchase of a ticket by a person eighteen years of age or older for the purpose of making the ticket a gift to a person less than that age.

(c) No ticket may be purchased by and no prizes received by or awarded to any officers or employees of the commission or any member of their immediate household.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.

Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes or counterfeits a lottery ticket is guilty of a felony, and, upon conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year or both fined and imprisoned.

§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.

(1) The commissioners, the director, the deputy directors and the employees of the lottery may not, directly or indirectly, individually, or as a member of a partnership or as a shareholder of a corporation have an interest in dealing in a lottery.

(2) A member of the commission, the director, and an employee of the lottery or a member of their immediate families may not ask for, offer to accept, or receive any gift, gratuity or other thing of value from any person, corporation, association or firm contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery or from an applicant for a license to sell tickets in the lottery or from a licensee.

(3) A person, corporation, association or firm contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery, an applicant for a license to sell tickets in the lottery or a licensee may not offer a member of the commission, an employee of the lottery, or a member of their immediate families any gift, gratuity or other thing of value.

§29-22-14. Administrative violations of articles; hearing; administrative penalties.

(a) In addition to any criminal penalty imposed under the provisions of this article or any other chapter of this code:

(1) No person shall be appointed, employed or continue to serve in any position or employment with the commission who has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude. The commission shall remove or discharge any person so convicted.

(2) No person shall be licensed as a lottery sales agent nor authorized to act as a lottery retailer who has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude. The commission shall revoke the license or the authority of any person so convicted.

(3) No person shall be permitted to act as vendor to the commission who has been convicted of any violation of this article, or of any felony or any crime related to theft, bribery or gambling or involving moral turpitude. The commission shall deny the privilege of acting as a vendor to the commission for any person so convicted.

(b) Any person aggrieved by any action of the commission under the provisions of this article may in writing to the commission request a hearing which shall be held before the commission or its duly authorized representative. Upon receipt of the request for a

hearing, the commission shall set a hearing date within thirty days of the receipt of the request and shall notify the aggrieved party in writing at least seven days in advance of the hearing date of the time, date and place of the hearing. The commission shall issue an order within thirty days after the hearing date, either affirming or reversing the action of the director. The provisions of chapter twenty-nine-a of this code shall apply to such hearings.

(c) After hearing and determination that any provision of this article or rule or regulation of the commission has been violated, the commission may impose a penalty not to exceed one hundred dollars per violation.

§29-22-15. Payment of prizes to minors.

If the person entitled to a prize or any winning ticket is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a legal guardian of the minor of a check or draft payable to the order of the minor. If the person entitled to a prize or any winning ticket is under the age of eighteen years, and the prize is five thousand dollars or more, the director may direct payment to the minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a legal guardian of the minor as guardian for the minor. The person so named as guardian shall have qualified under and shall have the same duties and powers as a person designated as a guardian in the manner as provided in article ten, chapter forty-four of this code. The commission and director shall be discharged of all further liability upon payment of a prize pursuant to this section.

§29-22-16. Disposition of unclaimed prize money.

Unclaimed prize money for the prize on a winning ticket shall be retained by the director for the person entitled thereto for one hundred eighty days after the drawing in which the prize was won or for one hundred eighty days after the announced end of a game. If no claim is made for said money within one hundred eighty days, the prize money reverts to the state lottery fund for the purposes of paying a portion of the sales commission to lottery sales agents pursuant to section ten of this article or for awarding additional prizes.

The commission shall promulgate rules for the awarding of additional prizes.

§29-22-17. Lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability.

(a) The commission shall establish rules and regulations for accounting for sales of lottery tickets and materials and accounting for all funds from sales and dispensing of lottery tickets, materials and games. Such regulations shall require all licensed lottery sales agents and lottery retailers to deposit in the bank account of the state treasurer in banks regularly used by said agents or retailers and

approved by the director all moneys received by such agents and retailers from the sale of lottery tickets, materials and games, within twenty-four hours of the receipt thereof, and in accordance with the provisions of section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, unless the director specifies a different time within which the deposit must be made. The state treasurer shall credit all funds so deposited to the credit of the state lottery fund. The director shall require such reports of lottery receipts and transactions in the sale of lottery tickets and materials in such form and containing such information as the director deems necessary.

(b) All funds from the sale of lottery tickets, materials and games are the funds of the state and until deposited in the accounts and in the manner specified by the director are held in trust by the person or entity receiving them for deposit. If a person or entity fails to collect, account for or deposit such funds to the accounts and in the manner specified by the director, such person and entity shall be personally liable for the full amount of such funds. If the person so failing is an association, corporation or other entity, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association, corporation or entity, and payment may be enforced against them as against the association, corporation or entity.

§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 shall consist 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 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 ten-year 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, 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 and the education, arts, sciences and tourism debt service fund 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 and the state building commission which are secured by lottery proceeds. No additional transfer shall 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 shall 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 through the twentieth day of June, two thousand five, 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 shall 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 lottery director shall allocate monthly, from the net profits of the lottery for the preceding month, an amount equal to one million five hundred thousand dollars into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter

eighteen of this code.

(i) On or before the twenty-eighth day of each month through the twenty-eighth day of June, two thousand twenty-one, 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 shall the monthly amount allocated exceed one million dollars nor shall 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.

(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 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 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 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.

§29-22-19. Post audit of accounts and transactions of office.

The legislative auditor shall conduct a yearly post audit of all accounts and transactions of the state lottery office. The cost of the audit shall be paid out of the state lottery fund moneys designated for payment of operating expenses. The commission shall have an annual audit performed by an independent certified public accountant, and such audit may be accepted by the legislative auditor in lieu of performance of its yearly post audit.

§29-22-20. Monthly and annual reports.

(a) The director shall, upon the twentieth day of each month, provide the joint committee on government and finance of the Legislature with a report reviewing the lottery operations, including, but not limited to, the amount of gross sales, the amount of net profit, the types of games being played, the number of licensed sales agents, the names and amounts of winners and any other information requested by the Legislature or by the joint committee on government and finance.

(b) The director shall, no later than the tenth day of each regular session of the Legislature, provide to the Legislature, legislative auditor, governor and state treasurer an annual report focused upon subjects of interest concerning lottery operations, including, but not limited to, an annual financial analysis of the lottery operations, a discussion of the types of games played and revenues generated, a statement of expenditures for the last fiscal year, a summary of the benefit programs and recommendations to the Legislature.

§29-22-21. Officials who may appear at lottery drawing.

No elected or appointed official, other than the members of the lottery commission, the director or deputy directors, may preside or appear at any lottery drawing.

§29-22-22. Exemption of lottery prizes from state and local taxation.

No state or local taxes of any type whatsoever shall be imposed upon any prize awarded by the state lottery.

§29-22-23. Procurement; disclosures by vendors and related persons and entities; authorizing background investigation; unenforceability of contracts in contravention of section.

(a) The commission shall utilize the provisions of article three, chapter five-a of this code in the procurement of all commodities, printing, services and goods, materials, lottery tickets and other items necessary for the commission and lottery, subject to the provisions of subsection (b) of this section.

(b) For the printing of tickets used in any lottery game, any goods or services involving the receiving or recording of number selection of any lottery game, or any goods or services involving the determination of winners on any lottery game, which are hereby referred to as major procurements, the commission shall evaluate the competence, integrity, character, reputation and background of the vendor. To allow for this evaluation, potential vendors shall supply the following information prior to the submission of an initial bid or proposal and on or before the first day of July of each year thereafter;

(1) If the vendor is a corporation, the officers, directors and each stockholder in such corporation; except that, in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and address of those known to the corporation to own beneficially five percent or more of such securities need be disclosed; and

(2) If the vendor is a partnership or joint venture, all of the general and limited partners or joint venturers; if such general and limited partners or joint venturers are themselves a partnership, joint venture, trust, association, corporation, subsidiary or intermediary corporation, the same information required by this section shall be supplied for such entities also;

(3) If the vendor is a trust, the name of the trustee;

(4) If the vendor is an association, the members, officers and directors; and

(5) If the vendor intends to or does subcontract to another person or entity any integral or substantial portion of the work to be performed in supplying such materials or equipment, then the vendor shall supply the above-mentioned information for all such persons or entities.

(6) The following information shall also be submitted:

(A) Other jurisdictions in which the vendor has contracts to supply gaming materials or equipment and the types of gaming materials or equipment involved therewith;

(B) The details of any felony conviction of a criminal offense, state or federal, of the vendor or any person whose name and address are required by this section;

(C) The details of any disciplinary action of a judicial nature relating to gaming taken by any state or person against the vendor or any person whose name and address are required by this section;

(D) The number of years the vendor has been in the business of supplying gaming materials or equipment;

(E) A disclosure of each state and jurisdiction in which the vendor has been denied, or has had revoked a gaming license of any kind, and the disposition of such in each such state or jurisdiction. If any gaming license has been revoked or has not been renewed or any gaming license application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying such failure to receive such license must be disclosed;

(F) A disclosure of the details of any bankruptcy, insolvency, reorganization or any pending litigation relating to gaming of each vendor;

(G) A signed authorization by each vendor and officer thereof allowing the deputy director for security to conduct a background investigation of such person; and

(H) Such other information, accompanied by such documents, as the commission, by rule or contract procurement documents, may require as being necessary or appropriate in the public interest to accomplish the purposes of this section.

(c) No contract for the supply of gaming materials or equipment for use in the operation of the state lottery is enforceable against the state if the provisions of this section are not complied with.

§29-22-24. Disclosures by vendors and related persons and entities of political contributions.

(a) For purposes of this section:

"Vendor" means any person required to make any disclosure under the provisions of section twenty-three of this article.

"Major procurement" has the same meaning as set out in section twenty-three of this article.

(b) Prior to the submission of the initial bid or proposal, and on or before the first day of July of each year thereafter, a vendor who is submitting an initial bid or proposal to, or who has submitted such within the preceding twelve months to, or who has a current contract with, the state lottery commission or any state agency, board or commission or political subdivision, for any major procurement, shall file with the secretary of state a detailed itemized disclosure statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth each contribution to any local, state or federal political candidate or political committee in this state, made in the preceding three years, or a statement that no such contributions have been made.

§29-22-25. Preemption of state laws or local regulation.

(a) No state or local law or regulation providing any penalty, disability, restriction, regulation or prohibition for the manufacture,

transportation, storage, distribution, advertising, possession or sale of any lottery tickets or materials or for the operation of any lottery shall apply to authorized operations by or for the state lottery or commission.

(b) The provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict herewith: Provided, That nothing herein shall invalidate any zoning law, or Sunday closing law under article ten, chapter sixty-one of this code.

(c) Nothing in this article shall be deemed to permit the operation of any lottery otherwise prohibited by the laws of this state, not owned and operated by this state and permitted by this article.

#### §29-22-26. Continuation of state lottery commission.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state lottery commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state lottery commission shall continue to exist until the first day of July, two thousand one.

#### §29-22-27. Penalties for criminal violations.

(a) Any person violating any of the provisions of this article, except sections eleven and twelve of this article, is guilty of a misdemeanor, and, upon conviction thereof, for the first offense, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Any person violating any of the provisions of this article, except sections eleven and twelve of this article, shall, for the second offense, be guilty of a felony, and, upon conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year, or both fined and imprisoned.

#### §29-22-27a. Payment of prizes to the child support enforcement division.

(a) Upon notification by the child support enforcement division created by article two, chapter forty-eight-a of this code that a person entitled to a prize or any winning ticket is delinquent in the payment of child support or spousal support, the director shall forward to said child support enforcement division such portion of any prize distributed directly from the state lottery office and that is available to pay all or any portion of the delinquent support payment.

(b) The director shall enter into a written agreement with the child support enforcement division for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section which shall include a method by which the child support enforcement division may receive the names of lottery winners as expeditiously as possible.

§29-22-28. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.

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

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

§29-22A-1. Short title.

This article shall be known and may be cited as the "Racetrack Video Lottery Act."

§29-22A-2. Legislative findings and declarations.

(a) The Legislature finds and declares that the limited video lottery games authorized by this article are "lotteries" as that term is commonly understood and as that term is used in West Virginia Constitution, article VI, section thirty-six, the video lottery games authorized by this article being lottery games which utilize advanced computer technology; and that the Constitution grants to the Legislature the authority to establish, by general law, the manner of regulation, control, ownership and operation of lottery games in the state of West Virginia.

