

## THE LIMITED VIDEO LOTTERY ACT

*Initial passage: 2001, 1<sup>st</sup> Extraordinary Session*  
*Last amended: 2004, 1<sup>st</sup> Extraordinary Session*

### Part 1. General Provisions.

#### §29-22B-101. Short title.

This article shall be known and may be cited as the "Limited Video Lottery Act". *Cited in Club Assn. Of W.Va., Inc. v. Wise, 156 F. Supp. 2d 599. 2001 U.S. Dist. LEXIS 13580 (S.D.W.Va. 2001), affirmed, 293 F.3d 723 (4<sup>th</sup> Cir. 2002).*

#### §29-22B-102. Authorization for limited video lottery; regulation by lottery commission.

Limited video lottery is hereby authorized and may be operated and maintained subject to the provisions of this article. The limited video lottery authorized by this article, being a lottery, is subject to regulation by the West Virginia lottery commission.

#### §29-22B-103. Exceptions.

(a) Nothing in this article shall be construed in any way to modify, amend, or otherwise affect the validity of any provisions regulating charitable bingo and raffles as set forth in articles 47-20-1, *et seq.*, and 47-21-1, *et seq.*, of this code.

(b) Nothing contained in this article shall be construed to modify, amend, or otherwise affect the validity of any provisions regulating racetrack video lottery as set forth in article 22A of this chapter.

### PART 2. LEGISLATIVE FINDINGS.

#### §29-22B-201. Legislative finding; constitutional authority; limited video lottery is a lottery.

The Legislature finds and declares that:

(1) The Constitution grants to the Legislature the authority to establish, by general law, lotteries which are regulated, controlled, owned and operated by the state of West Virginia; and

(2) The limited video lottery authorized by this article is a "lottery" as that term is commonly understood and as that term is used in the West Virginia Constitution, article 6, section 36. The limited video lottery authorized as video lottery games in this article is a system of lottery games that utilize advanced computer technology.

#### §29-22B-202. Legislative finding; state ownership of video lottery through outright ownership or possession of a proprietary interest in computer hardware and software.

The Legislature further finds and declares that:

(1) 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;

(2) The state may possess 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 (A) the manufacturer retains copyrighted ownership of the software, (B) the product license granted to the state is nontransferable, and (C) the agreement 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; and

(3) The state can control and regulate a video lottery if the state (A) restricts licensure to a limited number of video lottery terminals at qualified locations, (B) extends strict and exclusive state regulation to all persons, locations, practices and associations related to the operation of licensed limited video lottery facilities, and (C) provides comprehensive law enforcement supervision of limited video lottery activities.

#### §29-22B-203. Legislative finding; license to participate in limited video lottery is a privilege.

The Legislature further finds and declares that:

(1) A person seeking a license or other affirmative lottery commission approval has no right to a license or to the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this article is a revocable privilege;

(2) The licensing, control and regulation of limited video lottery by the state does not create (A) any property right in a license issued pursuant to this article, (B) any right to transfer or encumber a license, (C) any vested right in a license, or (D) the accrual of any value to the privilege of participation in any limited video lottery activity; and

(3) That the privilege of participation in limited video lottery operations is conditioned upon (A) the proper and continuing individual qualification of an applicant or licensee, and (B) the discharge of the affirmative responsibility of each licensee to provide the regulatory and investigatory authorities with any assistance and information necessary to assure that the policies declared by this article are achieved.

### Part 3. Definitions.

#### §29-22B-301. Applicability of definitions.

For the purposes of this article, the words or terms defined in this part 3, and any variation of those words or terms required by the context, have the meanings ascribed to them in this part 3. These definitions are applicable unless a different meaning clearly appears from the context.

#### §29-22B-302. Applicant defined.

“Applicant” means a person applying for a license required by this article for lawful participation in limited video lottery.

**§29-22B-303. Associated equipment defined.**

“Associated equipment” means any hardware located on the premises of a video lottery retailers, other than the video lottery terminals themselves, that is connected to the video lottery terminal or to the central computer for the purpose of performing communication, validation or other functions. “Associated equipment” does not include the communication equipment and facilities of a regulated public utility.

**§29-22B-304. Background investigation defined.**

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

**§29-22B-305. Central computer, central control computer or central site system defined.**

“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.

**§29-22B-306. Commission or state lottery commission defined.**

“Commission” or “state lottery commission” means the West Virginia lottery commission created by article 22 of this chapter.

**§29-22B-307. Control defined.**

“Control” means the authority to direct the management and policies of an applicant or a license holder.

**§29-22B-308. Director defined.**

“Director” means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

**§29-22B-309. Disable or terminal disable defined.**

“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.

**§29-22B-310. Display defined.**

“Display” means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.

**§29-22B-311. EPROM and erasable programmable read-only memory chips defined.**

“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.

**§29-22B-312. Identification document defined.**

“Identification document” means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government or a political subdivision of a foreign government, which, when completed with information concerning a particular individual, is of the type intended or commonly accepted for the purpose of identifying individuals.

**§29-22B-313. Indirect ownership defined.**

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

**§29-22B-314. License defined.**

“License” or “video lottery license” means authorization granted by the commission pursuant to this article to a person permitting that person to engage in the activity for which the license was issued. “License used in this article” means a license issued by the commission as provided in this article that has not expired or been cancelled, revoked or suspended by the director or the commission.

**§29-22B-315. Location defined.**

“Location” means a restricted access adult-only facility located on premises in which the limited video lottery retailer holds a license as provided in section 22B-501 of this article.

**§29-22B-316. Limited video lottery retailer defined.**

“Limited video lottery retailer” means a person who holds either a valid license issued under article 60-7-1, *et seq.*, of this code, to operate a private club, or who holds a valid Class A license issued under article 11-16-1, *et seq.*, of this code, to operate a business where nonintoxicating beer is sold for consumption on the premises, or who holds both licenses, and the person also holds a valid limited video lottery retailer’s license issued under this article.

**§29-22B-317. Lottery defined.**

“Lottery” means the public gaming systems or games regulated, controlled, owned and operated by

the state lottery commission as provided in this article and in articles 29-22-1, *et seq.*, 29-22A-1, *et seq.*, and article 29-25-1, *et seq.*

**§29-22B-318. Manufacturer defined.**

“Manufacturer” means any person holding a license issued under this article by the commission which allows the person 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 the video lottery terminal is housed, and whose product is intended for sale, lease or other assignment to a person who is issued a permit under this under this article allowing the person to purchase or lease video lottery terminals from a manufacturer.

**§29-22B-319. National criminal history background check system defined.**

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

**§29-22B-320. Net terminal income and gross terminal income defined.**

“Net terminal income” means the portion of gross terminal income collected by the commission from the permittees determined to be net terminal income as calculated under subsection 22B-1408(a) of this article. “Gross terminal income” means the total amount of cash inserted into 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. A licensee may not deduct costs or expenses related to the operation of video lottery games from net terminal income.

**§29-22B-321. Operator defined.**

“Operator” means a person holding an operator’s license granted under this article by the commission allowing the person to: (1) Own or lease a specified number of video lottery terminals from one or more manufacturers; (2) service and repair those video lottery terminals; and (3) enter into contracts with limited video lottery retailers for placement of those video lottery terminals in a restricted access adult-only facility located on the premises of the limited video lottery retailers.

**§29-22B-322. Own defined.**

“Own” means any beneficial or proprietary interest in any property and includes, but is not limited to, any direct or indirect beneficial or proprietary interest in any business of an applicant or licensee.

**§29-22B-323. Permit defined.**

“Permit” means the authorization issued by

the commission allowing a person licensed as an permittee under this article to own or lease a specified number of video lottery terminals.

**§29-22B-324. Permittee defined.**

“Permittee” means a licensed operator or a licensed limited video lottery retailer who has a permit for video lottery terminals issued under part 11 of this article.

**§29-22B-325. Person defined.**

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

**§29-22B-326. Player defined.**

“Player” means a person who plays a video lottery game on a video lottery terminal at a restricted access adult-only facility.

**§29-22B-327. Resident of this state defined.**

“Resident of this state” means an individual who: (1) Maintains a bona fide full time primary place of abode in this state; (2) is not registered to vote in any other state; (3) if licensed to drive, holds a valid driver’s license in this state and does not hold a current driver’s license issued by any other state; (4) timely filed personal income tax returns as a resident of this state for the four preceding calendar years (determined by including any authorized extension of time for filing the return); and (5) does not claim to be a resident of any other state for any purpose whatsoever.

**§29-22B-328. Restricted access adult-only facility defined.**

“Restricted access adult-only facility” means:

(a)(1) A private club licensed under article 60-7-1, *et seq.*, of this code that is licensed under this article by the commission to allow its members and their guests to play video lottery games: *Provided*, That when the private club is frequented by minors and their parents, video lottery terminals shall be located in a separate room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room; and

(2) A place of business that: (A) Has a “Class A” license issued under article 11-16-1, *et seq.*, of this code to sell nonintoxicating beer for consumption on the premises; (B) derives at least forty percent of its annual gross receipts at that location from sales of nonintoxicating beer to consumers and of such sales, at least eighty percent are sales of nonintoxicating beer for consumption on the premises; (C) maintains a suitable kitchen and dining facility and related equipment for serving meals for on-premises consumption; (D) regularly prepares and sells meals for consumption on the premises; (E) has a separate

room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room; and (F) after meeting any additional standards developed by the commission to implement and apply this subdivision (2), is licensed under this article by the commission to allow video lottery games to be played in the restricted access adult-only separate room on the premises.

(b) Notwithstanding the provisions of subsection (a) of this section, it does not include a place of business that sells petroleum products in conjunction with the sale of other retail products which may include, but are not limited to, tobacco, alcohol or food products; nor may such place of business establish a separate room or building which is a part of, contiguous to, or adjoining the place of business as a restricted access adult-only facility.

**§29-22B-329. Service technician defined.**

“Service technician” means an individual who is licensed under this article to service, maintain and repair video lottery terminals that are registered under this article. A licensed service technician may be a sole proprietor, partner, or an employee of a person licensed under this article or an employee of a business not licensed under this article that services, maintains and repairs video lottery terminals owned or leased by a permittee through one or more service technicians.

**§29-22B-330. Video lottery defined.**

“Video lottery” means a lottery that allows a game to be played utilizing an electronic computer and an interactive 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 a voucher that can be redeemed for a cash or non-cash prize, or nothing, determined wholly or predominantly by chance. “Video lottery” does not include a lottery game that merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game and which does not utilize an interactive electronic terminal device allowing input by one or more players.

**§29-22B-331. Video gambling machine defined.**

(a) “Video gambling machine” means a computerized device:

(1) That is not approved and registered by the commission under the provisions of this article or used, possessed or operated pursuant to and under the requirements of the provisions of articles 29-22-1, *et seq.*, 29-22A-1, *et seq.*, 29-25-1, *et seq.*, 47-20-1, *et seq.*, or 47-21-1, *et seq.*, or any reenactment thereof;

(2) That employs a monitor that has a display screen, software programs, graphics board, graphics card or any other necessary components that give the monitor graphics capabilities for displaying

and manipulating pictures, words, numbers or symbols;

(3) That has a storage medium containing the source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than, through the display of pictures, words, numbers or symbols, simulating the play of such games as poker, blackjack, roulette, baccarat, keno, craps, or any other game of skill or chance of whatever name or kind;

(4) That allows a person, by inserting currency, coins, tokens or other similar objects into the machine, or by otherwise making some payment of consideration, to make the machine available for the person to play;

(5) That allows a person playing the machine an opportunity to win (A) cash, (B) play credits, (C) tokens, tickets, vouchers or other things that can be exchanged for cash or any other thing of value, or (D) prizes, premiums, merchandise or any other thing of value, whether by reason of the skill of the player or by the application of the element of chance, or both; and

(6) That can result in a payoff to a winning player automatically from the machine or in any other manner whatsoever.