(b) The Legislature further finds and declares that the state can control, own and operate a video lottery by possessing a proprietary interest in the main logic boards, all erasable, programmable read-only memory chips used in any video lottery equipment or games, and software consisting of computer programs, documentation and other related materials necessary for the video lottery system to be operated. The state may acquire a proprietary interest in video lottery game software, for purposes of this article, through outright ownership or through an exclusive product license agreement with a manufacturer whereby the manufacturer retains copyrighted ownership of the software but the license granted to the state is nontransferable and authorizes the state to run the software program, solely for its own use, on the state's central equipment unit and electronic video terminals networked to the central equipment unit.

(c) The Legislature further finds and declares that the state can control and regulate a video lottery if the state limits licensure to a limited number of video lottery facilities located at qualified horse or dog racetracks, extends strict and exclusive state regulation to all persons, locations, practices and associations related to the operation of licensed video lottery facilities, and provides comprehensive law enforcement supervision of video lottery activities.

(d) The Legislature further finds and declares that since the public has an interest in video lottery operations and since lottery

operations conducted pursuant to West Virginia Constitution, article VI, section thirty-six, and under this article represent an exception to the general statutory policy of the state concerning wagering for private gain, participation in a video lottery by a licensee or permittee under this article shall be deemed a privilege conditioned upon the proper and continued qualification of the licensee or permittee and upon the discharge of the affirmative responsibility of each licensee to provide to the regulatory and investigatory authorities established by this article any assistance and information necessary to assure that the policies declared by this article are achieved. Consistent with this policy, it is the intent of this article to preclude the creation of any property right in any license or permit issued by the state under this article, the accrual of any value to the privilege of participation in any video lottery operation, or the transfer of any license or permit, and to require that participation in video lottery operations be solely conditioned upon the individual qualifications of persons seeking such privilege.

(e) The purpose of this article is to define and provide specific standards for the operation of video lottery games at pari-mutuel racing facilities licensed by the state racing commission pursuant to article twenty-three, chapter nineteen of this code. The Legislature finds and declares that the existing pari-mutuel racing facilities in West Virginia provide a valuable tourism resource for this state and provide significant economic benefits to the citizens of this state through the provision of jobs and the generation of state revenues; that this valuable tourism resource is threatened because of a general decline in the racing industry and because of increasing competition from racing facilities and lottery products offered by neighboring states; and that the survival of West Virginia's pari-mutuel racing industry is in jeopardy unless modern lottery games are authorized at the racetracks. §29-22A-3. Definitions.

As used in this article:

(a) "Applicant" means any person applying for any video lottery license or permit.

(b) "Associated equipment" means any hardware located on a licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

(c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

(d) "Central computer," "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation

and to disable programs.

(e) "Commission" or "state lottery commission" means the West Virginia lottery commission created by article twenty-two of this chapter.

(f) "Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

(g) "Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.

(h) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(i) "Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.

(j) "Display" means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.

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

(l) "Floor attendant" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who corrects paper jams and bill jams in video lottery terminals and also provides courtesy services for video lottery players.

(m) "Gross terminal income" means the total amount of cash inserted into the video lottery terminals operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(n) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia racing commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission.

(o) "Lottery" means the public gaming systems or games established and operated by the state lottery commission.

(p) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building,

constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(q) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(r) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(s) "Pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, That, for the purposes of this article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a facility which was licensed prior to the first day of January, one thousand nine hundred ninety-four, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the racing commission in accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this code.

(t) "Permit" means authorization granted by the commission to a person to function as either a video lottery manufacturer, service technician or validation manager.

(u) "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.

(v) "Player" means a person who plays a video lottery game on a video lottery terminal at a racetrack licensed by the commission to conduct video lottery games.

(w) "Service technician" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who performs service, maintenance and repair on licensed video lottery terminals in this state.

(x) "Video lottery game" means a commission approved, owned and controlled electronically simulated game of chance which is displayed on the screen or video monitor of a video lottery terminal and which:

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

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

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

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

(5) In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either: (A) Signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance, based upon probabilities, that the player may select a winning combination; (B) signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether the additional selection presents the best chance, based upon probabilities, that the player may select a winning combination; or (C) randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

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

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

(y) "Validation manager" means a person who holds a permit issued by the commission and who performs video lottery ticket redemption services.

(z) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer

terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device the player may receive free games or credit that can be redeemed for cash, or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(aa) "Video lottery terminal" means a commission-approved interactive electronic terminal device which is connected with the commission's central computer system, and which is used for the purpose of playing video lottery games authorized by the commission.

A video lottery terminal may simulate the play of one or more video lottery games.

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

#### §29-22A-4. Video lottery games authorized.

The state lottery commission is authorized to implement and operate video lottery games at pari-mutuel racing facilities in this state in accordance with the provisions of this article and the applicable provisions of article twenty-two of this chapter. The provisions of article twenty-two of this chapter apply to this article, except in the event of conflict or inconsistency between any of the provisions of this article and the provisions of article twenty-two of this chapter. In that event, the provisions of this article shall supersede any conflicting or inconsistent provisions contained in article twenty-two of this chapter.

§29-22A-5. Video lottery terminal requirements; filing of specific game rules with the secretary of state; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

(a) Video lottery terminals registered with and approved by the commission for use at licensed racetracks may offer video lottery games regulated, controlled, owned and operated by the commission in accordance with the provisions of this section, and utilizing specific game rules separately filed from time to time by the commission with the secretary of state.

(b) A manufacturer may not sell or lease a video lottery terminal for placement at a licensed racetrack in this state unless the terminal has been approved by the commission. Only manufacturers with permits may apply for approval of a video lottery terminal or associated equipment. The manufacturer shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis,

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

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

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

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

(d) After each test has been completed, the commission shall provide the terminal manufacturer with a report containing findings, conclusions and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with the provisions of this article. Prior to approving a particular terminal model, the commission may require a trial period not in excess of sixty days for a licensed racetrack to test the terminal. During the trial period, the manufacturer may not make any modifications to the terminal model unless such modifications are approved by the commission.

(e) The video lottery terminal manufacturer and licensed racetrack are jointly responsible for the assembly and installation of all video lottery terminals and associated equipment. The manufacturer and licensed racetrack shall not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a request for modification of an existing video terminal prototype is approved by the commission. The request must contain a detailed description of the type of change, the reasons for the change and technical documentation of the change.

(f) Each video lottery terminal approved for placement at a licensed racetrack must conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission. If any video lottery terminal or any video lottery terminal modification, which has not been approved by the commission, is supplied by a manufacturer and operated by a licensed racetrack, the

commission shall seize and destroy all of that licensed racetrack's and manufacturer's noncomplying video lottery terminals and shall suspend the license and permit of the licensed racetrack and manufacturer.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) Video lottery terminals licensed for placement in this state shall meet the following hardware specifications:

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

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

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

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

(5) A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one or more of the following: One dollar bills, five dollar bills, ten dollar bills and twenty dollar bills. All coin and bill acceptors must be approved by the commission prior to use on any video lottery terminal in this state.

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

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

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

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

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

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

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

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

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game, there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. A video lottery terminal may not allow more than two dollars to be wagered on a single game. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices may be placed on the video lottery terminal screen or face without the prior approval of the commission.

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

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

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

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

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

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

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

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of said terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval must be obtained prior to applying for testing of such high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

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

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

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

(2) Number of credits wagered;

- (3) Number of credits won;
- (4) Number of credits paid out by a printed ticket;
- (5) Number of times the logic area was accessed;
- (6) Number of times the cash door was accessed;
- (7) Number of credits wagered in the current game;
- (8) Number of credits won in the last complete video lottery game; and
- (9) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically.

Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

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

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

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:

(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia racing commission under provisions of article twenty-three, chapter nineteen of this code.

(2) An applicant must be a person of good character and integrity.

(3) An applicant must be a person whose background, including criminal record, reputation and associations, does not pose a threat to the security and integrity of the lottery or to the public interest of the state. A person who has been convicted of any violation of article twenty-two of this chapter or of this article or of any crime related to theft, bribery, gambling or involving moral turpitude is

not eligible for any license or permit. The commission shall revoke the license or permit of any person who is convicted of any such crime after a license or permit is granted.

(4) An applicant must be a person who demonstrates the business ability and experience necessary to establish, operate and maintain the business for which a video lottery license or permit application is made.

(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section, and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least thirty days before the effective date of the change.

(6) A racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a majority of the pari-mutuel clerks and the representative of a majority of the breeders or the representative of a majority of the kennel owners for the applicable racetrack who hold permits required by section two, article twenty-three, chapter nineteen of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the racetrack of video lottery terminals, the electronic computer components thereof, the random number generator thereof, or the cabinet in which it is housed. Once filed with the commission, such agreement shall be a public document subject to the provisions of article one, chapter twenty-nine-b of this code.

(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. The following persons are deemed to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant (but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in

the ordinary course of business) who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

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

(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.

(c) Applicants must furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms and other materials requested by the commission for purposes of determining qualifications for a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation requested by the commission. The burden of proving qualification for any video lottery license or permit shall be on the applicant.

(d) Each applicant shall bear all risks of adverse public notice, embarrassment, criticism, damages or financial loss which may result from any disclosure or publication of any material or information obtained by the commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the commission, the state of West Virginia and the employees of either for damages as a result of any background investigation, disclosure or publication relating to an application for a video lottery license or permit.

(e) All application, registration and disclosure forms and other documents submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer oaths.

(f) An applicant who knowingly fails to reveal any fact material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license or permit.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

(a) The commission shall determine the form of applications to be used and shall not consider incomplete applications. The

commission may consider an application when the applicant has completed and executed all forms and documents required by the commission and all application fees and costs have been paid.

(b) The question of whether video lottery games shall be permitted at pari-mutuel racetracks shall be determined by local option election in each county in which a pari-mutuel racetrack is located. The local option election on this question may be placed on the ballot in each county at any general election. The county commission of the county in which the racetrack is 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 within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

Yes     No

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

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election to the commission.

(c) Upon receipt of the results of the election from the county commission, and if a majority has voted “yes”, the commission shall issue the requested license if the applicant is otherwise qualified for the license. If a majority has voted “no”, the commission shall notify the applicant of the results, the application shall be denied, and another election on the issue shall not be held for a period of two years: Provided, That for purposes of this section, the term “two years” means the interval between a general election and the next general election, and in no event shall it mean or encompass a period of time in excess of one hundred four weeks. If a majority has voted “yes”, 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 commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

Name                      Address                      Date  
(Post office or street address)

(d) The commission may not issue any license or permit until background investigations are concluded. The commission shall make an affirmative determination that the applicant is qualified and the applicable license or permit fees have been paid prior to issuing any license or permit.

(e) The commission shall notify the applicant if an application is incomplete and the notification shall state the deficiencies in the application.

(f) The commission shall notify applicants in writing of the denial, suspension or revocation of a permit or license and the reasons for the denial, suspension or revocation in accordance with the provisions of section fifteen of this article.

(g) An applicant may request a hearing to review a license or permit denial, suspension or revocation in accordance with section fifteen of this article.

(h) The following license or permit fees shall be paid annually by each licensed racetrack, or permitted manufacturer, service technician, floor attendant or validation manager:

- (1) Racetrack: ..... \$1,000
- (2) Manufacturer: .....\$10,000
- (3) Service technician: .....\$100
- (4) Validation manager: .....\$50
- (5) Floor attendant: .....\$50

The fees shall be paid to the commission at the time of license or permit application and on or before the first day of July of each year thereafter, at which time the license or permit may be renewed.

(i) An applicant for a video lottery license shall, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond shall be issued by a surety company authorized to transact business in West Virginia and the company shall be approved by the insurance commissioner of this state as to solvency and responsibility.

(j) The commission shall renew video lottery licenses and permits annually as of the first day of July of each year, if each person seeking license or permit renewal submits the applicable renewal fee, completes all renewal forms provided by the commission, and continues to meet all qualifications for a license or permit.

(k) License and permit holders shall notify the commission of any proposed change of ownership or control of the license or permit holder and of all other transactions or occurrences relevant to license or permit qualification. In order for a license or permit to remain in effect, commission approval is required prior to completion of any proposed change of ownership or control of a license or permit holder.

(l) A license or permit is a privilege personal to the license or permit holder and is not a legal right. A license or permit granted or renewed pursuant to this article may not be transferred or assigned to another person, nor may a license or a permit be pledged as collateral. The purchaser or successor of any license or permit holder shall independently qualify for a license or permit. The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this

article voids the license unless the sale has been approved in advance by the commission.  
§29-22A-9. General duties of all video lottery license and permit holders;  
duties of permitted manufacturers;

duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

(a) All video lottery license and permit holders shall:

(1) Promptly report to the commission any facts or circumstances related to video lottery operations which constitute a violation of state or federal law;

(2) Conduct all video lottery 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 lottery;

(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 license or permit holder, the commission, the state or the employees thereof, arising from the license or permit holder's participation in the video lottery system authorized by this article;

(4) Assist the commission in maximizing video lottery revenues;

(5) Maintain all records required by the commission;

(6) Upon request by the commission, provide the commission access to all records and the physical premises of the business or businesses where the license or permit holder's video lottery activities occur, for the purpose of monitoring or inspecting the license or permit holder's activities and the video lottery games, video lottery terminals and associated equipment; and

(7) Keep current in all payments and obligations to the commission.

(b) Manufacturers shall:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in sections five and six of this article;

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed racetracks;

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state;

(4) Provide to licensed racetracks and permitted service technicians technical assistance and training in the service and repair of video lottery terminals and associated equipment so as to assure the continuous authorized operation and play of the video lottery terminals; and

(5) Obtain certification of compliance under the provisions of part fifteen of the federal communication commission rules for all video lottery terminals placed in this state.

(c) Service technicians shall:

(1) Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation of those terminals;

(2) Attend all commission mandated meetings, seminars and training sessions concerning the repair and maintenance of licensed video lottery terminals and associated equipment; and

(3) Promptly notify the commission of any electronic or mechanical video lottery terminal malfunctions.

(d) Validation managers shall:

(1) Attend all commission mandated meetings, seminars and training sessions concerning the validation and redemption of video lottery winning tickets and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets; and

(3) Supervise video lottery ticket validation procedures at the applicable licensed racetrack.

(e) Floor attendants shall:

(1) Provide change and assistance to persons playing video lottery games in a licensed racetrack video lottery gaming area;

(2) Open video lottery terminal access doors to clear ticket paper jams and to insert new paper ticket tapes into the video lottery terminals; and

(3) Open video lottery terminal access doors to clear bill jams from the bill acceptors in video lottery terminals.

(f) The specific duties required of all licensed racetracks are as follows:

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

operation and play of the video lottery terminals;

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

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

(4) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the licensed racetrack are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines;

(5) Ensure that video lottery terminals are within the sight and control of designated employees of the licensed racetrack;

(6) Ensure that video lottery terminals are placed and remain placed in the specific locations within the licensed racetrack which have been approved by the commission. No video lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the commission;

(7) Monitor video lottery terminals to prevent access to or play by persons who are under the age of eighteen years or who are visibly intoxicated;

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

(9) Provide no access by a player to an automated teller machine (ATM) in the area of the racetrack where video lottery games are played, accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

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

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

(12) Conduct no video lottery advertising and promotional activities without the prior written approval of the director;

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

(14) Permit video lottery to be played only during those hours established and approved by the commission;

(15) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least two million dollars per claim;

(16) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(17) Assume liability for lost or stolen money from any video lottery terminal; and

(18) Submit an audited financial statement, which has been approved by the commission, to the commission when applying for a license or permit and annually thereafter prior to the time a license or permit may be renewed.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack's share shall be in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of

this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder's program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section nine, article one, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall

promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veteran's memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds, and not more than twenty thousand dollars be deposited in the "John F. 'Jack' Bennett Fund": Provided, however, That five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex: Provided further, That the remainder of the one percent of net terminal income shall be deposited in a special fund of the department of administration created under section five, article four, chapter five-a of this code to be used to maintain and make repairs to the Morris square properties.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code, which interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack must report to the commission any discrepancies between the commission's

statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

§29-22A-10a. Lottery commission income to be deposited in state lottery fund.

Notwithstanding the provisions of subdivision one, subsection (c), section ten of this article, beginning on the first day of July, one thousand nine hundred ninety-five and continuing thereafter, the net terminal income received by the commission shall be paid into the state lottery fund created by section eighteen, article twenty-two of this chapter, to be appropriated by the Legislature: Provided, That

income deposited pursuant to this section shall not be subject to the provisions of subsections (b), (c), (d) or (e), section eighteen, article twenty-two of this chapter.

§29-22A-11. Maintenance of video lottery terminals; manufacturers required to provide training; notice of availability of training; reports and certificates of training programs; terminals to be maintained in the condition approved; maintenance log required; keys to video lottery terminals; notice of repairs to the logic area; notice of broken seals on logic board.

(a) No video lottery terminal may be placed in operation in this state until the manufacturer provides training in the service and repair of each approved video lottery terminal model and service technicians complete such training. Manufacturers must submit to the commission the following information on each training program conducted:

- (1) An outline of the training curriculum;
- (2) A list of the instructors and their qualifications;
- (3) Instructional materials; and
- (4) The time, dates and location of the training programs.

(b) Manufacturers shall notify all licensed racetracks who have purchased or leased that manufacturer's video lottery terminals of all scheduled training programs. Training programs must be scheduled at convenient locations within this state to facilitate attendance by service technicians. Manufacturers must inform licensed racetracks of any new developments in the service and repair of video lottery terminals and provide appropriate subsequent training programs.

(c) The manufacturers shall issue training certificates to each person upon successful completion of a video lottery training program. The certificate shall include the name of the person who completed the training program and the date and the location of the training program. A person who successfully completes training is eligible for a service technician's permit. No person may conduct maintenance on any video lottery terminal or associated equipment unless the commission has issued a service technician permit to that person.

(d) Each manufacturer shall file with the commission the following information within two weeks after the completion of a training program:

- (1) The name of each person who attended and completed the training program;
- (2) The name of the manufacturer offering the course;
- (3) The manufacturer's video lottery terminal models on which training for service and repair was provided;
- (4) The date and location of the training program; and
- (5) Copies of all certificates of completion.

(e) A written maintenance log shall be kept within the main cabinet access area in each video lottery terminal. Every person,

including lottery personnel, who gains entry into any internal space of a video lottery terminal must sign the log, record the time and date of entry, record the mechanical meter readings and list the areas inspected or repaired. The maintenance log forms shall be retained by licensed racetracks for a period of three years from the date of the last entry. The maintenance logs shall be available upon request for inspection by the commission.

(f) Licensed racetracks shall provide the commission with a master key for access into the main cabinet door of each video lottery terminal placed in operation. A logic box seal shall be provided by the commission. The seal shall be affixed by commission personnel to prevent unauthorized access to the video lottery terminal logic unit.

(g) No repairs to, or replacement of, the logic board or circuitry within the logic area may occur unless authorized commission personnel are present and observe the repairs or replacement. The logic area seal shall not be broken by anyone other than authorized commission personnel. Each service technician shall submit a written report within twenty-four hours after the repairs or replacement are completed and the report shall include the serial number of any replacement board and the new logic area seal number.

(h) The software eeproms on the logic board of each video lottery terminal shall be tested by the commission prior to sealing the logic area. Licensed racetracks or permit holders shall notify the commission in writing of any discovered damage, tears or breaks in the logic area seal and, upon notice, the video lottery terminal shall be disabled. The video lottery terminal shall remain disabled until completion by the commission of an investigation of the seal damage.

§29-22A-12. Number and location of video lottery terminals; security.

(a) A racetrack which has been licensed to conduct video lottery games has the right to install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed racetrack may apply to the commission for authorization to install and operate more than four hundred video lottery terminals. If the commission determines that the installation of additional machines is in the best interest of the licensed racetrack, the lottery commission and the citizens of this state, the commission may grant permission to install and operate additional machines.

(b) All video lottery terminals in licensed racetracks shall be physically located as follows:

(1) The video lottery location shall be continuously monitored through the use of a closed circuit television system capable of recording activity for a continuous twenty-four hour period. All video tapes shall be retained for a period of at least thirty days;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without prior approval from the commission; and

(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of article twenty-three, chapter nineteen of this code: Provided, That if the commission, before the first day of November, one thousand nine hundred ninety-three, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission: Provided, however, That on the effective date of this section, for each two video lottery terminals located in a nonconforming location, the racetrack shall locate and operate one video lottery terminal in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted.

(c) A licensee shall allow video lottery games to be played only on days when live racing is being conducted at the racetrack and/or on televised racing days: Provided, That this restriction shall not apply to any racetrack authorized by the commissioner prior to the first day of November, one thousand nine hundred ninety-three, to operate video lottery terminals and conduct video lottery games.

(d) Security personnel shall be present during all hours of operation at each video lottery terminal location. Each license holder shall employ the number of security personnel the commission determines is necessary to provide for safe and approved operation of the video lottery facilities and the safety and well-being of the players.

§29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.

(a) No payment for credits awarded on a video lottery terminal may be made unless the ticket meets the following requirements:

(1) The ticket is fully legible and printed on paper approved by the commission and the ticket contains all information required by this article;

(2) The ticket is not mutilated, altered, unreadable or tampered with in any manner;

(3) The ticket is not counterfeit, in whole or in part; and

(4) The ticket is presented by a person authorized to play video lottery pursuant to this article.

(b) Each licensed racetrack shall designate validation managers and employees authorized to redeem tickets during the business hours of operation. Credits shall be immediately paid in cash or by check when a player presents a valid ticket for payment. No credits may be paid in tokens, chips or merchandise.

(c) Licensed racetracks shall not redeem tickets for credits awarded on video lottery terminals which are not located on its premises. A ticket must be presented for payment no later than ten days after the date the ticket is printed. The commission is not liable for the payment of any video lottery ticket credits.

(d) All tickets redeemed by a licensed racetrack shall be defaced in a manner which prevents any subsequent presentment and payment.

(e) The commission is not responsible for any video lottery terminal malfunction which causes a credit to be wrongfully awarded or denied to players. The licensed racetrack is solely responsible for any wrongful award or denial of credits.

#### §29-22A-14. Transportation and registration of video lottery.

(a) Trucking companies or common carriers shipping video lottery terminals shall be bonded and shall ship all terminals in sealed trailers.

(b) A manufacturer transporting one or more video lottery terminals into this state shall, prior to shipment, provide the commission with the following information on forms prescribed by the commission:

(1) The full name, address and permit number of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name, address and license number of the licensed racetrack to which the video lottery terminals are being sent and the destination of the terminals if different from the address;

(4) The number of video lottery terminals in the shipment;

(5) The serial number of each video lottery terminal in the shipment;

(6) The model number and description of each video lottery terminal in the shipment; and

(7) The expected arrival date of the video lottery terminals at their respective destination within this state.

(c) A licensed racetrack which purchases or leases a video lottery terminal shall, upon receipt of the terminal, provide the commission with the following information on forms prescribed by the commission:

(1) The full name, address and license number of the licensed racetrack receiving the video lottery terminal;

(2) The full name, address and permit number of the manufacturer from whom the video lottery terminal was received;

(3) The serial number of each video lottery terminal received;

(4) The model number and description of each video lottery terminal received;  
(5) The expected date and time of video lottery terminal arrival; and  
(6) The expected date and time of video lottery terminal installation, and if a video lottery terminal is not placed in operation, the licensed racetrack must notify the commission of the location where the terminal is stored.

(d) Any person transporting a video lottery terminal from one location to another in this state, other than for repair or servicing purposes, shall notify the commission in writing prior to the transportation of the terminal and provide the following information on forms required by the commission:

(1) The full name, address and license number of the person or entity transporting the video lottery terminal;

(2) The reason for transporting the video lottery terminal;

(3) The full name, address and license number of the person or entity to whom the terminal is being sent and the destination of the video lottery terminal if it is different from the address;

(4) The serial and model number of the video lottery terminal;

(5) The video lottery terminal license number, if affixed;

(6) The manufacturer of the video lottery terminal; and

(7) The expected date and time of video lottery terminal installation or reinstallation.

(e) Any person shipping video lottery terminals to a destination outside of this state shall, prior to the shipment, provide the commission with the following information on forms prescribed by the commission:

(1) The full name, address and license or permit number of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name and address of the person to whom the video lottery terminals are being sent and the destination of the video lottery terminals if different from the address;

(4) The serial number of each video lottery terminal being shipped;

(5) The model number and description of the video lottery terminal being shipped;

(6) The video lottery terminal control number, if affixed;

(7) The manufacturer of the video lottery terminal being shipped; and

(8) The expected date and time of the shipment.