(b) “Video gambling machine” does not include:

(1) Pin ball machines;

(2) Automatic weighing, measuring, musical, and vending machines which are designed and constructed to give a uniform and fair return in value for each coin deposited and in which there is no element of chance; or

(3) Crane machines.

(c) A machine described in subsection (a) of this section is no less a video gambling machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability.

**§29-22B-332. Video lottery game defined.**

“Video lottery game” means an electronically simulated game of chance that is approved, owned and controlled under this article by the commission, which is displayed on the screen or video monitor of a video lottery terminal and that:

(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; and

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

**§29-22B-333. Video lottery terminal defined.**

“Video lottery terminal” means a commission-approved machine or device that is compatible with the lottery commission’s central computer system, and that is used for the purpose of playing video lottery games authorized by the lottery commission by no more than one player at a time.

**§29-22B-334. Wager defined.**

“Wager” means a sum of money or thing of value risked on an uncertain occurrence.

**PART 4. ADMINISTRATION OF LIMITED VIDEO LOTTERY.**

**§29-22B-401. General authority of state lottery commission and director; conflicts.**

(a) The lottery commission created by section 29-22-4 of this code is authorized to implement and operate a system of limited video lottery in accordance with the provisions of this article and the applicable provisions of article 22 of this chapter.

(b) The state lottery commission and the director of the commission shall exercise their respective powers and perform their respective duties and functions as specified in this article.

(c) The provisions of article 22 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 22 of this chapter. In that event, the provisions of this article shall supersede any conflicting or inconsistent provisions contained in article 22 of this chapter.

**§29-22B-402. Powers and duties of the state lottery commission.**

In addition to any other powers and duties set forth in this article or article 22 of this chapter, the lottery commission has the following powers and duties:

(1) To propose legislative rules for promulgation by the Legislature in accordance with the provisions of article 29A-3-1, *et seq.*, of this code, governing the licensing, conduct, and operation of limited video lottery that may be necessary to carry out the purposes of this article. The director shall prepare and submit to the lottery commission written recommendations concerning proposed legislative rules for this purpose;

(2) To propose other rules for promulgation as provided in article 29A-3-1, *et seq.*, of this code not

inconsistent with this article which the commission in its discretion believes to be necessary. Authority to propose rules includes the authority to propose amendments to rules and to propose repealing rules;

(3) Notwithstanding any other provision of this code to the contrary, proposed legislative rules for this article filed in the state register by the first day of August, 2001, may be filed as emergency rules.

(4) To conduct hearings upon complaints charging violations of this article or applicable rules, and to conduct other hearings as may be required by this article or rules of the lottery commission;

(5) To enter into written agreements with the state police and local law enforcement agencies for the conduct of identification and investigation of applicants, licensees or employees in accordance with the provisions of this article, including, but not limited to, (A) performing background investigations and criminal records checks and (B) investigating possible violations that may be discovered as a result of an investigatory process or discovered by the tax commissioner, the alcohol beverage control commissioner or the lottery commission in the course of conducting their respective business. Disclosure to the state police or other law enforcement officials of a possible violation of this article and material facts related thereto shall not be deemed to be an unauthorized disclosure of information under section 11-10-5d of this code. Nothing in this section prevents or impairs the state police or local law enforcement agencies from engaging in the activities set forth in this subdivision on their own initiative;

(6) To conduct a continuous study and investigation of limited video lottery throughout the state (A) to ascertain any defects in this article or in legislative rules that may conflict with the purposes of this article, (B) to discover any abuses in the administration, control and oversight of limited video lottery or (C) to discover any violation of this article or applicable legislative rules;

(7) To formulate and recommend proposed legislation amending this article or any applicable legislative rule so as to increase the efficiency and effectiveness of this article;

(8) To report immediately to the governor, the speaker of the house of delegates, the president of the senate, the minority leaders of both houses, and such other state officers as the lottery commission deems appropriate concerning any laws which it determines may require immediate amendment to prevent abuses and violations of this article or any applicable rule or to remedy undesirable conditions in connection with the administration or the operation of limited video lottery;

(9) To require such special reports from the director as it considers necessary;

(10) To issue licenses to those involved in the ownership, participation, or conduct of limited video lottery;

(11) To delegate to the director the authority to issue or deny licenses and renewals under criteria established by the commission;

(12) Upon complaint, or upon its own motion, to levy civil penalties and to suspend or revoke licenses that the lottery commission has issued for failure to comply with any applicable provision of this article or rule of the commission;

(13) To establish and collect fees upon persons, licenses, and gaming devices used in, or participating in, limited video lottery as provided in this article or rule of the commission;

(14) To obtain all information from licensees and other persons and agencies which the lottery commission deems necessary or desirable in the conduct of its business;

(15) To issue subpoenas for the appearance or production of persons, records, and things in connection with applications before the lottery commission or in connection with disciplinary or contested cases considered by the lottery commission;

(16) To apply for injunctive or declaratory relief to enforce the provisions of this article and any rules promulgated pursuant to this article;

(17) To impose and collect civil penalties as provided for under this article;

(18) To inspect and examine without notice all premises wherein limited video lottery is conducted or devices or equipment used in limited video lottery are located, manufactured, sold, or distributed, and to summarily seize, remove, and impound, without notice or hearing from such premises any equipment, devices, supplies, books, or records for the purpose of examination or inspection;

(19) To exercise other incidental powers as may be necessary to ensure the safe and orderly regulation of limited gaming and the secure collection of all revenues, including but not limited to taxes, fees, civil penalties and other monies due the commission;

(20) To establish internal control procedures for licensees, including accounting procedures, reporting procedures, and personnel policies;

(21) To establish and collect fees for performing background checks on all applicants for licenses and on all persons with whom the commission may agree with or contract with for the providing of goods or services, as the commission deems appropriate;

(22) To establish and collect fees for performing, or having performed, tests on equipment and devices to be used in limited video lottery;

(23) To demand, at any time when business is being conducted, access to and inspection, examination, photocopying, and auditing of all papers, books, and records of applicants and licensees, on their premises or elsewhere as practicable by authorized employees or agents of the commission and in the presence of the licensee or his agent, pertaining to the gross income produced by any licensed gaming establishment and to require verification of income, and all other matters affecting the enforcement of the policies of the lottery commission or any provision of this article; and to impound or remove all papers, books, and records of applicants and licensees, without hearing, for inspection or examination; and

(24) To prescribe voluntary alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns, writings or other documents.

**§29-22B-403. Powers and duties of the director.**

In addition to the duties imposed upon the director elsewhere in this article and article 22 of this chapter, the director shall:

(1) Supervise and administer the operation of licensed limited video lottery in accordance with the provisions of this article and the rules of the lottery commission;

(2) Issue licenses to manufacturers, operators, limited video lottery retailers and service technicians, after approval by the lottery commission;

(3) Register video lottery terminals and equipment and issue registration decals;

(4) Collect and deposit license and registration fees due under this article;

(5) Require the mandatory posting by limited video lottery retailers of the rules of play and the odds or house percentage on each video lottery game;

(6) Attend meetings of the lottery commission or appoint a designee to attend in the director's place;

(7) Employ and direct such personnel as may be necessary to carry out the purposes of this article, but no person shall be employed who has been convicted of a felony or gambling-related offense;

(8) With the approval of the lottery commission, enter into agreements with any department, agency, or unit of state government to secure services which the director deems necessary and to provide for the payment for such services;

(9) Employ and compensate such consultants and technical assistants as may be required and as otherwise permitted by law;

(10) Confer with the lottery commission as necessary or desirable, with regard to the operation of the division;

(11) Make available for inspection by the lottery commission or any member of the commission, upon request, all books, records, files, and other information and documents in the director's office;

(12) Advise the lottery commission and recommend to the commission such rules and other procedures as the director deems necessary and advisable to improve the operation of limited video lottery;

(13) With the concurrence of the lottery commission or pursuant to commission requirements and procedures, enter into contracts for materials, equipment, and supplies;

(14) Make a continuous study and investigation of the operation and the administration of similar laws which may be in effect in other states or countries; of any literature on video gaming which from time to time may be published or available; and of any federal laws which may affect the conduct of limited video lottery in this state with a view to

recommending or effecting changes that would serve the purposes of this article;

(15) Publish as a public document a monthly report that contains a full and complete statement of the revenue and expenses for each month from limited video lottery operations;

(16) Provide copies of the monthly revenue and expense statement to the lottery commission, the secretary of the department of tax and revenue, the governor, the speaker of the house of delegates, the president of the senate, and the minority leaders of both houses of the Legislature; and

(17) Perform any other acts that the lottery commission finds are necessary or desirable in order to carry out the purposes of this article.

**§29-22B-404. Advertising by commission or director prohibited.**

Neither the commission nor the director may conduct video lottery advertising or promotional activities to promote or advertise limited video lottery authorized by this article.

**PART 5. REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.**

**§29-22B-501. Types of licenses issued for participation in limited video lottery activities.**

(a) The lottery commission may issue four types of limited video lottery licenses, as follows:

- (1) A manufacturer's license;
- (2) An operator's license;
- (3) A limited video lottery retailer's license;

and

- (4) A service technician's license.

(b) A manufacturer's license is required for all persons who act as a manufacturer as defined in section 22B-319 of this article.

(c) An operator's license is required for all persons who engage in the business of placing and operating video gaming machines on the premises of a retailer. A licensed operator and a licensed limited video lottery retail who hold a permit issued under part 11 of this article may obtain video lottery terminals only from a licensed manufacturer.

(d) A video lottery retailer's license is required for all persons conducting limited video lottery on their premises. Each person licensed as a retailer shall have and maintain sole and exclusive legal possession of the entire premises for which the retail license is issued.

(e) Each license issued pursuant to this section expires one year from the date of its issuance but may be successively renewed upon the filing and approval of an application for renewal, except as otherwise provided in this article.

**§29-22B-502. General qualifications for all types of limited video lottery licenses.**

No limited video lottery license or license renewal may be granted unless the lottery commission has determined that the applicant satisfies all of the

following qualifications:

(1) The applicant is a person of good character, honesty and integrity;

(2) The applicant is a person whose background, criminal record, if any, reputation, habits and associations, do not threaten to (A) compromise the public interest of the citizens of the state, (B) weaken the effective regulation and control of video gaming, (C) breach the security and integrity of the lottery, or (D) introduce corrupt, unfair, or illegal practices, methods and activities into the operation of video gaming or the business or financial transactions incidental to the operation of video gaming;

(3) The applicant has not been convicted of any violation of this article, article 19-23-1, *et seq.*, of this code, articles 22, 22A or 25 of this chapter, or any felony related to theft, bribery, gambling or involving moral turpitude in this or in any other state or foreign country;

(4) The applicant has disclosed to the lottery commission the identity of each person who has control of the applicant, as control is described in section 22B-507, and those persons satisfy all qualifications required by this section and any applicable qualifications required by sections 22B-503 through 22B-506;

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in section 22B-602;

(6) The applicant has furnished all information, including financial data and documents, certifications, consents, waivers, individual history forms and other materials requested by the lottery commission for purposes of determining qualifications for a license.

**§29-22B-503. Additional qualifications for an applicant for an operator's license.**

(a) No operator's license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant satisfies all of the following qualifications:

(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state for the four year period immediately preceding the application; or

(B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four year period immediately preceding the application.

(2) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(3) The applicant has secured any necessary financing for the business for which the license

application is made, and the financing (A) is from a source that meets the qualifications of this section and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee. A licensee shall request commission approval of any change in financing or leasing arrangements at least thirty days before the effective date of the change;

(4) The applicant has disclosed 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 lottery commission;

(5) The applicant has filed with the lottery commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the operator of video lottery terminals, the electronic computer components of the terminals, the random number generators of the terminals, or the cabinets in which they are housed; and

(6) The applicant does not hold any other license under this article, article 19-23-1, *et seq.*, of this code, or articles 22, 22A or 25 of this chapter, except that an applicant may also be licensed as a service technician.