(f) Each video lottery terminal placed in operation in this state must have a commission registration decal permanently affixed, with a video lottery terminal registration control number placed thereon. A decal registration fee is hereby imposed. The amount of the fee shall equal six percent of the total consideration paid to the manufacturer for the use or the ownership of the video lottery terminal. The fee shall be paid by the manufacturer to the commission prior to the receipt of the registration decal. The registration decal fee shall be collected by the commission and deposited to the credit of the general revenue fund of the state. No person other than authorized

commission personnel shall affix or remove a registration control number. The affixing of the commission decal on a video lottery terminal evidences that the decal registration fee has been paid and that the terminal has been registered, inspected and approved for operation in this state. No terminal may be transported out of this state until authorized commission personnel have removed the commission registration control number.

§29-22A-15. Hearing and appeal procedure; order refusing license or permit or suspending or revoking same; petition for hearing; petition requirements; cost of hearings; subpoenas and subpoenas duces tecum; no stay of suspension or revocation order; hearing date; place of hearing; continuances; absence of petitioner; hearing; argument and briefs; evidence admissible at hearing; record of proceedings; commission's decision; appeal to circuit court.

(a) If the commission refuses to issue a license or permit, or suspends or revokes a license or permit, it shall make and enter an order to that effect including a statement of the reasons for that action and shall, by certified mail, return receipt requested, mail a copy of the order to the applicant, or the license or permit holder, or serve the same in the manner provided for the service of legal process.

(b) Any applicant or licensee or permit holder adversely affected by such order has the right to a hearing thereon before the commission or a person designated as hearing examiner, if a petition in writing requesting a hearing is served upon the commission within ten days following the receipt of the order by such applicant, or license or permit holder.

(c) The petition for a hearing shall be in writing and shall include an original and one copy. The petition must contain the following:

(1) A clear and concise statement of each error which the petitioner alleges to have been committed by the commission in refusing to issue a license or permit, or suspending or revoking a license or permit, with each assignment of error being shown in separately numbered paragraphs.

(2) A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the petitioner.

(5) Verification by the petitioner.

(d) The person demanding a hearing shall give security for the cost of the hearing in the amount of three hundred dollars in the form of certified check, cashier's check or money order, which shall accompany the petition demanding a hearing.

(e) In all hearings held under this article, oral and documentary evidence may be required through the use of subpoenas and

subpoenas duces tecum. Subpoenas or subpoenas duces tecum may be issued by either the commission or its duly appointed hearing examiner and the following provisions shall govern and control:

(1) Every subpoena or subpoena duces tecum must be served at least five days before the return date thereof, either by personal service made by any person eighteen years of age or older, or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

(2) All subpoenas and subpoenas duces tecum shall be issued in the name of the commission. Service of subpoenas and subpoenas duces tecum issued at the insistence of the commission are the responsibility of the commission, but any party requesting issuance of a subpoena or subpoena duces tecum is responsible for service of any such subpoena. Any person who serves a subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state.

(3) All fees shall be paid by the commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the commission.

(4) All fees related to any subpoenas or subpoena duces tecum issued at the insistence of an interested party shall be paid by the interested party.

(5) All requests by an interested party for a subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(6) Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it were issued by a circuit court of this state and shall appear as a witness or produce such books, records or papers as are requested in response to a subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, shall, upon application by the commission, compel obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify therein.

(f) The service of a petition for hearing upon the commission shall not operate to suspend the execution of any suspension or revocation of a video lottery license or permit with respect to which a hearing is being demanded.

(g) The commission shall set a date for any hearing demanded and notify the person demanding a hearing not later than seven days before the hearing date of the date and time of the hearing, which hearing shall be held within thirty days after receipt of the petition.

(h) Hearings may not be delayed by a motion for continuance made less than ten days before the date set for the hearing.

(i) The commission may designate a hearing examiner to conduct any hearing.

(j) The petitioner may appear individually, or by legal counsel.

(k) The petitioner, or his duly authorized representative, may, with the approval of the commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Waivers and agreements must be in writing or upon the record.

(l) The petitioner shall be given an opportunity for argument within the time limits fixed by the commission following submission of evidence. The commission, upon request of the petitioner, shall accept briefs in addition to or in lieu of argument. Briefs must be filed within ten days after the hearing date.

(m) The commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The commission may exclude any evidence which is irrelevant, unduly repetitious or lacking in substantial probative effect.

(n) There shall be a record made of all hearings held pursuant to this article.

(o) After the conclusion of the hearing and within ten days of receipt of the transcript thereof and receipt of any briefs, the person designated by the commission as hearing examiner shall prepare a recommended decision, supported by findings of fact and conclusions of law, affirming, modifying or vacating the earlier order of the commission. Thereafter, the commission, within ten days of receipt of the recommended decision, shall either accept or reject the recommended decision, and if it accepts the decision, it shall cause the director to sign and acknowledge the recommended decision as its own, after having reviewed the transcript and all exhibits attached and affixed thereto; and if it shall reject the same, it shall within ten days of receipt of the recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either event, the decision shall be final unless vacated or modified upon judicial review thereof. A copy of the decision shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

(p) A petition for appeal by an applicant, licensee or permit holder may be filed with the circuit court of Kanawha County, West

Virginia, or with the circuit court of the county in which the racetrack is located, if filed no later than thirty days after the date upon which the petitioner receives notice of the final decision of the commission.

§29-22A-16. Offenses and penalties.

(a) A licensee who places a video lottery game or video lottery terminal into play without authority of the commission to do so is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(b) A person who operates, carries on or exposes for play a video lottery game or video lottery terminal after the person's license has expired and prior to the actual renewal thereof is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(c) A licensee who possesses any video lottery terminal or other device, equipment or material which the person knows has been manufactured, distributed, sold, tampered with or serviced in violation of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(d) A licensee who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play any video lottery game, video lottery terminal, or other device, equipment or material which has in any manner been tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the video lottery game which could determine or alter the result of the game is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than fifty thousand dollars.

(e) A licensee who employs or continues to employ an individual, not issued a permit under the provisions of this article, in a position with duties which would require a permit under the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a

person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(f) A person who, without obtaining the requisite permit as provided for in this article, works or is employed in a position with duties which would require a permit under the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than ten thousand dollars.

(g) A person who, while a video lottery game is being played at a licensed racetrack, uses, or assists another in the use of, an electronic, electrical, or mechanical device which is designed, constructed, or programmed specifically for use in obtaining an advantage at playing any video lottery game is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than one thousand dollars, or both.

(h) A person who knowingly violates a provision of this article, or the rules of play or game rules of a video lottery game and who profits thereby in an amount equal to one thousand dollars or more, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the person profits thereby in an amount less than one thousand dollars, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed two thousand five hundred dollars, or both.

(i) A person who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article shall be subject to a civil penalty as may be determined by the commission, not to exceed ten thousand dollars.

§29-22A-17. Disagreement as to duties of racing commission and lottery commission.

In the event of a disagreement between the racing commission and the lottery commission with regard to their respective duties or responsibilities in carrying out the purposes of this article, such disagreement shall be resolved by the secretary of the department of tax and revenue in a manner not inconsistent with the provisions of this article, article twenty-two-a of this chapter and article twenty-three, chapter nineteen of this code.

§29-22A-18. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.

§29-22A-19.

Repealed.

Acts, 1997 Reg. Sess., Ch. 62.

## CHAPTER 47. REGULATION OF TRADE

### ARTICLE 20. CHARITABLE BINGO

#### §47-20-1. Legislative intent.

The Legislature, in recognition of the recreational enjoyment the people of West Virginia receive from playing bingo and of the need charitable and public service organizations have for a practicable way of raising funds, declares its intent to grant the privilege of holding bingo games to those organizations which qualify for a license as provided below.

#### §47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Bingo" means the game wherein participants pay consideration for the use of one or more cards bearing several rows of numbers in which no two cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he or she has covered a predetermined sequence or pattern which had been preannounced for that game is, upon verification that he or she has covered the predetermined sequence or pattern, declared the winner of that game.

(b) "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by a single licensee.

(c) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Assisting them to establish themselves in life as contributing members of society through education or religion; or

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office;

(5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities.

(d) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

An organization or association is tax-exempt if it is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code.

(e) "Commissioner" means the state tax commissioner.

(f) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, "concession" includes beverages which are regulated by and are subject to the provisions of chapter sixty of this code: Provided, That in no case may the sale or the consumption of alcoholic beverages or nonintoxicating beer be permitted in any area where bingo is conducted.

(g) "Conduct" means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners and awarding prizes.

(h) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to section fifteen of this article.

(i) "Gross proceeds" means all moneys collected or received from the conduct of bingo at all bingo occasions held by a licensee during a license period; this term shall not be considered to include any moneys collected or received from the sale of concessions at bingo occasions.

(j) "Joint bingo occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by two or more licensees.

(k) "Licensee" means any organization or association granted an annual, limited occasion or state fair bingo license pursuant to the

provisions of this article.

(l) "Net proceeds" means all moneys collected or received from all the conduct of bingo at bingo occasions held by a licensee during a license period after payment of expenses authorized by sections ten, thirteen, fifteen and twenty-two of this article; this term shall not be considered to include moneys collected or received from the sale of concessions at bingo occasions.

(m) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(n) "Patron" means any individual who attends a bingo occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or plays any bingo games.

(o) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (d) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (c) of this section. "Qualified recipient organization" includes without limitation any licensee which is organized and functions exclusively as provided in this subdivision.

(p) "Venue" means the location in which bingo occasions are held.  
§47-20-3. Who may hold bingo games; application for license; licenses not transferable.

Any charitable or public service organization which has been in existence in this state two years prior to filing an application for a bingo license issued pursuant to section four or five of this article may hold bingo occasions in accordance with the provisions of this article during the time it holds a valid license.

Application for a bingo license shall be made to the tax commissioner and shall be on a form which shall be supplied by him or her.

The application shall contain the information required by section seven of this article and any other information which the commissioner

considers necessary. An application shall be filed not less than sixty days before the date when the applicant intends to hold its first

bingo occasion. No bingo occasion may be held until an application filed in accordance with this article has been approved by the

tax commissioner, and the bingo license has been received: Provided, That under no circumstances may a licensee organization

conduct a bingo occasion before the sixty day filing period between the filing of the application and date of the first bingo occasion has

elapsed: Provided, however, That the date the application is received by the tax commissioner shall begin the sixty day filing period.

The tax commissioner shall send the applicant its license within five days after approval of the bingo application. If the filing period has

elapsed, and the application has not been denied by the tax commissioner, and the license has not been received by the applicant, the applicant may consider the application approved and begin to hold bingo occasions. The tax commissioner shall send a bingo license to the applicant within five days after the expiration of the filing period if the application has not been otherwise denied.

No bingo license issued pursuant to this article may be transferred.

§47-20-4. Annual license; conditions on holding of games.

A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide for the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance and entitles only the licensee to hold no more than two bingo occasions per week. No two or more organizations may hold a joint bingo occasion under any annual licenses. No bingo occasion held pursuant to an annual license may exceed six hours duration.

A licensee shall display its annual bingo license conspicuously at the location where the bingo occasion is held.

All bingo occasions shall be open to the general public: Provided, That no licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game with knowledge or reason to believe that the individual is under the age of eighteen: Provided, however, That an individual under the age of eighteen may attend the playing of a bingo game when accompanied by and under the supervision of an adult relative or a legal guardian of said individual: Provided further, That nothing contained herein may be construed to prohibit junior volunteer firefighters sixteen years of age or older from assisting the volunteer fire company of which such junior firefighter is a member in the conduct of an event under this article where such junior firefighter is supervised by a senior member of the same volunteer fire company who is over the age of twenty-one years.

Any licensee may receive and cash personal checks in an amount not to exceed one hundred dollars during the normal operation of a bingo game.

§47-20-5. Limited occasion license; conditions on holding of games.

A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold a bingo occasion once every twenty-four hours for a time period not to exceed two weeks. Two or more organizations may hold a joint bingo occasion provided each participating organization has been granted a limited occasion bingo license for such jointly held occasion. No bingo occasion held pursuant to a limited occasion license may exceed twelve hours in duration. Each charitable or public service organization which desires to hold bingo occasions pursuant to this section, or any of its auxiliaries or other organizations otherwise affiliated with it, shall obtain a limited occasion license notwithstanding the fact that it holds a valid annual license: Provided, That no licensee which holds an annual license may obtain more than one limited occasion license.

Only three limited occasion licenses per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, none of which hold an annual license. For purposes of this section, the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the three licenses allowed under this section are granted.

A licensee shall display its limited occasion license conspicuously at the location where the bingo occasion is held.

All bingo occasions shall be open to the general public: Provided, That no licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game with knowledge or reason to believe that the individual is under the age of eighteen: Provided, however, That an individual under the age of eighteen may attend the playing of a bingo game when accompanied by and under the supervision of an adult relative or a legal guardian of said individual.

§47-20-5a. Venue.

Any charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it possessing an annual or limited occasion bingo license or a super bingo license shall conduct a bingo occasion only in the county within which the organization is principally located.

Any licensee which, in good faith, finds itself unable to comply with this requirement shall apply to the tax commissioner for permission to conduct a bingo occasion in a location other than the county within which the organization is principally located:

Provided, That the location shall be in a contiguous county, or, if not in a contiguous county, and not in the county where the licensee organization has its principal location, the location of the proposed bingo occasion may be no more than thirty air miles from the county within which the organization is principally located. The application shall be made on a form provided by the tax commissioner and shall include the particulars of the requested change and the reasons for the change. The application shall be filed no later than sixty days before any scheduled bingo occasion.

For purposes of this section, the principal location of a licensee is the address of the licensee shown on the licensee's West Virginia business registration certificate.

§47-20-6. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissioner for annual licenses in the amount of five hundred dollars, except that for volunteer or nonprofit groups who gross less than twenty thousand dollars the fee shall be two hundred dollars and for bona fide senior citizen organizations the fee is fifty dollars. A license fee shall be paid to the tax commissioner for a limited occasion license in the amount of one hundred dollars. A license fee of five hundred dollars shall be paid to the tax commissioner for a state fair license as provided in section twenty-two of this article. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and no county or municipality or other political subdivision of this state is empowered to impose a license or franchise tax or fee.

(b) The gross proceeds derived from the conduct of a bingo occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. The licensee is exempt from payment of consumers sales and service taxes and use taxes on all purchases for use or consumption in the conduct of a bingo occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of bingo cards: Provided, That the exemption provided in this subsection does not apply to state fair bingo proceeds.

§47-20-6a. Super bingo license.

Any charitable or public service organization may, upon payment of a five thousand dollar license fee, apply to the tax commissioner for issuance of an annual super bingo license. All revenue from the license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory

activities provided for in that section. The tax commissioner shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code specifying those organizations which qualify as charitable or public service organizations.

A holder of a super bingo license may conduct one super bingo occasion each month during the period of the license at which up to fifty thousand dollars in prizes may be awarded, notwithstanding the ten thousand dollar limitation on prizes specified in section ten of this article.

A charitable or public service organization that has a regular or limited occasion bingo license may apply for a super bingo license.

§47-20-7. Information required in application.

An application for a bingo license shall include the following information:

(a) Name of the applicant and name and headquarter's address of any state or national organization of which it is a local branch or lodge;

(b) The address and telephone number of the applicant organization, if any. If the applicant organization has no telephone, then the address and telephone number of the person applying on behalf of such organization shall be supplied;

(c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's bingo operations, at least one of whom shall be present at all times bingo is conducted; and the names and addresses of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present at all times bingo is conducted; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's bingo operations, at least one of whom shall be present at all times bingo is conducted; and the names and addresses and telephone numbers of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present at all times bingo is conducted;

(d) The address or location of the premises where licensed bingo games are to be held;

(e) Information as may be required by the commissioner to satisfy him that the applicant meets the requirements of:

(1) Being a charitable or public service organization as required by this article; and

(2) Being in existence in this state two years prior to filing an application for a bingo license.

(f) The day or days of the week, and the time or times when the bingo occasions will be held;

(g) The name of the owner of the premises where the bingo occasions are to be held and a copy of all rental agreements involved if

leased or subleased by the applicant from the owner or lessee;

(h) A statement as to whether the applicant has ever had a previous application for any bingo license refused, or whether any previous license has been revoked or suspended;

(i) A statement of the charitable or public service purpose or purposes for which the bingo proceeds will be expended;

(j) A statement or statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct any part of the

bingo games or concessions operated in conjunction therewith;

(2) That it is required to file the reports and keep the records as provided by this article; and

(3) That it is a crime to violate the provisions of this article and, in addition, that a violation may result in suspension or revocation of its license and denial of applications for subsequent licenses;

(k) A sworn statement by an authorized representative of the applicant that the information contained in the application is true to the best of his knowledge;

(l) A list and description of estimated expenses to be incurred in connection with the holding of the bingo occasions and any concessions operated and the name and address of each payee. If a concession is operated in accordance with the provisions of section thirteen of this article, a copy of any written agreement or an explanation of any oral agreement providing for any type of remuneration to be received by the concession operator shall be attached to the application;

(m) A list of the names and addresses of all officers and members of the board of directors, governors or trustees, if any, of the applicant organizations; and

(n) Any other necessary and reasonable information which the commissioner may require.

#### §47-20-8. Amendment of license.

If circumstances beyond the control of the licensee organization prohibit it from holding any bingo occasion in accordance with the information provided by it in its license application form, the licensee organization may request approval by the commissioner to:

(a) Modify the holding of one or more bingo occasions held pursuant to an annual license if the changes are temporary; or

(b) Modify the holding of one or more bingo occasions held pursuant to a limited occasion license if the changes affect fewer than one-third the occasions to be held under the license; or

(c) Amend its original license if the changes to the holding of occasions pursuant to an annual license are permanent or if the

changes affect one third or more of the occasions to be held under a limited occasion license.

§47-20-9. Licensee rules and regulations.

Each licensee may adopt rules and regulations, not inconsistent with or in violation of the provisions of this article, or rules or regulations promulgated hereunder, to govern the conduct of bingo occasions, except that no licensee may allow an individual not present to play any bingo games.

Any rules and regulations adopted by the licensee shall be made available for inspection at all bingo occasions held. Any such rules and regulations adopted are a part of the records required to be kept by section sixteen of this article.

§47-20-10. Limits on prizes awarded -- General provisions.

Except as otherwise provided in section twenty-two of this article, during the period of a license the average total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license, may not exceed ten thousand dollars in value.

Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time of purchase.

§47-20-11. Operator of bingo games and related concessions.

Except as provided in sections thirteen and twenty-two of this article, only persons, as defined in section two of this article, who are residents of this state and who are active members of the licensee organization or its authorized auxiliary organization and who have been active members in good standing of the licensee organization or its authorized auxiliary for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license may participate in any manner in the conduct of any bingo game or operate any concession in conjunction with a bingo occasion: Provided, That notwithstanding anything contained in this article to the contrary, no individual under the age of eighteen years may directly or indirectly participate in the conduct of a bingo game except for junior firefighters, in accordance with the provisions of this article. §47-20-12.

Compensation.

Except as provided otherwise in sections twelve-a, thirteen and twenty-two of this article, no individual who participates in any manner in the conduct of a bingo occasion or the operation of a concession in conjunction with a bingo occasion may receive or accept

any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation or remuneration whether directly or indirectly, regardless of the source, for his work, labor or services.

§47-20-12a. Compensation of bingo operator; number of employees.

(a) Within the guidelines set forth in subsections (b), (c) and (d) of this section, a licensee may pay a salary, the minimum of which shall be established at the federal minimum wage, and the maximum being six dollars and fifty cents per hour, to operators of bingo games who are active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license.

(b) If the licensee's gross receipts from bingo occasions equal or exceed one hundred thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than eight operators.

(c) If the licensee's gross receipts from bingo occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee's gross receipts from bingo occasions are less than fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than three operators.

(e) If the licensee also possesses a super bingo license, it may pay a salary to not more than fifteen operators during the super bingo occasion.

(f) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable bingo operator employees allowed under this limitation for bingo licensees shall be in addition to the number of charitable raffle operator employees allowed under section fifteen, article twenty-one of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations, and the charitable bingo fund and the charitable raffle fund and payments from the funds shall not be commingled.

(g) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle operator" shall not include concession stand workers. Wages paid to concession workers shall not exceed six dollars and fifty cents per hour.

§47-20-13. Concessions exception.

A licensee may allow any individual, firm, partnership or corporation to operate concessions in conjunction with bingo occasions, and to be compensated for the operation, only if the individual, firm, partnership or corporation agrees to donate all net proceeds

received from the sale of the concessions and all compensation received from the licensee organization to charitable or public service purposes as specified under section two, subsection (c) of this article.

§47-20-14.

Repealed.

Acts, 1995 Reg. Sess., Ch. 51.

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed twenty-five percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

(1) Rent paid for the use of the premises: Provided, That a copy of the rental agreement was filed with the bingo license application and any changes to the rental agreement were filed within ten days of being made: Provided, however, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the bingo occasion;

(4) The cost to the licensee organization for advertising the bingo occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the raffle patrons: Provided, That any proceeds received from the provision of child care services shall be handled the same as raffle proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section ten of this article, may be paid out of the gross proceeds of the conduct of bingo.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned on the proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient

organization for the construction or acquisition of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) The tax commissioner has the authority to disapprove any contract for sale of goods or services to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, or any lease of real or tangible personal property to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Contracts or leases which are disapproved shall be considered to be in contravention of this article, and are void. Any attempt by any charitable bingo licensee to engage in transactions under the terms of any lease or contract that has been disapproved is grounds for revocation or suspension of the charitable bingo license and for refusal by the tax commissioner to renew the charitable bingo license.

(f) If a property owner or lessee, including his or her agent, has entered into a rental contract to hold super bingo occasions on his or her premises, the premises shall be rented, for super bingo occasions, to not more than four super bingo licensees during any period of four consecutive calendar weeks: Provided, That each of the charitable or public service organizations desiring to hold a super bingo occasion must possess its own super bingo license. Subject to this limitation, the premises may be used for super bingo occasions during two consecutive days during a conventional weekend. For purposes of this subsection, the term "conventional weekend" means Saturday and Sunday: Provided, however, That the super bingo occasions may occur at the same facility no more often than alternating weekends during a calendar month.

(g) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than sixty days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are expended. §47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate checking account and separate bookkeeping procedure for its bingo operations. Money for expenses shall be withdrawn only by checks having preprinted consecutive numbers and made payable to a specific person, firm or corporation and at no time shall a check be made payable to cash. A licensee shall maintain all records required by this article for at least three years and the records shall be open to the commissioner for reasonable inspection. Whenever the tax commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records: Provided, That the tax commissioner shall perform or cause to be performed an audit of the books and records of any licensee that has awarded total prizes in excess of one hundred seventy-five thousand dollars. The tax commissioner shall file a copy of the completed audit with the county commission of the county wherein the licensee holds bingo occasions.

§47-20-17. Advertising.

A licensee may advertise its bingo occasions in a manner reasonably necessary to promote the occasion: Provided, That a licensee may not hire any person, as defined in section two of this article, to develop or conduct an advertising campaign to promote any bingo occasion.

§47-20-18. Fraud; penalties.

In addition to any other offense set forth in this code, any person who or licensee which knowingly conducts or participates in a fraudulently or deceptively conducted bingo game with intent to defraud is guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred nor more than ten thousand dollars, or imprisoned in the penitentiary not less than one, nor more than five years, or both fined and imprisoned.

§47-20-19. Obtaining license fraudulently; penalty.

In addition to any other offense set forth in this code, any individual, association, organization or corporation which knowingly obtains or assists another in obtaining a bingo license under false, deceptive or fraudulent pretenses is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than ten thousand dollars.

§47-20-20. Violation of provisions; penalties.

Any person who knowingly violates the provisions of this article other than sections eighteen and nineteen is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars. Any

individual who knowingly violates the provisions of this article other than sections eighteen and nineteen is guilty of a misdemeanor, and, upon a second or subsequent conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars or imprisoned not more than one year or both fined and imprisoned.

§47-20-21. Proceeds of state fair.

The Legislature declares that the net proceeds of any bingo game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in section two of this article. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct bingo occasions at the state fair are deemed to be expenses incurred by the state fair board.

§47-20-22. State fair bingo license; rules and regulations.