(b)(1) A person or a member of his or her immediate family who has an ownership interest in a business entity that submits an application for an operator's license may not (A) submit an application for another operator's license as an individual, (B) serve as an officer, director, member or partner of a business entity that submits an application for another operator's license, or (C) have an ownership interest in any other business entity that submits an application for an operator's license.

(2) Business entities that have common owners or common officers, directors, members or partners may not hold more than one operator's license.

**§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's license.**

No limited video lottery retailer's license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant satisfies all of the following qualifications:

(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state for the four year period immediately preceding the application;

(B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four year period immediately preceding the application;

(2) The applicant has disclosed to the lottery

commission the identity of each person who has control of the applicant, as control is described in section 22B-507;

(3) The applicant holds either (A) a valid license issued under article 60-7-1, *et seq.*, of this code to operate a private club, (B) a valid Class A license issued under article 11-16-1, *et seq.*, of this code to operate a business where nonintoxicating beer is sold for consumption on the premises, or (C) both licenses;

(4) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(5) The applicant has secured any necessary financing for the business for which the license application is made, and the financing (A) is from a source that meets the qualifications of this section and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee;

(6) The applicant has disclosed all financing or refinancing arrangements for placement on the applicant's premises of video lottery terminals and associated equipment in the degree of detail requested by the lottery commission;

(7) The applicant has filed with the lottery commission a copy of any current or proposed agreement between the applicant and a licensed operator for the placement on the applicant's premises of video lottery terminals;

(8) The applicant has filed with the lottery commission a copy of any current or proposed agreement between the applicant and a licensed operator or other person for the servicing and maintenance of video lottery terminals by licensed service technicians; and

(9) The applicant does not hold any other license under this article, article 19-23-1, *et seq.*, of this code, or articles 22A or 25 of this chapter, except that an applicant may also be licensed as a service technician. *Amended in Acts 2001, 5<sup>th</sup> Extraordinary Session, Chapter 6, effective 9/15/01. Deleted reference to Article 22 in (9).*

**§29-22B-505. Additional qualification for an applicant for a service technician's license.**

No service technician's license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant has passed a technical competence test administered or approved by the lottery commission.

**§29-22B-506. Additional qualifications for an applicant for a manufacturer's license.**

No manufacturer's license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant satisfies all of the following qualifications:

(1) The applicant has obtained, or can obtain, certification of compliance under the provisions of part 15 of the federal communications



commission rules for all video lottery terminals placed in this state;

(2) The applicant has demonstrated the capacity to manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures set forth in part 9 of this article;

(3) The applicant has demonstrated the ability to maintain and provide an inventory of spare parts so as to assure the timely repair and continuous operation of licensed video lottery terminals placed in this state; and

(4) The applicant has demonstrated the capacity to timely deliver video lottery terminals and associated equipment to licensed operators and licensed limited video lottery retailers who hold permits issued under part 11 of this article to own or lease video lottery terminals from licensed manufacturers.

**§29-22B-507. Persons having control of an applicant for a limited video lottery license.**

The following persons are considered to have control of an applicant:

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

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

(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.

**§29-22B-508. Commission action on applications.**

(a) The commission may not issue any license until after the background investigations are concluded. This provision shall not apply to an application for renewal of a license except to the extent background investigations are required of an applicant for renewal of a license in legislative rules of the commission.

(b) The commission shall make an affirmative determination that the applicant is qualified and that the applicable license fees have been paid prior to issuing any license.

**§29-22B-509. Incomplete application not to be considered.**

(a) The lottery commission shall notify the applicant in writing if an application is incomplete and the notification shall state the deficiencies in the

application.

(b) The commission may 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.

**§29-22B-510. Burden of proving qualification for license.**

The burden of proving qualification for any limited video lottery license or for renewal thereof is on the applicant.

**§29-22B-511. Issuance of order refusing to issue or renew license, or suspending or revoking same.**

(a) The commission shall notify applicants and licensees in writing of the denial, suspension or revocation of a license and the reasons for the denial, suspension or revocation in accordance with the provisions of section 22B-518.

(b) An applicant may request a hearing to review a license denial, suspension or revocation in accordance with part 15 of this article.

**§29-22B-512. Review of continuing eligibility for license.**

The lottery commission shall determine on a continuing basis the eligibility of licensees to hold a license. Notwithstanding any other provision of this article, each operator and limited video lottery retailer shall meet the residency requirements in sections 22B - 503 and 22B - 504 of this article and shall be a resident of this state during the period in which the license issued for the operator or limited video lottery retailer is in effect.

**§29-22B-513. Application forms and other documents.**

(a) The commission shall determine the forms of application to be used.

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

**§29-22B-514. Failure to reveal material fact; false or misleading material.**

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

(b) An applicant who is awarded a license or renewal of a license shall give the commission written notification of any material change in the information previously submitted in or with the application for the license or for renewal thereof, whichever is the most recent document filed with the commission, within thirty days after the material change occurs or the licensee becomes aware of the material change,

whichever event occurs last.

**§29-22B-515. Bonding requirements for operators and limited video lottery retailers who are permittees.**

Before any operator or limited video lottery retailer is issued a permit under part 11 of this article to own or lease video lottery terminals from a licensed manufacturer, the permittee shall post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond must be issued by a surety company authorized to transact business in West Virginia and the company must be approved by the insurance commission of this state as to solvency and responsibility. A permittee who is a video lottery retailer that has permits for two or more restricted access adult-only facilities may post a blanket bond.

**§29-22B-516. Applicant bears the risk of adverse publicity.**

Each applicant bears 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 lottery commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the lottery 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.

**§29-22B- 517. Renewal of licenses.**

The commission shall renew video lottery licenses annually on a date set by the commission, if each person seeking license renewal submits the applicable renewal fee, completes all renewal forms provided by the commission, and continues to meet all qualifications for a license.

**§29-22B- 518. Annual license fees.**

(a) The following license fees shall be paid annually by each licensed operator, manufacturer, service technician or limited video lottery retailer:

- (1) Operator: \$10,000;
- (2) Manufacturer: \$10,000;
- (3) Service technician: \$100;
- (4) Limited video lottery retailer: \$500.

(b) The applicable fee shall be paid to the commission at the time the application for a license is submitted to the commission and upon the annual renewal date each year thereafter, at which time the license may be renewed.

(c) A manufacturer who ceases supplying any additional video lottery terminals to permittees in this state may continue to supply repair parts and service for video lottery terminals previously provided to permittees, if an annual renewal fee of one thousand dollars is paid and the manufacturer is otherwise eligible for licensure under this article.

(d) License fees collected under this section shall be deposited in the fund established in section 29-22-18a.

**PART 6. BACKGROUND INVESTIGATIONS.**

**§29-22B-601. Establishment of procedures for background investigations.**

(a) The lottery commission, through a cooperative agreement with the state police, shall establish procedures for conducting background investigations for the purpose of determining whether an applicant has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant's fitness to hold a license under this article.

(b) A background investigation must include, but not be limited to, (1) accessing the national criminal history background check system as defined in section 22B-319 and (2) reviewing any other readily accessible state or federal criminal history records that may be pertinent to the background investigation.

(c) The state police shall make a determination whether the applicant has been convicted of, or is under pending indictment for, a crime that bears upon the applicant's fitness to hold a license under this article and shall convey that determination to the lottery commission.

**§29-22B-602. Responsibility of state police in conducting background investigations.**

The state police shall establish and maintain an adequate system for background investigations that:

(1) Ensures that timely background investigations are conducted on applicants for limited video lottery licenses, current licensees, and other persons required to be investigated by the lottery commission in accordance with the provisions of this article or by legislative rules promulgated pursuant to this article;

(2) Provides for review and oversight of applicants, current licensees, and other persons on an ongoing basis;

(3) Provides that upon receipt of a background check report lacking disposition data, further research will be conducted in whatever state and local recordkeeping systems are available in order to obtain complete data;

(4) Provides for prompt notification to the lottery commission of the results of background investigations before the issuance or renewal of any of license; and

(5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or reputation, habits and associations are such as to pose a threat to the public interest or to the effective regulation of limited video lottery, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, thereby rendering that person ineligible for licensing.

**§29-22B-603. Guidelines for background investigations.**

The lottery commission may not request a background check of an applicant under section 22B-601 of this article unless the applicant first provides a set of fingerprints and completes and signs a statement that:

- (1) Contains the name, address, and date of birth appearing on a valid identification document (as defined in section 22B-312 of this article) of the applicant;
- (2) Declares that the applicant has not been convicted of a crime or, if the applicant has been convicted of a crime, contains a description of the crime and the particulars of the conviction. For the purposes of this section, an applicant has not been convicted of a crime if he or she was convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in connection with a motor vehicle collision;
- (3) Notifies the applicant that the lottery commission will request a background check under section 22B-601 of this article; and
- (4) Notifies the applicant of the applicant's rights under section 22B-604 of this article.

**§29-22B-604. Applicant's rights regarding background investigations.**

Each applicant who is the subject of a background check is entitled to a copy of his or her background investigation report, and has the right to challenge the accuracy and completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination is made by the lottery commission that would deny issuance of a license or renewal of a license.

**PART 7. DUTIES AND RESPONSIBILITIES OF LICENSEES.**

**§29-22B-701. General duties of all licensees.**

All video lottery license holders shall:

- (1) Promptly report to the commission any facts or circumstances related to video lottery operations that constitute a violation of state or federal law;
- (2) Conduct all video lottery activities and functions in a manner that 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 that may be asserted against a license holder, this state or the commission and its employees arising from the license 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 or any designated agent of the commission, provide the commission access to all records and the physical premises of the business or businesses where the license holder's video lottery activities occur, for the purpose of monitoring or inspecting the license holder's activities and the video lottery games, video lottery terminals and associated equipment;

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

(8) Notify the commission in writing of any proposed change of ownership or control of the license holder and of all other transactions or occurrences relevant to license qualification, and receive commission approval prior to any change of ownership or control of a licensed manufacturer, operator or limited video lottery retailer.

**§29-22B-702. Additional duties of limited video lottery retailers.**

In addition to the general duties imposed on all licensees in section 22B-701, a limited video lottery retailer shall:

(1) Attend all commission mandated meetings, seminars and training sessions concerning operation of video lottery terminals, 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;

(3) Supervise video lottery operations and ticket validation procedures at the applicable location;

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

(5) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(6) Ensure that video lottery terminals are within the sight and control of designated employees of the limited video lottery retailer;

(7) Ensure that video lottery terminals are placed and remain placed in the specific locations which have been approved by the commission. A video lottery terminal in a restricted access adult-only facility may not be relocated within the facility without the prior written approval of the commission;

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

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

(10) Provide no access by a player to an automated teller machine (ATM) in the restricted access adult-only facility 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;

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

(12) Report promptly in writing to the operator and the commission all video lottery terminal malfunctions and notify the commission in writing of the failure of an operator or service technician to provide prompt service and repair of the terminals and associated equipment;

(13) Conduct no video lottery advertising or promotional activities;

(14) Not use the words "video lottery" in the name of the approved location, or in any directions or advertising visible from outside the retailer's establishment;

(15) Install, post and display prominently within or about the approved location signs, redemption information and other promotional material as required by the commission;

(16) Permit video lottery to be played only during those hours established and approved by the commission: *Provided*, That the limited video lottery retailer shall not permit video lottery to be played beyond the hour during which liquor may be served;

(17) Contract with no more than one licensed operator for the placement of video lottery terminals at the licensed location;

(18) Maintain insurance covering all losses as the result of fire, theft or vandalism to video lottery terminals and associated equipment; and

(19) Comply with all applicable provisions of this article and rules and orders of the commission.