The West Virginia state fair board may apply annually to the tax commissioner for a state fair bingo license to provide for the conduct of bingo occasions at the state fair. The license shall permit the state fair board to have one or more persons conduct bingo occasions at the state fair who have conducted bingo occasions on a regular basis for a least two years prior to the date of the state fair board's application. A license fee of five hundred dollars shall be paid to the tax commissioner for the state fair bingo license. The provisions of sections ten, eleven, twelve, fourteen, fifteen and twenty-eight of this article do not apply to a state fair bingo license. No state fair bingo license may be issued unless the application includes a copy of any lease or agreement entered into between the state fair board and the persons who are to conduct bingo occasions at the state fair. The state fair board may adopt reasonable rules and regulations, not inconsistent with or in violation of the provisions of this article, to govern the holding of bingo occasions at the state fair.

§47-20-23. Administration; rules and regulations.

(a) The tax commissioner shall administer the provisions of this article in accordance with the provisions of chapter twenty- nine-a of this code.

(b) The commissioner shall deny an application for a license if he finds that the issuance thereof would be in violation of the provisions of this article.

(c) The commissioner may revoke, suspend or refuse to renew a license if the licensee or any member of a licensee organization has been convicted pursuant to section eighteen or nineteen of this article and the commissioner finds that it would be in the public interest to do so; or if the licensee has violated any of the provisions of this article: Provided, That before revoking or suspending a

license issued under the authority of this article, the commissioner shall give at least ten days, three days for a limited occasion or state fair license, notice to the licensee. Notice shall be in writing, shall state the reason for revocation or suspension and shall designate a time and place when the licensee may show cause why the license should not be revoked or suspended. Notice shall be sent by certified mail to the address of the licensee or served by certified mail or by personal or substituted service on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, produce evidence in its behalf and be represented by counsel. A decision of the commissioner revoking or suspending a license is subject to judicial review upon the appeal of a licensee.

(d) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(e) The commissioner shall promulgate reasonable rules and regulations necessary to the administration of this article.

(f) The provisions of article five, chapter twenty-nine-a of this code apply to the denial, revocation, suspension of or refusal to renew a license hereunder.

(g) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a bingo license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

(h) Notwithstanding any other provision of this article, the commissioner may issue an emergency order suspending a bingo license in the following manner:

(1) An emergency order may be issued only when the commissioner believes that:

(a) There has been a criminal violation of this article;

(b) Such action is necessary to prevent a criminal violation of this article; or

(c) Such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

(2) The emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action. This order shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.

(3) The emergency order is effective immediately upon issuance and service upon the licensee.

(4) Within five days after issuance of an emergency order, the commissioner shall set a time and place for a hearing wherein the licensee may appear and show cause why its license should not be revoked.

§47-20-24. Filing of reports.

Each licensee holding an annual license shall file with the tax commissioner a quarterly and an annual financial report summarizing its bingo operations for the time period covered by the report. Each quarterly report shall be filed within twenty days after the end of the quarter which it covers. The annual report shall be filed within thirty days after the expiration of the license under which the operations covered by the report were held. The time period covered by the annual report is the full license year or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year.

Each licensee holding a limited occasion license or state fair license shall file with the tax commissioner a financial report summarizing its bingo operations for the license period within thirty days after the expiration of the license under which the operations covered by the report are held. The report shall contain the name, address and social security number of any individual who receives, during the course of a bingo occasion, prizes, the aggregate value of which exceeds one hundred dollars, and other information required by the commissioner: Provided, That any licensee failing to file the report when due is liable for a penalty of twenty-five dollars for each month or fraction of a month during which the failure continues, the penalty not to exceed one hundred dollars: Provided, however, That annual financial reports must contain either a compilation or review of the financial report by a certified or licensed public accountant, or may be audited by a certified or licensed public accountant, if a licensee's gross receipts exceed fifty thousand dollars.

§47-20-25. Filing of copy of license; application open to public inspection.

Whenever a license is granted pursuant to this article, the commissioner shall cause a copy of the license to be filed and recorded with the clerk of the county commission of the county in which the bingo occasions are to be held. A copy of the application shall be made available for public inspection in the office of the commissioner.

§47-20-26. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in said county: Provided, That no local option election may be called to disapprove the playing of bingo games at the state fair in accordance with the provisions of this article.

A petition for local option election shall be in the form specified in this section and shall be signed by qualified voters residing within said county equal to at least ten percent of the persons qualified to vote within said county at the last general election. The petition may

be in any number of counterparts and is sufficient if substantially in the following form:  
PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF  
BINGO GAMES FOR CHARITABLE  
PURPOSES IN ..... COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in .....  
County, West Virginia, and is duly qualified to vote  
in that county under the laws of the State, and that his or her name, address, and the date  
of signing this petition are correctly set forth  
below.

The undersigned petition the County Commission to call and hold a local option  
election at (1) a special or (2) the next primary,  
general or special election (the petition shall specify (1) or (2)) upon the following  
question: Shall the provisions of Article Twenty,  
Chapter Forty-Seven of the Code of West Virginia, one thousand nine hundred thirty-one,  
as amended, continue in effect in .....  
County, West Virginia?

Name	Address	Date
.....	.....	.....

(Each person signing must specify either his post-office address or his street number.)

Upon the filing of a petition for a local option election in accordance with the  
provisions of this section, the county commission shall  
enter an order calling a local option election as specified in the petition. The county  
commission shall give notice of such local option  
election by publication thereof 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 such publication is the county. The notice shall be  
so published within fourteen consecutive days  
next preceding the election.

Each person qualified to vote in the county at any primary, general or special election  
shall likewise be qualified to vote at the local  
option election. The election officers appointed and qualified to serve as such at any  
primary, general or special election shall conduct  
the local option election. If the local option election is to be held at the same time as a  
primary, general or other special election, it shall  
be held in connection with and as a part of that primary, general or special election. The  
ballots in the local option election shall be  
counted and returns made by the election officers and the results certified by the  
commissioners of election to said county commission  
which shall canvass the ballots, all in accordance with the laws of the state of West  
Virginia relating to primary and general elections  
insofar as the same are applicable. The county commission shall, without delay, canvass  
the ballots cast at said local option election and  
certify the result thereof.

The ballot to be used in said local option election shall have printed thereon  
substantially the following:

"Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in ..... County of West Virginia?

// Yes // No

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

If a majority of the voters voting at any local option election vote no on the foregoing question, the provisions of article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, no longer continue in effect in said county.

No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was approved or disapproved at the previous local option election, sooner than five years after the last local option election.

§47-20-27. Prohibited acts by convicted individuals and corporations.

Any individual, organization, association or corporation convicted of any felony, or a misdemeanor for a gambling offense, is prohibited from directly or indirectly obtaining a bingo license, conducting a bingo game, operating a concession, or leasing or providing to a licensee organization any premises where bingo occasions may be held within ten years from said conviction.

§47-20-28. Restrictions on use of bingo equipment.

A licensee may use only bingo equipment which it owns or which it borrows without compensation, or leases for a reasonable and customary amount, from another licensee.

§47-20-28a. Certain operators of bingo games to provide for smoking and nonsmoking sections.

Any bingo operator who distributes more than one hundred bingo cards or bingo sheets at any bingo occasion shall provide a smoking and nonsmoking section, if smoking is permitted.

§47-20-29. Effective date.

The effective date of this article is the fifteenth day of August, one thousand nine hundred eighty-one.

§47-20-30. Severability.

If, for any reason, any section, sentence, clause, phrase or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end each and every article, section, sentence, clause, phrase or provision of this article is hereby declared to be severable.

## **ARTICLE 21. CHARITABLE RAFFLES**

§47-21-1. Legislative intent.

The Legislature, in recognition of the need charitable and public service organizations have for a practicable way of raising funds, declares its intent to grant the privilege of holding raffles to those organizations which qualify as provided in this article.

§47-21-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Contributing to educational or religious purposes; or

(2) Relieving them from disease, distress, suffering, constraint or the effects of poverty; or

(3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or

(4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office; or

(5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or

(6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities; or

(8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

(c) "Commissioner" means the state tax commissioner.

(d) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, "concession" includes beverages which are regulated by and shall be subject to

the provisions of chapter sixty of this code.

(e) "Conduct" means to direct the actual holding of a raffle by activities including, but not limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners and awarding prizes.

(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to section fifteen of this article.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be deemed to include any moneys collected or received from the sale of concessions at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by sections eleven, thirteen and fifteen of this article; this term shall not be deemed to include moneys collected or received from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (a) of this section. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling of tickets to participate in such game entitling the holder or holders to a chance on a prize or prizes.

(o) "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) "Tax-exempt association or organization" means an association or organization which is, and has received from the "Internal Revenue Service" a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection 527(a) of said code.

§47-21-3. Authorizing the conduct of certain raffles without a license.

Notwithstanding any other provisions of this article to the contrary, any charitable or public service organization which has been in existence in this state for at least one year is hereby authorized to conduct raffles without compliance with the licensing provisions of this article: Provided, That any prize awarded in any single raffle at a raffle occasion may not exceed in value the sum of one thousand dollars: Provided, however, That the cumulative gross proceeds derived from the conduct of raffle occasions by any such charitable or public service organization shall not exceed seven thousand five hundred dollars during any calendar year: Provided further, That any such organization shall not be subject to the record keeping provisions of section sixteen of this article but shall maintain a separate accounting for the operation of raffles. All records required by this section shall be maintained for at least three calendar years and shall be available for reasonable inspection by the commissioner.

§47-21-4. Who may hold raffles; application for license; licenses not transferable.

(a) Except as provided in section three of this article, only persons, as defined in section two of this article, who are residents of this state and who are active members of any charitable or public service organization which has been in existence in this state for at least two years prior to filing an application for a raffle license issued pursuant to section five or six of this article may hold raffle occasions in accordance with the provisions of this article during the time it holds a valid license.

(b) Application for a raffle license shall be made to the tax commissioner and shall be on a form supplied by him or her. The application shall contain the information required by section eight of this article and any other information which the commissioner considers necessary. No raffle may be held and no tickets may be sold pursuant to this article until the raffle application has been approved by the tax commissioner and the license has been received by the applicant: Provided, That no raffle occasion may be held and no raffle tickets may be sold until a sixty day filing period, which is that time period between the receipt of that application by the

tax commissioner and the first raffle occasion, has expired: Provided, however, That the tax commissioner shall send the applicant its license within five days after the application is approved. If the sixty day filing period has expired and the application has not been denied and the raffle license has not been received by the applicant, the applicant may consider the application approved and begin to sell tickets for the raffle or hold the raffle occasion. The tax commissioner shall send the applicant its license within five days after the expiration of the filing period if the application has not been otherwise denied.

(c) For purposes of this article, any application for an annual license or a limited occasion license received prior to the effective date of this article is considered filed on the effective date.

(d) No raffle license issued pursuant to this article may be transferred.

#### §47-21-5. Annual license; conditions on holding of raffles.

A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it, may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section, the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide for the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance. No organizations may hold a joint raffle occasion under any annual licenses.

A licensee shall display its annual raffle license conspicuously at the location where the raffle occasion is held.

#### §47-21-6. Limited occasion license; conditions on holding of raffles.

Two or more organizations may hold a joint raffle occasion provided each participating organization has been granted a limited occasion raffle license for such jointly held occasion: Provided, That no licensee which holds an annual license may obtain more than one limited occasion license.

A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold two raffle occasions during the time period so specified which may not exceed six months from the date of issuance of such limited occasion license.

Subject to the limitations set forth in this section for charitable or public service organization having an annual license, a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, may be granted only

three limited occasion licenses per year in the aggregate. For purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the three licenses allowed under this section are granted.

A licensee shall display its limited occasion license conspicuously at the location where the raffle occasion is held.

#### §47-21-7. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissioner for annual licenses in the amount of five hundred dollars. A license fee shall be paid to the tax commissioner for a limited occasion license in the amount of fifty dollars. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and no county or municipality or other political subdivision of this state is empowered to impose a license or franchise tax or fee on any raffle or raffle occasion.

(b) The gross proceeds derived from the conduct of a raffle occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. Any charitable or public service organization conducting a raffle occasion pursuant to the provisions of this article is exempt from payment of consumers sales and service taxes, use taxes and all other taxes on all purchases for use or consumption in the conduct of a raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of raffle tickets.