**§29-22B-703. Additional duties of limited video lottery retailers who are permittees.**

In addition to the general duties imposed on all licensees in section 22B-701 and the additional duties imposed on all limited video lottery retailers in section 22B-702, a limited video lottery retailer who is a permittee shall:

(1) Acquire video lottery terminals by purchase, lease or other assignment only from licensed manufacturers;

(2) Acquire no video lottery terminals in excess of the number he or she is authorized to operate in this state as stated in the permit issued under part 11 of this article.;

(3) 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;

(4) Purchase or lease and install computer controller units and other associated equipment required by the commission for video lottery terminals owned or leased by the permittee;

(5) Ensure that telephone lines from the

commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(6) Assume financial responsibility for proper and timely payments of all credits awarded to players in accordance with legislative rules promulgated by the commission;

(7) Enter into contracts with a licensed operator, licensed manufacturer or other businesses to provide for the maintenance and repair of video lottery terminals and associated equipment only by individuals who are licensed service technicians or employ one or more licensed service technicians, and to provide for the placement of video lottery terminals pursuant to the provisions of this article;

(8) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(9) Assume liability for all amounts due to the commission in connection with any money lost or stolen from any video lottery terminal; and

(10) Maintain a separate bank account into which the limited video lottery retailer shall deposit the gross terminal income from all of the limited video lottery retailer's video lottery terminals.

**§29-22B-704. Duties of limited video lottery retailer regarding payment of credits.**

(a) A limited video lottery retailer shall not make payment for credits awarded on a video lottery terminal 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 limited video lottery retailer shall 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. The limited video lottery retailer is responsible for all income tax reporting of prize payments paid to players above the threshold set by the United States Internal Revenue Service.

(1) A limited video lottery retailer may not redeem tickets for credits awarded on a video lottery terminal that is not located on its premises;

(2) 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.

(c) A limited video lottery retailer shall deface all redeemed tickets in a manner that prevents any subsequent presentment and payment.

(d) The commission is not responsible for

any video lottery terminal malfunction that causes a credit to be wrongfully awarded or denied to players. The permittee is solely responsible for any wrongful award or denial of credits.

**§29-22B-705. Additional duties of manufacturers.**

In addition to the general duties imposed on all licensees in section 22B-701 of this article, a manufacturer shall:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in part 9 of this article;

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

(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) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, beyond a nominal consideration of one dollar per year;

(5) Provide to licensed permittees 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;

(6) 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;

(7) Comply with all applicable provisions of this article and rules and orders of the commission; and

(8) Sell or lease video lottery terminals or associated equipment to a permittee who is a limited lottery retailer under terms and conditions that are no more favorable than the terms and conditions under which similar terminals or equipment are generally sold or leased to permittee who are licensed operators.

**§29-22B-706. Additional duties of operators.**

In addition to the general duties imposed on all licensees in section 22B-701 of this article, an operator shall:

(1) Acquire video lottery terminals by purchase, lease or other assignment only from licensed manufacturers;

(2) Acquire no video lottery terminals in excess of the number they are authorized to operate in this state as stated in the permit issued under part 11 of this article;

(3) Contract with limited video lottery retailers for a secure location for the placement, operation and play of the video lottery terminals;

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, that is in addition to the consideration stated in the written agreement between the operator and the

limited video lottery retailer, which may be not less than forty percent nor more than fifty percent of the amount of net terminal income received by the operator in connection with the video lottery terminals at that location;

(5) 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;

(6) Purchase or lease and install computer controller units and other associated equipment required by the commission for video lottery terminals owned or leased by the permittee;

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

(8) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(9) Ensure that video lottery terminals are placed and remain placed in the specific places within the approved restricted access adult-only facility that have been approved by the commission. No video lottery terminal in a restricted access adult-only facility may be relocated within the restricted access adult-only facility without the prior written approval of the commission;

(10) Assume financial responsibility for proper and timely payments by limited video lottery retailers of all credits awarded to players in accordance with legislative rules promulgated by the commission;

(11) Enter into contracts with limited video lottery retailers to provide for the maintenance and repair of video lottery terminals and associated equipment only by licensed service technicians, and to provide for the placement of video lottery terminals pursuant to the provisions of this article;

(12) Conduct no video lottery advertising and promotional activities;

(13) Install, post and display prominently within or about the approved location signs, redemption information and other material as required by the commission;

(14) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least one million dollars per claim;

(15) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(16) Assume liability for all amounts due to the commission in connection with any money lost or stolen from any video lottery terminal;

(17) Comply with all applicable provisions of this article and rules and orders of the commission; and

(18) Maintain a separate bank account into which the operator shall deposit the gross terminal income from all of the operator's video lottery

terminals.

**§29-22B-707. Additional duties of service technicians.**

In addition to the general duties imposed on all licensees in section 22B-701 of this article, a service technician 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;
- (3) Promptly notify the commission in writing of any electronic or mechanical video lottery terminal malfunctions; and
- (4) Comply with all applicable provisions of this article and rules and orders of the commission.

**PART 8. APPROVAL OF VIDEO LOTTERY TERMINALS AND ASSOCIATED EQUIPMENT.**

**§29-22B-801. Manufacturer seeking approval of terminal must be licensed; prohibition against placement of unapproved terminal.**

- (a) Only licensed manufacturers may apply to the lottery commission for approval of a video lottery terminal or associated equipment.
- (b) A manufacturer may not sell or lease a video lottery terminal for placement in a licensed facility in the state unless the terminal has been approved by the lottery commission.

**§29-22B-802. Testing of video lottery terminals and associated equipment.**

- (a) 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.
- (b) The lottery commission may require that the manufacturer transport two working models of a video lottery terminal to the location designated by the lottery commission for testing, examination and analysis. When this is required:
  - (1) The manufacturer shall pay all costs of testing, examination, analysis and transportation of the 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 the terminal model. The lottery commission may require that the manufacturer provide specialized equipment or pay for the services of an independent technical expert to test the terminal; and
  - (2) The manufacturer shall pay the cost of transportation of two video lottery terminals to lottery headquarters. The lottery commission shall conduct

an acceptance test to determine terminal functions and central system compatibility. If the video lottery terminal fails the commission conducted acceptance test, the manufacturer shall make all modifications required by the commission.

**§29-22B-803. Reporting of testing results.**

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.

**PART 9. VIDEO LOTTERY HARDWARE AND SOFTWARE.**

**§29-22B-901. Hardware specifications.**

Video lottery terminals licensed for placement in this state must meet the hardware specifications set forth in this part 9.

**§29-22B-902. Control of electrical power.**

- (a) 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 ninety 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.
- (b) An on/off switch that 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.
- (c) The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

**§29-22B-903. Coin or bill acceptors.**

- (a) A minimum of one electronic or mechanical coin acceptor or other means by which to accurately and efficiently establish credits must 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.
- (b) The lottery commission shall approve all coin and bill acceptors prior to use on any video lottery terminal in this state.
- (c) A video lottery terminal shall not allow more than two dollars to be wagered on a single game.

**§29-22B-904. Security; access to the interior of video lottery terminals.**

- (a) Access to the interior of video lottery terminals shall be controlled through a series of locks and seals.
- (b) The main logic boards and all erasable programmable read-only memory chips (EPROMS) are considered to be owned by the lottery commission and shall be located in a separate locked and sealed

area within the video lottery terminal.

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

(d) 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 intended to control the terminal's graphic routines, speed of play, sound and other purely cosmetic features may not be used without the written approval of the commission.

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

**§29-22B-905. Printing mechanism.**

Each video lottery terminal must 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 lottery commission. The following information must be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

- (1) The number of credits accrued;
- (2) The value of the credits in dollars and cents displayed in both numeric and written form;
- (3) The time of day and date;
- (4) The validation number; and
- (5) Any other information required by the commission.

**§29-22B-906. Identification plate.**

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:

- (1) The manufacturer of the video lottery terminal;
- (2) The serial number of the terminal; and
- (3) The model number of the terminal.

**§29-22B-907. Display of information on terminal face or screen.**

All information required by this section must be displayed under glass or another transparent substance.

(1) 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 that are incomplete, confusing, misleading or inconsistent with game rules approved by the commission.

(2) 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.

(3) No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior written approval of the commission.

(4) A label prominently displaying information on how to locate and contact persons or organizations available for help, assistance or treatment for persons who may have a gambling addiction, together with the telephone number "1-800-GAMBLER."

**§29-22B-908. Communication with central computer system.**

Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the lottery commission's central computer system. The commission shall provide to licensed manufacturers, or applicants applying for a manufacturer's license, 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.

**§29-22B-909. Random number generator required.**

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; and

(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.

**§29-22B-910. Payout standards.**

Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the 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 shall be determined using standard methods of probability theory;

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

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

**§29-22B-911. Continuation of current game after malfunction.**

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 limited video lottery retailer shall return the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction to the player.

**§29-22B-912. Electronic accounting required.**

(a) 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) The number of coins inserted by players or the coin equivalent if a bill acceptor is being used;
- (2) The number of credits wagered;
- (3) The number of credits won;
- (4) The number of credits paid out by a printed ticket;
- (5) The number of times the logic area was accessed;
- (6) The number of times the cash door was accessed;
- (7) The number of credits wagered in the current game;
- (8) The number of credits won in the last complete video lottery game; and
- (9) The number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(b) No video lottery terminal may have any mechanism that would allow 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, the limited video lottery retailer shall record all meter readings in the presence of a commission employee.

**PART 10. CONDITIONS FOR SALE OR LEASE OF VIDEO LOTTERY TERMINALS.**

**§29-22B-1001. Manufacturer must be licensed.**

A manufacturer of video lottery terminals may not sell or lease video lottery terminals to any

person for use in this state unless the manufacturer possesses a current manufacturer's license issued by the lottery commission as provided in this article.

**§29-22B-1002. Manufacturers may sell or lease only to permittees.**

A licensed manufacturer of video lottery terminals may only sell or lease video lottery terminals for use in this state to a person who possesses at the time of delivery a valid permit to own or lease one or more video lottery terminals and a valid operator's license or a valid limited video lottery retailer's license issued by the lottery commission as provided in this article.

**§29-22B-1003. Terminals must be approved.**

A licensed manufacturer may not sell or lease a video lottery terminal for placement by a permittee in this state unless the terminal has been approved by the lottery commission as provided in this article.

**§29-22B-1004. Purchase or lease by permittees.**

Only permittees may purchase or lease video lottery terminals from a licensed manufacturer.

**PART 11. ALLOCATION AND DISTRIBUTION OF VIDEO LOTTERY TERMINALS.**

**§29-22B-1101. Limitation on number and location of video lottery terminals.**

(a) The lottery commission may not authorize the placement of more than nine thousand video lottery terminals in restricted access adult-only facilities in this state.

(b) No person may directly or indirectly operate more than seven and one-half percent of the number of video lottery terminals authorized in this section, which shall be located only in restricted access adult-only facilities.

(c) No licensed limited video lottery retailer may be authorized to have on the premises for which the license was issued more than five video lottery terminals except that a fraternal society or veteran's organization that is (A) a fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended, (B) a domestic fraternal society that is exempt from federal income tax under section 501(c)(10), or (C) a veterans' organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code may be authorized to have on the premises for which the license was issued not more than ten video lottery terminals.

**§29-22B-1102. Permits to operate video lottery terminals; expiration date; annual fee to be paid by May 1st.**

(a) The lottery commission shall establish forms for an operator's permit to own or lease and operate video lottery terminals and a permit for a



limited video lottery retailer that allows the holder to own or lease video lottery terminals from a licensed manufacturer. The number of video lottery terminals that a person may own or lease or have on a limited video lottery retailer premises shall be stated in the license or permit issued by the commission as provided in this article.

(b) Permits shall be issued by the commission for a period of ten years, except that all permits expire on the thirtieth day of June, 2011, unless they are sooner surrendered, modified, suspended or revoked as provided in this article: *Provided*, That the annual fee imposed by this part for each video lottery terminal authorized in the permit shall be paid on or before the first day of May each year.