#### §47-21-8. Information required in application.

An application for a raffle license shall include the following information:

(a) Name of the applicant and name and headquarter's address of any state or national organization of which the applicant is a local branch or lodge;

(b) The address and telephone number of the applicant organization, if any, and if the applicant organization has no telephone, then the address and telephone number of the person applying on behalf of such organization shall be supplied;

(c) For a limited occasion license, the names and addresses of two or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's raffle operations, at least one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; and the names and addresses of the highest

elected officer of the licensee and his officially appointed designee, one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; for an annual license, the names, addresses and telephone numbers of three or more bona fide active members of the applicant organization who are charged with overall responsibility for the applicant's raffle operations, at least one of whom shall be present when the winning numbers or names are drawn, announced, posted and verified and the prizes are awarded; and the names and addresses and telephone numbers of the highest elected officer of the licensee and his officially appointed designee, one of whom shall be present when the winning numbers and names are drawn, announced posted and verified and the prizes are awarded;

(d) The address or location of the premises where licensed raffles are to be held;

(e) Information as may be required by the commissioner to satisfy him that the applicant meets the requirements of:

(1) Being a charitable or public service organization as defined by this article; and

(2) Being in existence in this state for at least one year prior to filing an application for a raffle license.

(f) Designate the date or dates and the time or times when the raffle occasions will be held;

(g) The name of the owner of the premises where the raffle occasions are to be held and a copy of all rental agreements involved if such premises are leased or subleased by the applicant from the owner or lessee;

(h) State whether the applicant has ever had a previous application for any raffle license refused, or whether any previous raffle license has been revoked or suspended;

(i) State the charitable or public service purpose or purposes for which the raffle proceeds will be expended;

(j) Provide statements to the effect that the individuals specified in subdivision (c) of this section and the officers of the applicant understand:

(1) That it is a violation of this article to allow any persons other than those authorized by this article to conduct the raffle or concessions operated in conjunction therewith;

(2) That it is required to file the reports and keep the records as provided by this article; and

(3) That it is a crime to violate the provisions of this article and, that a violation of such provisions may result in suspension or revocation of the raffle license and denial of applications for subsequent raffle licenses;

(k) Provide a sworn statement by an authorized representative of the applicant that the information contained in the application is true to the best of his knowledge;

(l) Provide a list and description of estimated expenses to be incurred in connection with the holding of the raffle occasions and any

concessions operated and the name and address of each payee. If a concession is operated in accordance with the provisions of section thirteen of this article, a copy of any written agreement or an explanation of any oral agreement providing for any type of remuneration to be received by the concession operator shall be attached to the application;

(m) A list of the names and addresses of all officers and members of the board of directors, governors or trustees, if any, of the applicant organizations; and

(n) Any other necessary and reasonable information which the commissioner may require.

#### §47-21-9. Amendment of license.

If circumstances beyond the control of the licensee organization prohibit it from holding any raffle occasion in accordance with the information provided by it in its license application form, the licensee organization may request approval by the commissioner to: modify the terms and conditions of its license.

#### §47-21-10. Licensee rules and regulations.

Each licensee may adopt rules and regulations, not inconsistent with or in violation of the provisions of this article, or rules or regulations promulgated hereunder, to govern the conduct of raffle occasions.

Any rules and regulations adopted by the licensee shall be made available for inspection at all raffle occasions held. Any such rules and regulations adopted are a part of the records required to be kept by section sixteen of this article.

#### §47-21-11. Limits on prizes awarded -- General provisions.

Prizes may be money, real or personal property or merchandise other than beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are real or personal property or merchandise, the value assigned to them is their fair market value at the time of acquisition for the raffle or at the time of purchase.

#### §47-21-12. Compensation.

(a) A licensee may pay a salary, the minimum of which shall be established at the federal minimum wage, and the maximum which shall be six dollars and fifty cents per hour, to operators of charitable raffle games who are active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable raffle license or the most recent filing of an application for renewal of the license.

(b) If the licensee's gross receipts from raffle occasions equal or exceed one hundred thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than eight operators.

(c) If the licensee's gross receipts from charitable raffle occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than five operators.

(d) If the licensee's gross receipts from charitable raffle occasions are less than fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to no more than three operators.

(e) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable raffle operator employees allowed under this limitation for charitable raffle licensees is in addition to the number of charitable bingo operator employees allowed under section twelve-a, article twenty of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations, and the charitable bingo fund and the charitable raffle fund and payments from the funds shall not be commingled.

(f) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle operator" shall not include concession stand workers. Wages paid to concession workers shall not exceed six dollars and fifty cents per hour. §47-21-13.

Compensation for concession operator; concession operated by charitable or public service organization.

A licensee may allow any person to operate concessions in conjunction with raffle occasions, and to be compensated for such operation, in accordance with the following provisions:

(a) The licensee organization is one which meets or holds functions other than raffle occasions on a regular basis;

(b) The concession to be operated at the raffle occasion is operated regularly at such meetings or functions;

(c) The person which operates the concession at such regular meetings or functions is the same which operates the concession at the raffle occasion; and

(d) The terms of the agreement under which the person operates the concession at the raffle occasion are the same terms under which the concession is operated at the regular meetings or functions: Provided, That a copy of such agreement is filed at the time the application is made and any changes thereto are filed within ten days of being made.

In addition, any charitable or public service organization as defined by section two of this article may operate a concession at any raffle occasions held by a licensee: Provided, That the net proceeds it receives from that concession are used solely for the charitable or public service purposes of that organization.

§47-21-14.

Repealed.

Acts, 1995 Reg. Sess., Ch. 51.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of raffle occasions, not to exceed twenty-five percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of raffle, including, but not limited to:

(1) Rent paid for the use of the premises: Provided, That a copy of the rental agreement was filed with the raffle license application with any modifications to the rental agreement to be filed within ten days of being made: Provided, however, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for the premises;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the raffle occasion;

(4) The cost to the licensee organization for advertising the raffle occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the raffle patrons: Provided, That any proceeds received from the provision of child care services shall be handled the same as raffle proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section eleven of this article, may be paid out of the gross proceeds of the conduct of raffle.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the raffle occasion. The licensee shall expend all net raffle proceeds and any interest earned on the net raffle proceeds for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the raffle occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a raffle license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any raffle operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, or improvement, of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) The tax commissioner has the authority to disapprove any contract for sale of goods or services to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, or any lease of real or tangible personal property to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Disapproved contracts or leases shall be considered to be in contravention of this article, and are void. Any attempt by any charitable raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the charitable raffle license and for refusal by the tax commissioner to renew the charitable raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of the subsections (a) through (e) of this section shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than sixty days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are expended.

#### §47-21-16. Records; commissioner audit.

Any licensee which holds a raffle occasion as provided by this article shall maintain a separate account and separate bookkeeping procedure for its raffle operations. All records required by this article shall be maintained for at least three years and shall be open to the commissioner for reasonable inspection. Whenever the commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he may perform or cause to be performed an audit of the licensee's books and records.

#### §47-21-17. Advertising.

A licensee may advertise its raffle occasions in a manner reasonably necessary to promote the occasion.

#### §47-21-18. Fraud; penalties.

In addition to any other offense set forth in this code, any person who or licensee which knowingly conducts or participates in a

fraudulently or deceptively conducted raffle with intent to defraud is guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred nor more than ten thousand dollars, or imprisoned in the penitentiary not less than one, nor more than five years, or both fined and imprisoned.

§47-21-19. Obtaining license fraudulently; penalty.

In addition to any other offense set forth in this code, any person who or licensee which knowingly obtains or assists another in obtaining a raffle license under false, deceptive or fraudulent pretenses is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than ten thousand dollars.

§47-21-20. Violation of provisions; penalties.

Any person who knowingly violates any provisions of this article, other than the provisions of sections eighteen and nineteen, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars; and, upon a second or subsequent conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars or imprisoned not more than one year or both fined and imprisoned.

§47-21-21. Administration; rules and regulations.

(a) The commissioner shall promulgate rules and regulations to administer the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code.

(b) The commissioner shall deny an application for a license or modification thereof if he finds that the issuance thereof would be in violation of the provisions of this article.

(c) The commissioner may revoke, suspend or refuse to renew a license if the licensee or any member of a licensee organization has been convicted pursuant to section eighteen or nineteen of this article and the commissioner finds that it would be in the public interest to do so; or if the licensee has violated any of the provisions of this article: Provided, That before revoking or suspending a license issued under the authority of this article, the commissioner shall give at least ten days, three days for a limited occasion license, notice to the licensee. Notice shall be in writing, state the reason for revocation or suspension and designate a time and place when the licensee may show cause why the license should not be revoked or suspended. The notice required by this section shall be by personal or substituted service, in accordance with the West Virginia rules of civil procedure for trial courts of record, on the person who applied for the license on behalf of the licensee. The licensee may, at the time designated for the hearing, present evidence in its behalf and be represented by counsel. A decision of the commissioner revoking or suspending a license is subject to judicial review upon the

appeal of a licensee. Such decision shall be subject to judicial review in the same manner as other decisions of the commissioner.

(d) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to such licensee.

(e) The commissioner shall promulgate reasonable rules and regulations necessary to the administration of this article.

(f) The provisions of article five, chapter twenty-nine-a of this code apply to the denial, revocation, suspension of or refusal to renew a license hereunder.

(g) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a raffle license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

(h) Notwithstanding any other provision of this article, the commissioner may issue an emergency order suspending a raffle license under the following circumstances and in the following manner:

(1) An emergency order may be issued only when the commissioner believes that:

(i) There has been a criminal violation of this article;

(ii) Such action is necessary to prevent a criminal violation of this article; or

(iii) Such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare.

(2) The emergency order shall set forth the grounds upon which it is issued, including a statement of facts constituting the alleged emergency necessitating such action. This order shall be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.

(3) The emergency order is effective immediately upon issuance and service upon the licensee.

(4) Within five days after issuance of an emergency order, the commissioner shall set a time and place for a hearing wherein the licensee may appear and show cause why its license should not be revoked.

#### §47-21-22. Filing of reports.

Each licensee holding an annual, limited or state fair license shall file with the commissioner a financial report summarizing its raffle operations within thirty days after the expiration date of the license. The time period covered by an annual report is the full license year or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year.

The reports required by this section shall contain the name, address and social security number of any individual who received

during the course of a raffle occasion prizes the aggregate value of which exceeded one hundred dollars, and other information required by the commissioner: Provided, That any licensee failing to file the report when due is liable for a penalty of twenty-five dollars for each month or fraction of a month during which the failure continues, the penalty not to exceed one hundred dollars: Provided, however, That annual financial reports must contain either a compilation or review of such financial report by a certified or licensed public accountant, or may be audited by a certified or licensed public accountant, if a licensee's gross receipts exceed fifty thousand dollars. §47-21-23. Filing of copy of license; application open to public inspection.

Whenever a license is granted pursuant to this article, the commissioner shall cause a copy of the license to be filed and recorded with the clerk of the county commission of the county in which the raffle occasions are to be held. A copy of the application shall be made available for public inspection in the office of the commissioner.

§47-21-24. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in such county.

A petition for a local option election shall be in the form specified in this section and shall be signed by qualified voters residing within such county equal to at least ten percent of the individuals qualified to vote within such county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF RAFFLES FOR CHARITABLE PURPOSES IN \_\_\_\_\_ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is an individual residing in \_\_\_\_\_ County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at (1) a special or (2) the next primary, general or special election (the petition shall specify (1) or (2)) upon the following question: Shall the provisions of article twenty-one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continue in effect in \_\_\_\_\_ County, West Virginia?

Name      Address      Date

\_\_\_\_\_  
(Each individual signing must specify either his post-office address or his street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof 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 such publication shall be the county. The notice shall be so published within fourteen consecutive days next preceding the election.

Each individual qualified to vote in the county at any primary, general or special election, shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary, general or other special election, it shall be held in connection with and as a part of that primary, general or special election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to such county commission which shall canvass the ballots, all in accordance with the laws of the state of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

§47-21-25. Prohibited acts by convicted persons.

Any person convicted of any felony, or a misdemeanor for a gambling offense, or of a violation of any provision of article twenty of this chapter, is prohibited from directly or indirectly obtaining a raffle license, conducting a raffle game, operating a concession, or leasing or providing to a licensee any premises where raffle occasions may be held, within ten years from said conviction.

§47-21-26. Restrictions on use of raffle equipment.

A licensee may use only raffle equipment which it owns or which it borrows without compensation, or leases for a reasonable and customary amount, from another licensee.

§47-21-27. Proceeds of state fair.

The Legislature declares that the net proceeds of any raffle game which accrue to the West Virginia state fair are considered used for charitable or public service purposes as defined in section two of this article. Any proceeds allowed by the state fair board to be paid to or retained by persons who conduct raffle occasions at the state fair are deemed to be expenses incurred by the state fair board.

§47-21-28. State fair raffle license; rules and regulations.