**§29-22B-1103. Permit fee.**

For the privilege of holding a permit that authorizes the licensee to own or lease video lottery terminals from a licensed manufacturer, the person shall pay an annual fee of one thousand dollars per video lottery terminal for which the permit is issued. This fee shall initially be paid at the time the permit is issued for the number of video lottery terminals a person is authorized to own or lease without going through the bid process. Thereafter, this fee shall be due and payable each first day of May while the person holds the permit and the amount of the fee shall be determined by the number of video lottery terminals the person is permitted to own or lease video lottery terminals from a licensed manufacturer.

**§29-22B-1104. Reservation of authority to have video lottery terminals on or before August 1, 2001.**

(a) On or before the first day of August, 2001, every person who held on the first day of January, 2001, a private club license issued as provided in article 60-7-1 *et seq.* of this code, or a class "A" nonintoxicating beer license issued as provided in article 11-16-1 *et seq.* of this code, and wants to offer video lottery terminals, as defined in this article, for the enjoyment of the licensee's customers after the effective date of this article shall file an application to be licensed as a limited video lottery retailer under this article.

(b) The applications described in subsection (a) of this section shall be in the form prescribed by the lottery commission, be signed by the applicant or a person authorized to sign an application filed for a person who is not an individual, and provide all of the information requested by the lottery commission. The commission shall not consider any application that is incomplete in any material respect and the incomplete application shall be returned to the applicant for completion and refiling. An incomplete application submitted for a limited video lottery retailer's license shall be returned to the applicant for completion and refiling by the first day of August, 2001.

(c)(1) An application filed on or before the first day of August, 2001 for a limited video lottery retailer's license shall state the number of video lottery

terminals to be located on the premise of the applicant and state whether the applicant will own or lease the video lottery terminals or obtain them from an operator.

(2) The number of video lottery terminals a limited video lottery retail licensee is authorized to have on its premises shall be stated in the limited video lottery retailer's license issued to the licensee. The number of video lottery terminals a limited video lottery retailer is authorized to own or lease from a manufacturer shall be stated in the permit issued to the licensee. Once the permit is issued, the permittee may purchase or lease the number of video lottery terminals authorized in the permit. A limited video lottery retailer who elects to obtain video lottery terminals from an operator may contract with an operator for the number of video lottery terminals stated in the license.

(d) Authorization to have a video lottery terminal on the premises of a video lottery retailer expires on the thirtieth day of June, 2011, and every ten years thereafter unless during the fiscal year of the state ending the thirtieth day of June, 2011, and each ten years thereafter, the video lottery retailer files an application as provided in this section for the next ensuing ten year period.

**§29-22B-1105. Determination of authorizations to be issued without bid and number of authorizations to be bid.**

(a) When the applications provided for in section 22B-1104 of this part are received by the commission on or before the first day of August, 2001, the commission shall reserve for each applicant authorizations to have no more than two video lottery terminals on the premises for which the private club license issued under article 60-7-1 *et seq.*, of this code, or a class "A" nonintoxicating beer license was issued prior to the first day of January, 2001, except that a fraternal society or veteran's organization that is (A) a fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended, (B) a domestic fraternal society that is exempt from federal income tax under section 501(c)(10), or (C) a veterans' organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code may be authorized to have on the premises for which the license was issued not more than seven video lottery terminals.

(b) The commission shall then determine the total number of authorizations to have video lottery terminals reserved under subsection (a) of this section and subtract that number from the total number of video lottery terminals authorized for the state in section 22B-1101 of this part. This establishes the number of authorizations available for bid as provided in section 22B-1106.

(c) If an application for a limited video lottery retailer's license is received after the first day of August, 2001, whether from an applicant who on the first day of January, 2001, held a private club

license issued under article 60-7-1, *et seq.*, of this code or a class "A" nonintoxicating beer license issued under article 11-16-1, *et seq.*, of this code, or from an applicant who is issued a private club license or a class "A" nonintoxicating beer license after the first day of January, 2001, no authorization to have video lottery terminals may be reserved for that applicant under this section. The applicant may contract with a licensed operator to furnish video lottery terminals or may submit a bid for authorization to own video lottery terminals as provided in section 22B-1106 of this part.

(d) As used in this section the term "received" means physically received in the office of the state lottery by 4:30 p.m. on the first day of August, 2001.

**§29-22B-1106. Allocation of permits to own or lease video lottery terminals by sealed bid.**

(a) Any video lottery terminals not authorized by the commission under section 1105 of this article shall be allocated under the provisions of this section by sealed competitive bid.

(b) Bids for permits to own or lease video lottery terminals shall be governed by the provisions of this part 11.

(c) A permit to own or lease one or more video lottery terminals, as defined in this article, may only be issued to a person who is licensed as an operator or a limited video lottery retailer under this article.

(d) All permits issued under this section shall be based on sealed competitive bids in accordance with the provisions of this section.

(e) The commission may set a single uniform minimum bid for each video lottery terminal for which bids are sought. Each time before the first publication of a legal notice soliciting bids, the commission may set a new minimum bid.

**§29-22B-1107. Bidding process.**

(a) Bids for issuance of permits shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of article 59-3-1, *et seq* of this code;

(b) The second publication of the notice shall appear more than sixty days next preceding the final day for submitting bids;

(c) Each bid shall indicate the number of video lottery terminals for which the permit is sought. The bid shall state the amount bid for each video lottery terminal for which the permit is sought;

(d) No bid may be altered or withdrawn after the appointed hour for the opening of the bids;

(e) Subject to the provisions of subsection (f) of this section, permits shall be awarded to the persons submitting the highest per terminal bids, except that no person may be authorized to directly or indirectly own or lease more than seven and one-half percent of the total number of video lottery terminals authorized in section 22B-1101 of this article. If a high bidder already holds a permit issued under this

section, the bid shall be awarded to that bidder, but only to the extent the total number of video lottery terminals the operator or limited video lottery retailer is authorized to directly or indirectly own or lease does not exceed seven and one-half percent of the number of video lottery terminals authorized for the entire state specified in section 22B-1101 of this article;

(f) No bid shall be considered unless the bond required by section 22B-1109 of this article accompanies the bid or was submitted to the state treasurer before the time designated for opening of the bid;

(g) No bid shall be considered unless the amount of the bid equals or exceeds the minimum bid amount for a video lottery terminal specified by the commission;

(h) All bids for a permit may be rejected by the commission if the commission determines that the bids are inadequate. In this event, the director shall begin anew the bidding process for the permits;

(i) Whenever there are two or more bids of the same dollar amount and the number of authorizations for which the bids were submitted exceeds the number of authorizations still available to fill the bids, the director shall award the permit based upon the drawing of lots among the bidders.

(j) A person submitting a bid under this article shall deliver one copy to the director of purchasing, West Virginia department of administration and deliver a second or duplicate copy to the state auditor. Both copies must be received at the respective offices prior to the specified date and time of the bid opening;

(k) The failure to deliver or the nonreceipt of these bid forms at either of these offices prior to the appointed date and hour are grounds for rejection of the bids. In the event of any deviation between the copies submitted to the purchasing division and the state auditor, the bids as to which there is a deviation shall be rejected;

(l) After the award of a permit, the director of the lottery shall indicate upon the successful bid that it was the successful bid and the number of video lottery terminals for which a permit is awarded to the bidder. This shall be the number of video lottery terminals for which the bid was submitted, or the remaining number of video lottery terminals to be awarded when the number of video lottery terminals remaining is less than the number of terminals for which the bid was submitted. Thereafter, a copy of the bid and the bidder's application for an operator's license or a limited video lottery retailer license shall be maintained as a public record at the commissions' offices and shall be open to public inspection during its normal business hours. These documents may not be destroyed without the prior written consent of the legislative auditor;

(m) Prior to issuing a permit to a successful bidder, the bid price for the number of video lottery terminals authorized in the permit plus the amount of the operator's annual license fee or the limited video

lottery retailer's annual license fee for the first license year, as specified in section 518 of this article, shall be paid to the commission by money order, certified check or cashier's check. If the operator's annual license fee or the limited video lottery retailer's license fee was paid for the current license year before the due date of the bid amount, the license fee shall not be collected a second time for the same license year. The amount paid shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter;

(n) All permits shall be signed by the director of the lottery in the name of the state;

(o) If the successful bidder fails to pay to the commission the bid price and the operator's annual license fee or the limited video lottery retailer's license fee for the first license year, at the time specified by the commission, the bond provided for in section 1109 of this article shall be forfeited and the bidder shall not be issued the permit;

(p) In the event of a default, as provided in subsection (h) of this section, the commission shall then issue the permit to the next highest bidder for video lottery terminals, or reject all remaining bids and start anew the bidding procedure for the remaining number of video lottery terminals;

(q) If after a permit is awarded, an operator or limited video lottery retailer surrenders the permit, in whole or in part, or the permit is revoked or canceled by operation of law, the commission may seek bids for video lottery terminals for which authorization was surrendered or revoked, subject to the limitations and requirements of this article; and

(r) During the fiscal year of the state ending the thirtieth day of June, 2011, the commission shall seek bids for the ten-year period beginning the first day of July, 2011 and ending the thirtieth day of June, 2021.

**§29-22B-1108. Preference for current permit holders.**

(a) When seeking bids for the ten-year period beginning the first day of July, 2011 and ending the thirtieth day of June, 2021, and for each subsequent ten-year period, the commission shall, in determining the amount a current holder of a permit issued under section 1106 of this article shall pay for authorization to place additional video lottery terminals in this state, afford the bidder an additional preference, if the bidder submitted at least the minimum bid amount prescribed by the commission, the amount of which shall be determined as provided in subsection (b) of this section.

(b) The preference allowed by this section shall be computed by adding five percent of the bid price submitted by the current permit holder to the amount of the bid submitted by that holder.

(c) Where the commission determines that it has not issued permits for the number of video lottery terminals allowed to be placed in this state, as provided in section 1101 of this article, the commission shall allow current permit holders to bid

on the remaining video lottery terminals before opening up the bidding to other persons. If the highest bid meets or exceeds the minimum bid, the commission shall determine whether, at the time of the bid, the bidder held a permit for the period ending the thirtieth day of June, 2011, or for any ten-year period thereafter, on the thirtieth day of June preceding the expiration of the permit. If the current permit holder submitted a bid that was not less than the minimum bid, the commission shall notify the bidder that upon paying the amount of the highest bid, that the permit for the ten-year period beginning the first day of July, 2011, or for any ten-year period thereafter, shall be issued to the current permit holder. If, within the time determined by the commissioner, the current permit holder pays the amount to the commission and complies with all other requirements imposed by the provisions of this article for the issuance of the permit, the permit for the ten-year period beginning the first day of July, 2011, or for any ten-year period thereafter, shall be issued to the current permit holder.

**§29-22B-1109. Bid bond required.**

(a) Each person submitting a bid under section 22B-1107 of this article shall furnish to the commission a bond at the time of bidding, which shall guarantee the payment of one hundred percent of the price bid for the permit sought by the bidder.

(b) The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commission.

(c) If the bid bond is furnished in cash or negotiable securities, the principal shall be deposited without restriction in the state treasurer's office and credited to the commission, but any income shall inure to the benefit of the bidder.

(d) The bond shall be returned to the bidder following the bidding if the bidder is not a successful bidder for authorization to place video lottery terminals in this state, as provided in this article.

(e) If the bidder is a successful bidder, the bid bond shall be released after the permit is issued, as provided in section 1106 of this article.

(f) If a successful bidder defaults in paying the amount due by the date specified by the commission, as provided in section 1106 of this article, the bid bond shall be forfeited to the state.

(g) If the defaulting bidder was successful only in part because the bid submitted was for authorization to place more video lottery terminals than were awarded to the bidder, the amount of the bid bond shall be prorated and the portion of the bid bond attributable to video lottery terminals not awarded to the defaulting bidder shall be returned to the bidder and the rest shall be forfeited to the state.

**§29-22B-1110. Operator permit.**

(a) An operator who holds a permit issued under this section may operate the number of video

lottery terminals specified in the permit.

(b) The number of video lottery terminals authorized in the permit shall be the sum of the number of authorizations for which the operator is the successful bidder under this section plus the number of authorizations reserved under section 22B-1104 of this article for video lottery retailers that elect to obtain video lottery terminals from the operator. If after the permit is issued, the operator enters into additional contracts with limited video lottery retailers with authorizations issued under section 22B-1104 or obtains additional authorizations through the bidding process, the operator shall apply to the commission for a supplemental permit to operate the number of video lottery terminals set forth in the application. Attached to the application shall be a true copy of all contracts the applicant has entered into with persons who hold a limited video lottery retailer's license issued under this article for placement of video lottery terminals in the premises of the limited video lottery retailer for whom authorizations were reserved under section 22B-1104 of this article and a true copy of the certificate of reservation issued by the commission to that video lottery retailer.

(c) The contract between the operator and the limited video lottery retailer shall be in writing and be signed by the parties, or their duly authorized representative when the party is a person who is not an individual.

**§29-22B-1111. Reduction of video lottery terminals authorized in a retailer's license.**

If after a limited video lottery license is issued or a permit is issued, a retailer surrenders the license in whole or in part, or the license is modified, revoked or canceled by operation of law, the lottery commission shall then allocate authorizations to operate those video lottery terminals through the bid process described in section 1107 of this part 11, subject to the limitations and requirements of this article.

**§29-22B-1112. Reduction of gambling.**

Each limited video lottery retailer shall conspicuously post in the restricted access adult-only facility and disseminate the telephone numbers of state approved providers of problem gambling information, treatment and referral support services and further conspicuously post the following: "CAUTION Gambling and playing this machine can be hazardous to your health, your finances, and your future."

**§29-22B-1113. Operation of authorized video lottery terminals; forfeiture of authorization for failure to operate.**

(a) A person who holds a permit or license to operate video lottery terminals shall place the video lottery terminals authorized by the license or permit in operation within six months after receiving the license or permit in which the terminals are first authorized. After January 1, 2002, a person who holds a permit or license to operate video lottery terminals shall place

the video lottery terminals authorized by the license or permit in operation within ninety days after receiving the license or permit.

(b) After a video lottery terminal is connected to the commission's central site system of monitoring lottery terminals, the terminal may not be off-line for more than five consecutive days, unless the terminal is off-line due to fire, flood, or other act beyond the control of the operator. If the terminal is off-line due to fire, flood, or other act beyond the control of the operator, the terminal shall be reconnected to the commission's central site by the date ordered by the commission. The commission shall propose a legislative rule for promulgation in accordance with the provisions of article 29A-3-1, *et seq.*, of this code, defining the term "other act beyond the control of the operator" and providing for application of this subsection (b).

(c) Except as otherwise provided in this section, authorization to operate a video lottery terminal that is not connected to the commission's central site system of monitoring lottery terminals shall be forfeited to the commission on the first day after expiration of the applicable period specified in this subsection (a) or (b) of this section.

**PART 12. PLACEMENT AND TRANSPORTATION OF VIDEO LOTTERY TERMINALS.**

**§29-22B-1201. Placement of video lottery terminals.**

(a) Video lottery terminals allowed by this article may be placed only in licensed limited video lottery locations approved by the commission.

(b) All video lottery terminals in approved locations shall be physically located as follows:

(1) The video lottery terminals shall be continuously monitored through the use of a closed circuit television system capable of identifying players and terminal faces and of recording activity for a continuous twenty-four hour period. All video tapes or other recording medium approved in writing by the commission shall be retained for a period of at least sixty days and be available for viewing by an authorized representative of the commission or the commissioner of alcohol beverage control. The cost of monitoring shall be paid by the limited video lottery retailer;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The permittee 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 location; and

(4) No video lottery terminal or video lottery camera may be relocated without prior written approval from the commission.

(c) Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel

shall make periodic inspections of the restricted access adult-only facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players.

(d) Security personnel of the commission and investigators of the alcohol beverage control commissioner shall have unrestricted access to video lottery terminal locations.

(e) Notwithstanding any other provision of this article to the contrary, the commission may not approve the placement of a video lottery terminal in a state park.

**§29-22B-1202. No limited video lottery retailer license for premises within 150 feet of another licensed premises; no two license retailer locations within a common structure.**

(a) A limited video lottery retailer license may not be granted for operation of video lottery terminals on a premises if, at the time of application for the license, the applicant's premises are within one hundred fifty feet of, or has an external structural connection not amounting to a common internal wall to, a premises that already has a license for video lottery terminals.

(1) A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(2) When determining common ownership, the commission shall consider direct as well as indirect ownership.

(b) A premises for which a private club license to dispense alcoholic liquors, under provisions of article seven, chapter sixty of this code, or a Class A nonintoxicating beer license, under the provisions of article sixteen, chapter eleven of this code, was granted, was applied for, or the transfer of which was validly contracted for prior to the first day of January, two thousand one, is not subject to subsection (a) and (c) of this section.

(c) No more than one restricted access adult-only facility shall hold a limited video lottery retailer license to offer video lottery terminals in any single structure under one roof.

**§29-22B-1203. Registration decals.**

(a) Each video lottery terminal placed in operation in this state shall have a commission registration decal permanently affixed, with a video lottery terminal registration control number placed on the video lottery terminal.

(b) 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 terminal has been registered, inspected, and approved for operation in this state.

(c) No terminal shall be transported out of this state until authorized commission personnel have removed the commission registration control number, except when the transportation of the terminal both begins and ends in this state.

**§29-22B-1204. Installation of approved lottery terminals.**

(a) The video lottery terminal manufacturer and licensed permittee are jointly responsible for the assembly and installation of all video lottery terminals and associated equipment.

(b) The manufacturer and licensed permittee may 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 in writing by the commission.

(c) The request for modification shall contain a detailed description of the type of change, the reasons for the change and technical documentation of the change.

(d) Each video lottery terminal approved for placement at a licensed location shall conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission.

(e) 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 permittee, the video lottery terminal shall be prima facie determined to be contraband. The commission or any law-enforcement officer having jurisdiction shall seize and destroy all of the licensed permittee's and manufacturer's noncomplying video lottery terminals, as provided in part 18 of this article.

(f) In addition, the commission shall suspend the licenses of the licensed permittee and the licensed manufacturer for the period of time the commission considers to be appropriate under the circumstances and may impose a civil penalty, as provided in part 16 of this article.

**§29-22B-1205. Transportation from manufacturer and registration of video lottery terminals.**

(a) A manufacturer transporting or arranging for the transportation of 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 and address 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 permittee to which the video lottery terminals are being sent and the destination of the terminals if different from the address of the permittee;

(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.

(b) A permittee that 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 and address of the limited video lottery retailer who will receive the video lottery terminal;

(2) The full name and address 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 date and time of video lottery terminal arrival; and

(6) The expected date and time of video lottery terminal installation.

(c) If a video lottery terminal is not placed in operation, the permittee shall notify the commission in writing of the location where the terminal is stored.

**§29-22B-1206. Any other transportation of video lottery terminals.**

(a) Any person who transports 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 and address of the person or entity transporting the video lottery terminal;

(2) The reason for transporting the video lottery terminal;

(3) The full name and address 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.

(b) 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 and address 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.

**PART 13. MAINTENANCE AND REPAIR OF VIDEO LOTTERY TERMINALS.**

**§29-22B-1301. Maintenance of video lottery terminals.**

(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 the training.

(b) Manufacturers shall 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.

(c) Manufacturers shall notify all licensed permittees who have purchased or leased that manufacturer's video lottery terminals of all scheduled training programs.

(d) The manufacturers shall schedule training programs at convenient locations within this state to facilitate attendance by service technicians.

(e) Manufacturers shall inform licensed permittees of any new developments in the service and repair of video lottery terminals and provide appropriate subsequent training programs.

(f) The manufacturers shall issue a training certificate to each person upon successful completion of a video lottery training program.

(g) The certificate shall include the name of the person who completed the training program and the date and the location of the training program.

(h) A person who successfully completes training is eligible for a service technician's license.

(i) No person may conduct maintenance (other than clearing paper ticket jams or clearing coin and bill acceptor jams) on any video lottery terminal or associated equipment unless the commission has issued a service technician license to that person.

(j) 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.

**§29-22B-1302. Maintenance log.**

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 shall 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 permittees 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.

**§29-22B-1303. Master keys.**

Permittees shall provide the commission with a master key for access into the main cabinet door of each video lottery terminal placed in operation. The commission shall provide a logic box seal. The seal shall be affixed by commission personnel to prevent unauthorized access to the video lottery terminal logic unit.

**§29-22B-1304. Repairs to logic board or circuitry.**

(a) No repairs to, or replacement of, the logic board or circuitry within the logic area shall occur unless authorized commission personnel are present and observe the repairs or replacement.

(b) The logic area seal shall not be broken by anyone other than authorized commission personnel.

(c) Each service technician shall submit a written report to the commission 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.

(d) The commission shall test the software EPROMS on the logic board of each video lottery terminal prior to sealing the logic area.

(e) License holders shall promptly notify the commission in writing of any discovered damage, tears or breaks in the logic area seal. This written notification shall be delivered electronically or by telephone facsimile machine whenever possible. Upon receipt of that notice, the commission shall disable the video lottery terminal. The video lottery terminal shall remain disabled until completion by the commission of an investigation of the seal damage.

**PART 14. NET TERMINAL INCOME AND DISTRIBUTION OF REVENUES.**

**§29-22B-1401. Accounting for the state's share of gross terminal income.**

(a) The gross terminal income from all operating video lottery terminals of a permittee shall be calculated periodically by the commission.

(b) Each licensed permittee shall maintain in

its bank account an amount equal to or greater than the lottery commission's share of the gross terminal income from its operation of video lottery machines, to be electronically transferred by the lottery commission on dates established by the commission.

(c) Upon a permittee's failure to maintain the bank account balance required in subsection (b) of this section, the commission may disable all of a permittee's video lottery terminals until full payment of all amounts due is made.

(d) Interest shall accrue on any unpaid balance due the commission at the rates charged for state income tax delinquency under chapter eleven of this code. The interest shall begin to accrue on the date payment is due to the commission and shall continue to accrue until the amount due, including applicable interest, is paid. Payments shall be applied first to interest and then to the balance of the amount due the commission.

**§29-22B-1402. Resolution of discrepancies.**

(a) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and send to the permittee a statement by mail, facsimile or internet e-mail reflecting the gross terminal income generated by the licensee's video lottery terminals. Each permittee shall report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings.

(b) The permittee 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.

(c) The licensed operator is solely responsible for paying the negotiated share of net terminal income, to each limited video lottery retailer to whom it has supplied video lottery terminals under the provisions of this article.

(d) Each limited video lottery retailer's periodic distribution from the appropriate operator shall be paid by check or by electronic funds transfer to the limited video lottery retailer's designated bank account.

(e) Until an accounting discrepancy is resolved in favor of the permittee, the commission may make no credit adjustments.

(f) For any video lottery terminal reflecting a discrepancy, the permittee 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.

(g) If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission.

(h) Any accounting discrepancies that cannot be otherwise resolved shall be resolved in favor of the commission.

**§29-22B-1403. Payover of state's share of gross terminal income.**

(a) The commission shall periodically transfer from each permittee's bank account described in subsection 22B-1401(b) of this article, the state's share of gross terminal income as calculated under section 22B-1408 of this article.

(b) The permittee shall remit payment by mail and submit the report required by subsection (c) of this section if the electronic transfer of funds is not operational or the commission notifies the permittee that remittance by this method is required.

(c) If the remittance is by mail, the permittee 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 the state's share of the amount 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.

(d) A permittee 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.

**§29-22B-1404. Permittees to furnish bank authorizations.**

(a) Each permittee shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission and from the commission to each permittee.

(b) Each permittee shall provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

**§29-22B-1405. State's share of gross terminal income held in trust.**

The amount of gross terminal income required to be paid over to the commission, shall be deemed to be moneys held in trust for the state of West Virginia while in the possession or constructive possession of any operator or limited video lottery retailer and until the state's share of gross terminal income is paid over to the commission.