The West Virginia state fair board may apply annually to the tax commissioner for a state fair raffle license to provide for the conduct of raffle occasions at the state fair. The license shall permit the state fair board to have one or more persons conduct raffle occasions at the state fair who have conducted raffle occasions on a regular basis for a least one year prior to the date of the state fair board's application. A license fee of five hundred dollars shall be paid to the tax commissioner for the state fair raffle license. The provisions of sections eleven, twelve, fourteen, fifteen and twenty-six of this article do not apply to a state fair raffle license. No state fair raffle license may be issued unless the application includes a copy of any lease or agreement entered into between the state fair board and the persons who are to conduct raffle occasions at the state fair. The state fair board may adopt reasonable rules and regulations, not inconsistent with or in violation of the provisions of this article, to govern the holding of raffle occasions at the state fair.

§47-21-29. Severability.

If, for any reason, any section, sentence, clause, phrase or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end each and every section, sentence, clause, phrase or provision of this article is hereby declared to be severable.

## CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS

### ARTICLE 1A. DEFINITIONS

§48A-1A-19. Gross income.

(a) "Gross income" means all earned and unearned income. The word "income" means gross income unless the word is otherwise qualified or unless a different meaning clearly appears from the context. When determining whether an income source should be included in the child support calculation, the court or master should consider the income source if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed.

(b) "Gross income" includes, but is not limited to, the following:

(1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income;

(2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation,

supplemental employment benefits, workers' compensation benefits and state lottery winnings and prizes;

(3) Interest, dividends or royalties;

(4) Expense reimbursements or in kind payments such as business expense accounts, business credit accounts, and tangible property such as automobiles and meals, to the extent that they provide the parent with property or services he or she would otherwise have to provide;

(5) Attributed income of the parent, calculated in accordance with the provisions of section three, article one-a of this chapter;

(6) Compensation paid for personal services as overtime pay: Provided, That overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court or master that the overtime work is voluntarily performed and that he or she did not have a previous pattern of working overtime hours prior to separation or birth of a nonmarital child;

(7) Income from self-employment or the operation of a business, minus ordinary and necessary expenses which are not reimbursable, and which are lawfully deductible in computing taxable income under applicable income tax laws, and minus FICA and medicare contributions made in excess of the amount that would be paid on an equal amount of income if the parent was not self-employed: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from such employment during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such income, whichever period is shorter;

(8) Income from seasonal employment or other sporadic sources: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from seasonal employment or other sporadic sources received during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such compensation, whichever period is shorter; and

(9) Alimony and separate maintenance receipts.

(c) Depending on the circumstances of the particular case, the court or master may also include severance pay, capital gains and net gambling, gifts or prizes as gross income.

(d) "Gross income" does not include:

(1) Income received by other household members such as a new spouse;

(2) Child support received for the children of another relationship;

(3) Means-tested assistance such as aid to families with dependent children, supplemental security income and food stamps; and

(4) A child's income unless the court or master determines that the child's income substantially reduces the family's living expenses.

## CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE

### ARTICLE 9. GAMING CONTRACTS

§55-9-1. Gaming contracts void.

Every contract, conveyance, or assurance, of which the consideration, or any part thereof, is money, property, or other thing won or bet at any game, sport, pastime, or wager, or money lent or advanced at the time of any gaming, betting, or wagering, to be used in being so bet or wagered (when the person lending or advancing it knows that it is to be so used) shall be void as between the parties thereto, and as to all persons except such as hold or claim under them in good faith, for value, and without notice of the illegality of the consideration.

§55-9-2. Recovery of money or property lost in gaming.

If any person shall lose to another within twenty-four hours ten dollars or more, or property of that value, and shall pay or deliver the same, or any part thereof, such loser may recover back from the winner the money or property, or in lieu of the property the value thereof, so lost, by suit in court, or before a justice, according to the amount or value, brought within three months after such payment or delivery. The loser may so recover from the winner, notwithstanding the payment or delivery was to the winner's indorsee, assignee, or transferee. But nothing in this section shall be so construed as to permit a recovery of such property, or its value, from any person (or those claiming under him) other than the winner, when such person has paid value for such property without notice of illegal consideration under which the winner derived his claim of title.

§55-9-3. Recovery of gaming losses by bill in equity; repayment discharges winner from punishment.

Such loser may file a bill in equity against such winner, who shall answer the same, and upon discovery and repayment or redelivery of the money or property so won, or its value, such winner shall be discharged from any forfeiture or punishment which he may have incurred for winning the same.

## CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS

### ARTICLE 7. LICENSES TO PRIVATE CLUBS

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined

not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of article sixteen, chapter eleven, or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

- (1) Revoke the licensee's license;
- (2) Suspend the licensee's license;
- (3) Place the licensee on probationary status for a period not to exceed twelve months; and
- (4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed.

(b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated "The Alcohol Beverage Control Enforcement Fund", which is hereby created. All moneys collected, received and deposited in the "Alcohol Beverage Control Enforcement Fund" shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the alcohol beverage control enforcement fund in excess of twenty thousand dollars shall be transferred to the general revenue fund.

(c) In addition to the grounds for revocation, suspension or other sanction of a license set forth in subsection (a) of this section, conviction of the licensee of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, nonintoxicating beer or gambling shall be mandatory grounds for such sanctioning of a license. Conviction of the licensee of any violation of the laws of this state or of the United States relating to prostitution, or the sale, possession or distribution of narcotics or controlled substances, shall be mandatory grounds for revocation of the licensee's license for a period of at least one year.

§60-7-13a. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs.

The commissioner shall not revoke or suspend any license issued pursuant to this article or impose any civil penalties authorized thereby unless and until a hearing shall be held after at least ten days' notice to the licensee of the time and place of such hearing, which notice shall contain a statement or specification of the charges, grounds or reasons for such proposed contemplated action, and which shall be served upon the licensee as notices under the West Virginia rules of civil procedure or by certified mail, return receipt requested, to the address for which license was issued; at which time and place, so designated in the notice, the licensee shall have the right to appear and produce evidence in his behalf, and to be represented by counsel: Provided, That the commissioner may forthwith suspend any such license when the commissioner believes the public safety will be adversely affected by the licensee's continued operation.

The commissioner shall have authority to summon witnesses in the hearing before him, and fees of witnesses summoned on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. Such fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed one hundred fifty dollars per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund created by section thirteen of this article.

If, at the request of the licensee or on his motion, the hearing shall be continued and shall not take place on the day fixed by the commissioner in the notice above provided for, then such licensee's license may be suspended until the hearing and decision of the commissioner, and in the event of revocation or suspension of such license, upon hearing before the commissioner, the licensee shall not be permitted to sell alcoholic liquor pending an appeal as provided by this article. Any person continuing to sell alcoholic liquor after his license has been suspended or revoked, as hereinbefore provided, is guilty of a misdemeanor and shall be punished as provided in section twelve of this article.

The action of the commissioner in revoking or suspending a license shall be subject to review by the circuit court of Kanawha County, West Virginia, in the manner provided in chapter twenty-nine-a of this code, when such licensee may be aggrieved by such revocation or suspension. Petition for such review must be filed with said circuit court within a period of thirty days from and after the date of revocation or suspension by the commissioner; and any licensee obtaining an order for such review shall be required to pay the

costs and fees incident to transcribing, certifying and transmitting the records pertaining to such matter to the circuit court. An application to the supreme court of appeals of West Virginia for a writ of error from any final order of the circuit court in any such matter shall be made within thirty days from and after the entry of such final order.

All such hearings, upon notice to show cause why license should be revoked or suspended, before the commissioner shall be held in the offices of the commissioner in Charleston, Kanawha County, West Virginia, unless otherwise provided in such notice, or agreed upon between the licensee and the commissioner; and when such hearing is held elsewhere than in the commissioner's office, the licensee may be required to make deposits of the estimated costs of such hearing.

Whenever any licensee has been convicted of any offense constituting a violation of the laws of this state or of the United States relating to alcoholic liquor, or nonintoxicating beer, and such conviction has become final, the clerk of the court in which such licensee has been convicted shall forward to the commissioner a certified copy of the order or judgment of conviction if such clerk has knowledge that the person so convicted is a licensee, together with the certification of such clerk that the conviction is final. The commissioner shall report violations of any of the provisions of section twelve or twelve-a of this article to the prosecuting attorney of the county in which the licensed premises is located.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT

### **ARTOC;E 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY**

§61-8-19. Cruelty to animals; penalties; exclusions.

(a) If any person cruelly mistreats, abandons or withholds proper sustenance, including food, water, shelter or medical treatment necessary to sustain normal health and fitness or to end suffering or abandons any animal to die, or uses, trains or possesses any domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in the county jail not more than six months, or both so fined and confined.

(b) Any person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which said conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(d) For the purpose of this section, the term "controlled substance" shall have the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.

(f) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second violation of said subsection is guilty of a misdemeanor and shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than one thousand dollars, or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (g) are complied with.

(g) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a second or subsequent violation of the provisions of subsection (a) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

(h) In addition to any other penalty which can be imposed for a violation of this section, a court may, as a condition of probation, prohibit any person so convicted from possessing or owning any animal or type of animal during the period of probation.

## **ARTICLE 10. CRIMES AGAINST PUBLIC POLICY**

§61-10-1. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine or device; forfeiture of money used in such gaming.

Any person who shall keep or exhibit a gaming table, commonly called A.B.C. or E.O. table, or faro bank, or keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other

gaming table or device of like kind, under any denomination, or which has no name, whether the game, table, bank, machine or device be played with cards, dice or otherwise, or shall be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character, shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and be fined not less than one hundred nor more than one thousand dollars. Any such table, bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table, or upon such gaming device, may be seized by order of a court, or under the warrant of a justice, and the money so seized shall be forfeited to the county and paid into the treasury of the county in which such seizure is made, and the table, bank, machine or gaming device shall be completely destroyed: Provided, however, That the provisions of this section shall not extend to coin-operated nonpayout machines with free play feature or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

§61-10-2. Permitting gaming table or device on premises; penalty.

If any person knowingly permit a gaming table, bank or device, such as is mentioned in the preceding section, to be kept or exhibited on any premises in his occupation, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year, and be fined not less than one hundred nor more than one thousand dollars.

§61-10-3. Unlawful to act as doorkeeper, guard or watch for keeper of gaming table or device; penalty.

If any person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any such gaming table, bank or device, or shall resist, or by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, or shall unlawfully take the same from the person seizing it, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than one year and be fined not exceeding one thousand dollars.

§61-10-4. Playing or betting at gaming tables and devices; playing or betting on games at hotels and public places; penalty.

If any person bet or play at any such gaming table, bank or device as is mentioned in the first section of this article, or if, at any

hotel or tavern, or other public place, or place of public resort, he play at any game except bowls, chess or backgammon, draughts or a licensed game, or bet on the sides of those who play at any game, whether the game be permitted or licensed or not, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than one hundred dollars, and shall, if required by the court, give security for his good behavior for one year, or, in default thereof, may be imprisoned in the county jail not more than three months.

§61-10-6. Permitting gaming at hotels; penalty.

If the keeper of a hotel or tavern permit unlawful gaming at his house, or at any outhouse, booth, arbor, or other place appurtenant thereto or held therewith, he shall be guilty of a misdemeanor, and, upon conviction, be fined not less than twenty nor more than one hundred dollars, and shall forfeit his license, and shall give security for his good behavior for one year, or, in default of such security, be imprisoned in the county jail not more than four months.

§61-10-7. Presumption against hotelkeeper.

In a prosecution under the preceding section, if the gaming be proved, it shall be presumed it was permitted by the keeper of the hotel, unless it appear that he did not know of or suspect such gaming, or that he endeavored to prevent it, and gave information of it, with the names of the players, to the next circuit court of the county in which such gaming occurred, or to the prosecuting attorney thereof.

§61-10-8. Gaming at outhouse of hotel; penalty.

If the keeper of a hotel or tavern let or hire to another person any outhouse or other place, which has been at any time appurtenant to or held with the house kept by him, with intent that unlawful gaming be permitted thereat, he shall suffer the same punishment and incur the same forfeiture as if such unlawful gaming were permitted at his own principal house; and in a prosecution therefor, if the gaming be proved, it shall be presumed that such outhouse or other place was let or hired with intent aforesaid, unless the presumption be repelled in the manner provided for in the preceding section.

§61-10-14. Laws on gaming, lotteries and unchartered banks remedial.

All laws for suppressing gaming, lotteries and unchartered banks shall be construed as remedial.