**§29-22B-1406. Examination of permittee books and records.**

The commission has the right to examine all accounts, bank accounts, financial statements and records in a permittee's possession, under its control or in which it has an interest and the licensed permittee shall 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.

**§29-22B-1407. Civil penalty for failure to pay over state's share of gross terminal income.**

(a) Any person required by law or contract to collect, truthfully account for, and pay over any of the state's share of gross terminal income who willfully fails to truthfully account for and pay over the net terminal income, or willfully attempts in any manner to evade or defeat any payment thereof, shall, in addition to other penalties provided by law, be liable for payment of a civil money penalty equal to the total amount of the state's share of gross terminal income not paid over to the commission.

(b)(1) No penalty may be imposed under subsection (a) unless the director notifies the person in writing, delivered in person or by mail sent to the last known address of the operator or limited video lottery retailer, that he or she is subject to an assessment of this penalty.

(2) The mailing of the notice described in subdivision (1) (or, in the case of notice delivered in person, the delivery) shall precede any notice and demand for payment of any penalty under subsection (a) of this section, by at least sixty days.

(3) If a notice described in subdivision (1) of this subsection (b) with respect to any penalty is mailed or delivered in person before the expiration of the three-year period for the assessment of the penalty (determined without regard to this subdivision), the three-year period provided for the assessment of a penalty shall not expire before the later of:

(A) The date ninety days after the date on which such notice was mailed, or delivered in person, or

(B) If there is a timely protest of the proposed assessment, the date thirty days after the director makes a final administrative determination with respect to the protest.

(4) The requirement that preliminary notice be given shall not apply if the director finds that the collection of the penalty is in jeopardy.

(c) This penalty may be collected by civil action instituted within three years after the date the state's share of gross terminal income not paid over to the commission should have been paid over to the commission, except as provided in subsection (b) of this section.

(d) If more than one person is liable for the penalty under subsection (a) with respect to any payment of the state's share of gross terminal income, each person who paid the penalty shall be entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by the person over that person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with, an action for collection of such penalty brought by the state of West Virginia.



(e) No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under section 501 of the Internal Revenue Code of 1986, as amended, if such member:

- (1) Is solely serving in an honorary capacity;
- (2) Does not participate in the day-to-day or financial operations of the organization; and
- (3) Does not have actual knowledge of the failure on which the penalty is imposed.

This subsection (e) shall not apply if it results in no person being liable for the penalty imposed by subsection (a) of this section.

**§29-22B-1408. Distribution of state's share of gross terminal income.**

(a) The state's share of gross terminal income is calculated as follows:

(1) The commission shall deposit two percent of gross terminal income into the state lottery fund for the commission's costs and expenses incurred in administering this article. From this amount, not less than one hundred fifty thousand dollars nor more than one million dollars per fiscal year, as determined by the commission each year, shall be transferred to the compulsive gambling treatment fund created in section 29-22A-19 of this chapter. In the event that the percentage allotted under this subsection for the commission's costs and expenses incurred in administering this article 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 to be deposited in the fund established in section 29-22-18a of this chapter: *Provided*, That at the close of each of the fiscal years ending the thirtieth day of June two thousand six, two thousand seven, two thousand eight, two thousand nine, two thousand ten and two thousand eleven, the portion of the two percent allowance for administrative expenses provided in this subdivision (1) that remains unspent for costs and expenses incurred in administering this article, not to exceed twenty million dollars in any fiscal year, shall be transferred to the Revenue Center Construction Fund created by subsection (l) of section eighteen, article twenty-two of this chapter for the purpose of constructing a state office building.

(2) Gross profits are determined by deducting the percentage described in subdivision (1) of this subsection, from gross terminal income.

(3) The commission shall receive thirty percent of gross profits as defined in subdivision (2) of this subsection except as otherwise provided in this subdivision. On the first day of June, 2002, the commission shall calculate the aggregate average daily gross terminal income for all operating video lottery terminal during the preceding three month period.

Thereafter, the commission shall make the calculation on the first day of the month preceding the months of October, January, April and July of each year. So long as the aggregate average gross terminal income per day for the operating video lottery terminals does not exceed sixty dollars, the commission's share of gross profits shall continue to be thirty percent for the succeeding quarter of the year beginning the first day of July. Beginning on the first day of July, 2002 and the first days of October, January, April and July in 2002 and thereafter, if the commission's calculation of aggregate average daily gross terminal income per video lottery terminal yields an amount greater than sixty dollars, one of the following schedules apply: If the amount is greater than sixty dollars per day but not greater than eighty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be thirty-four percent; if the amount is greater than eighty dollars per day but not greater than one hundred dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be thirty-eight percent; if the amount is greater than one hundred dollars per day but not greater than one hundred twenty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be forty-two percent; if the amount is greater than one hundred twenty dollars per day but not greater than one hundred forty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be forty-six percent; if the amount is greater than one hundred forty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be fifty percent. This amount shall be known as net terminal income.

(b) Net terminal income shall be distributed by the commission as follows:

(1)(A) Beginning the first day of July, 2002, a county and the incorporated municipalities within that county shall receive two percent of the net terminal income generated by limited video lottery terminals located within the county;

(B) From this two percent of net terminal income, each municipality shall receive a share that bears the same proportion to the total two percent of net terminal income as the population of the municipality bears to the total population of the county as determined by the most recent decennial United States census of population, and the county shall receive the remaining portion of the two percent of net terminal income; and

(2) Any remaining funds shall be deposited into the state excess lottery revenue fund established in section eighteen-a, article twenty-two of this chapter.

(c) The licensed operators and limited video

lottery retailers shall receive the balance of gross terminal income remaining after deduction of the state's share as calculated pursuant to this section. (2001, 1<sup>st</sup> Extr. Sess., c6; 2006, 1<sup>st</sup> Extr. Sess., c .)

**PART 15. APPEAL OF ORDER OF THE COMMISSION.**

**§29-22B-1501. Appeal of order.**

(a) Any applicant or license holder adversely affected by an order issued under this article has the right to a hearing on the order 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 the applicant, or license holder.

(b) A petition for hearing shall be served on the commission by delivery in person at the primary office of the commission or by certified mail. By procedural rule, the commission may allow other methods of service.

(c) 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 any other order of the commission with respect to which a hearing is being demanded.

(d) The commission shall set a date for any hearing demanded and notify the person demanding the hearing not later than ten days before the hearing date of the date, time and place of the hearing. The hearing shall be held within thirty days after receipt of the petition.

**§29-22B-1502. Contents of petition for hearing; security.**

(a) A petition for a hearing shall be in writing and shall include an original and one copy. The petition shall 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 suspending or revoking a license, 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; and

(5) Verification by the petitioner.

(b) 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 a certified check, cashier's check or money order, which shall accompany the petition demanding a hearing.

**§29-22B-1503. Hearing procedures.**

(a) Hearings held under this article shall be subject to the provisions of article 29A-5-1, *et seq.*, of this code except to the extent otherwise provided in this article. In case of any conflict, the provisions of this article shall control.

(b) In all hearings held under this article,

oral and documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. The 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 shall 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 is the responsibility of the commission, but any party requesting issuance is responsible for service. Any person who serves any 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 the fees; and

(6) Any person receiving a subpoena or subpoena duces tecum issued under this section shall honor the subpoena or subpoena duces tecum 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 in response to the 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 in the circuit court.

(c) Hearings may not be delayed by a motion for continuance made less than seven days before the date set for the hearing.

(d) The commission may designate a hearing examiner to conduct the hearing.

(e) The petitioner may appear individually, or by legal counsel.

(f) The petitioner, or his or her 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. The waivers and agreements shall be in writing or upon the record.

(g) 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 shall be filed within ten days after the hearing date.

(h) 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.

(i) A record shall be made of all hearings held pursuant to this article. Testimony may be recorded electronically or by a court reporter.

(j) After the conclusion of the hearing and within ten days of receipt of the transcript of the hearing, 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 decision as its own, after having reviewed the transcript and all exhibits attached and affixed to the decision; if the commission rejects the decision, 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 is final unless vacated or modified upon judicial review of the decision. 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.

#### **§29-22B-1504. Judicial review.**

The applicant or license holder who filed the petition for administrative review may appeal the decision of the commission issued under section 22B-1503 to the circuit court of Kanawha County, West Virginia, if the petition for appeal is filed no later than thirty days after the date upon which the petitioner receives written notice of the final decision of the commission.

### **PART 16. CIVIL PENALTIES.**

#### **§29-22B-1601. Imposition of civil penalties by the commission.**

The commission may impose the civil penalties provided for in this part 16. These civil penalties may be imposed in conjunction with one or more other civil penalties provided in this part 16 and in conjunction with a license suspension or revocation or other administrative action taken against a licensee, or as a result of an action or inaction by a licensee for which the commission is also seeking criminal prosecution.

#### **§29-22B-1602. Civil penalties applicable to limited video lottery retailers.**

(a) For allowing persons under age twenty-one years to play video lottery games, the limited video lottery retailer shall be fined:

- (1) Two hundred dollars for a first violation;
- (2) One thousand dollars for a second violation; and
- (3) Five thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by five thousand dollars.

(b) For allowing persons under age twenty-one years to be present at a video lottery terminal or in the immediate area where video lottery terminals are present, the limited video lottery retailer may be fined:

- (1) One hundred dollars for a first violation;
- (2) Two hundred dollars for a second violation; and
- (3) Three hundred dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by one hundred dollars.

(c) For allowing a person or persons to tamper in any way with, or disconnect, any data line or feature that allows the state's central control computer to communicate with each video lottery terminal in the premises, the limited video lottery retailer may be fined:

- (1) One thousand dollars for a first violation;
- (2) Five thousand dollars for a second violation; and
- (3) Ten thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(d) For entering the logic area of a video lottery terminal or allowing an unauthorized person or persons to enter the logic area of a video lottery terminal, or tampering in any way with the lottery security seal, any EPROM or other chip or memory device installed in the logic area, whether or not any tampering would alter any characteristic of the video lottery terminal, the limited video lottery retailer may be fined:

- (1) One thousand dollars for a first violation;
- (2) Five thousand dollars for a second violation; and
- (3) Ten thousand dollars for a third violation.

violation.

For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(e) For failure to aim or focus a closed circuit television camera on all video lottery terminals in the premises or for failure to record all video lottery terminals during the hours of operation of the limited access adults-only facility, the limited video lottery retailer shall be fined:

- (1) One hundred dollars for a first violation;
- (2) One thousand dollars for a second violation; and
- (3) Five thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by five thousand dollars.

(f) For violating the provisions of subdivision (10), subdivision (13) or subdivision (14) of section 29-22B-702 of this article, the limited video lottery retailer shall be fined:

- (1) One hundred dollars for a first violation;
- (2) One thousand dollars for a second violation;
- (3) Five thousand dollars for a third violation.

For each subsequent violation the fine imposed by the commission shall increase by an additional five thousand dollars.

**§29-22B-1603. Civil penalties applicable to service technicians.**

(a) For entering the logic area of any video lottery terminal at any time when a representative of the West Virginia Lottery Commission is not present and observing the process, the service technician shall be fined:

- (1) One hundred dollars for a first violation;
- (2) One thousand dollars for a second violation; and
- (3) Three thousand dollars for a third violation.

(b) For each subsequent violation, the fine imposed by the commission shall increase by one thousand dollars. If two or more service technicians participate in violation of this section, each service technician shall be fined according to this schedule.

**§29-22B-1604. Civil penalties applicable to permittees.**

(a) For employing or contracting with persons, other than service technicians licensed by the commission, to repair video lottery terminals, the permittee shall be fined:

- (1) One thousand dollars for a first violation;
- (2) Five thousand dollars for a second violation; and
- (3) Ten thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by ten

thousand dollars.

(b) For acquiring, or installing in licensed premises, any video lottery terminal that has not been manufactured and supplied by a licensed manufacturer, that has not also been tested and approved by the commission's independent testing laboratory, and that has not been approved for use in this state by the commission, the permittee shall be fined:

- (1) Five thousand dollars for a first violation;
- (2) Ten thousand dollars for a second violation.

(c) For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

**§29-22B-1605. Civil penalties applicable to manufacturers.**

(a) For shipping a video lottery terminal into this state to a person who does not have a permit issued by the commission under this article, the manufacturer shall be fined:

- (1) One thousand dollars for a first violation;
- (2) Five thousand dollars for a second violation; and
- (3) Ten thousand dollars for a third violation.

(b) For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(c) For shipping a video lottery terminal into this state that is not identical to a video lottery terminal make and model approved by the commission, including the electronic computer components, the random number generator, the coin acceptor, the bill acceptor, and the cabinet in which the video lottery terminal is housed, the manufacturer shall be fined:

- (1) One thousand dollars for a first violation;
- (2) Five thousand dollars for a second violation; and
- (3) Ten thousand dollars for a third violation.

(d) For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

**§29-22B-1606. Civil penalties for failure of licensees to perform duties.**

A person who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article or legislative rule of the commission is subject to a civil penalty as may be determined by the commission in an amount not to exceed ten thousand dollars.

**§29-22B-1607. Civil action to collect penalty.**

(a) The commission may collect any money penalty imposed pursuant to this article by instituting civil action in any court of this state having jurisdiction over the named defendant.

(b) Collection shall be barred unless the civil action is commenced within six years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, or (2) the date on which the commission first knew or should reasonably have known the prohibited conduct had occurred.

#### **PART 17. CRIMINAL OFFENSES.**

##### **§29-22B-1701. Financial interest of director, etc.; receiving reward from interested party; criminal penalty; application of bribery statute.**

(a) Neither the director of the commission, nor any member or employee of the commission, may be financially interested, or have any beneficial personal interest, direct or indirect, in any person furnishing video lottery terminals or video lottery games, or in any person who is a bidder for video lottery terminals, or who is a holder of a license issued under this article.

(b) Neither the director of the commission, nor any member or employee of the commission, may accept or receive, directly or indirectly, from any person known by the director, commission member or employee of the commission to be interested in any bid, contract or license under this article, by rebate, gift or otherwise, any money or other thing of value whatsoever, or any promise, obligation or contract for future reward, or compensation.

(c) A person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both, in the discretion of the court: *Provided*, That any person who violates any of the provisions of subsection (b) of this section under circumstances constituting the crime of bribery under the provisions of section 61-5A-3 of this code, shall, upon conviction of bribery, be punished as provided in article 61-5A-1, *et seq.*, of this code.

##### **§29-22B-1702. Criminal penalties for unlawful inducement.**

(a) Any person who gives another person any thing of value to induce the other to refrain from bidding for a video lottery permit is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars and, in addition, shall be subject to a civil penalty payable to the commission of five hundred thousand dollars.

(b) Any person who gives a person any thing of value to induce the other to refrain from placing a video lottery terminal at a restricted access adult-only facility is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars and, in addition, shall be subject to a civil penalty payable to the commission of five hundred thousand dollars.

##### **§29-22B-1703. Criminal penalty for unauthorized**

##### **game on authorized video lottery terminal.**

(a) A licensee who places a video lottery game on a video lottery terminal that is allowed under this article without authority of the commission to do so is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail for a term of not more than one year, and fined not more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than five thousand dollars nor more than ten thousand dollars, except that in the case of a person other than an individual, the fine may not be less than twenty-five thousand dollars nor more than fifty thousand dollars.

##### **§29-22B-1704. Criminal penalty for unauthorized video lottery terminal.**

(a) A licensee who places a video gambling machine into play is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail for a term of not more than one year, and fined not less than five thousand dollars nor more than ten thousand dollars, except that, in the case of a person other than an individual, the fine may not be less than twenty thousand dollars nor more than thirty thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than ten thousand dollars nor more than twenty thousand dollars, except that in the case of a person other than an individual, the fine may not be less than twenty-five thousand dollars nor more than fifty thousand dollars.

##### **§29-22B-1705. Criminal penalty for possession of video gambling machine.**

(a) After December 31, 2001, any person who has a video gambling machine in their actual or constructive possession in this state is guilty of a felony and, upon conviction thereof, shall for a first conviction be confined in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than fifty thousand dollars nor more than one hundred thousand dollars, for each video gambling machine in the person's actual or constructive possession in this state, except that, in the case of a person other than an individual, the fine may not be less than one hundred thousand dollars nor more than five hundred thousand dollars for each video gambling machine in the person's actual or constructive possession in this state.

(b) For any second or subsequent conviction

under this section the person shall be confined in a state correctional facility for a term of not less than two years nor more than five years, and fined not less than one hundred thousand dollars nor more than five hundred thousand dollars, for each video gambling machine in their actual or constructive possession in this state, except that, in the case of a person other than an individual, the fine may not be less than five hundred thousand dollars nor more than one million dollars for each video gambling machine in the person's actual or constructive possession in this state.

**§29-22B-1706. Criminal penalty for expired operator or limited video lottery retailer's license.**

(a) 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 of the license is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail for not more than one year or fined not less than one thousand dollars nor more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may not be less than ten thousand dollars nor more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than ten thousand dollars nor more than twenty thousand dollars, except that in the case of a person other than an individual, the fine may not be less than twenty-five thousand dollars nor more than fifty thousand dollars.

**§29-22B-1707. Criminal penalty for possession of altered or nonconforming video lottery terminal, device or related material.**

(a) A person who possesses any video lottery terminal that is not a video gambling machine or possesses any 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 for a first conviction be confined in a county or regional jail not more than one year and fined not less than one thousand dollars nor more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not less than five thousand dollars nor more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that in the case of a person other than an individual, the fine may not be less than

fifty thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1708. Criminal penalty for tampered game, terminal, device or other equipment.**

(a) A person 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 for a first conviction be confined in a county or regional jail not more than one year and fined not less than one thousand dollars nor more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not less than twenty-five thousand dollars nor more than fifty thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that in the case of a person other than an individual, the fine may be not less than fifty thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1709. Criminal penalty for deceptive practices.**

(a) A person 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, data line connection with the central control computer, 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 state lottery commission or tends to alter the accurate recording of credits played and credits won by the commission's central control computer, or the central control computer's ability to disable and cause not to operate any or all video lottery terminals of a licensed limited video lottery retailer, for the first offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year and fined not more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not more than fifty thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for at least one year but not more than five years, and fined not less than one

thousand dollars nor more than five thousand dollars, except that when the person is not an individual, the amount of the fine imposed may be not less than five thousand dollars nor more than fifty thousand dollars.

**§29-22B-1710. Employment of unlicensed person who is required to be licensed.**

(a) A person who employs or continues to employ an individual not issued a license under the provisions of this article in a position with duties which would require a license under the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall for a first offense be confined in a county or regional jail for not more than one year and fined not more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that, in the case of a person other than an individual, the fine may not be less than fifty thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1711. Criminal penalty for unlicensed person to work in a position for which license is required.**

(a) An individual who is required by this article to obtain a license from the commission to work as a limited video lottery retailer or service technician but who works as a limited video lottery retailer or service technician without obtaining the requisite license, as provided for in this article, or is employed in a position with duties which would require a license under the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year and fined not more than ten thousand dollars.

(b) A second and each subsequent offense under this section shall be a misdemeanor and, upon conviction thereof, the person shall be confined in a county or regional jail for a term not to exceed one year and fined not less than five thousand dollars nor more than twenty thousand dollars.

**§29-22B-1712. Criminal penalty for use of device that gives player an unauthorized advantage.**

(a) A person who, while a video lottery game is being played, uses, or assists another person 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 felony and, upon conviction thereof, shall for a first offense be confined in a state correctional facility for at least one year but not more than five years, or shall be fined

not less than one thousand dollars nor more than five thousand dollars, or both.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that, in the case of a person other than an individual, the fine may be not less than fifty thousand dollars nor more than one hundred thousand dollars.

**§29-22B-1713. Criminal penalty for violation of rules of play.**

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 state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in jail for not more than one year and be fined not less than two thousand dollars nor more than five thousand dollars. If the person profits thereby in an amount less than one thousand dollars, that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not less than one thousand dollars nor more than two thousand five hundred dollars, or both.

**§29-22B-1714. Criminal penalty for corrupt combinations, collusions or conspiracies prohibited.**

It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or leasing of video lottery terminals or associated equipment, or the provisions of services, or the bidding of authorizations to own or lease video lottery terminals. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in a state correctional facility for a term of not less than one year nor more than five years, and be fined not less than ten thousand dollars nor more than twenty-five thousand dollars.

**PART 18. SEIZURE AND DESTRUCTION OF CONTRABAND; FORFEITURES.**

**§29-22B-1801. Video gambling machines declared contraband.**

Effective January 1, 2002, and thereafter, video gambling machines are per se illegal gambling devices which may be seized and destroyed as illegal contraband by any law-enforcement agency having jurisdiction over the political subdivision in which the device is found, and the owner or owners of the device have no right to compensation for the seizure and destruction of any video gambling machine.

**§29-22B-1802. Legislative findings regarding seizure and sale of video gambling machines and other property.**

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this part 18 is not contemplated to be a forfeiture as the same is used in article 12, section 5 of the West Virginia Constitution and, to the extent that a seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article 12, section 5 of the West Virginia Constitution.

**§29-22B-1803. Items subject to forfeiture.**

(a) The following items are subject to forfeiture:

(1) Any video gambling machine present in this state after January 1, 2002;

(2) All property found with the video gambling machine that in any way facilitates its operation for any purpose;

(3) Any video lottery terminal registered under this article that is found on the premises where a video gambling machine is found;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of a video gambling machine, except as follows:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section unless it appears that the person owning such conveyance is a consenting party or privy to a violation of this article;

(B) No conveyance shall be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this article; and

(C) No bona fide security interest or other valid lien in any conveyance shall be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of such security interest or lien either knew, or had reason to know, that such conveyance was being used or was likely to be used in a violation of this article.

(5) All books, records and materials, including microfilm, tapes and data which are used, or have been used, or are intended for use with a gray gambling device;

(6) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of this article by any person in exchange for a gray gambling device or in exchange for playing or operating a gray gambling device, all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities

used, or which have been used, or which are intended to be used to facilitate any violation of this article: *Provided*, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his knowledge or consent; and

(7) All real property, including any right, title and interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit, or to facilitate the commission of a violation of this article punishable by more than one year imprisonment: *Provided*, That no property may be forfeited under this subdivision, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his knowledge or consent.

(b) The requirements of this section pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances thereto.

(c) Property subject to forfeiture under this section may be seized by any person granted law-enforcement powers (hereinafter referred to as the "appropriate person" in section 22B-1804).

**§29-22B-1804. Procedure for seizure of forfeitable property.**

(a) Seizure of property made subject to forfeiture by the provisions of sections 22B-1802 and 22B-1803 may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section; or

(3) The appropriate person has probable cause to believe that the property was used or intended for use in violation of this article.

(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:

(1) Place the property under seal;

(2) Remove the property to a place designated by him or her;

(3) Require the appropriate law-enforcement



agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.

The requirements of this subsection (d), pertaining to the removal of seized property, are not mandatory in the case of real property and appurtenances thereto.

**§29-22B-1805. Procedures for forfeiture.**

(a) The following procedures for forfeiture shall be followed:

(1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this section shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor;

(2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court of the county wherein the seizure was made or the circuit court of the county wherein any owner of the property subject to forfeiture may reside;

(3) Any civil trial stemming from a petition for forfeiture brought under this part 18 at the demand of either party shall be by jury;

(4) A petition for forfeiture of the seized property shall be filed within ninety days after the seizure of the property in question. The petition shall be verified by oath or affirmation of a law-enforcement officer representing the law-enforcement agency responsible for the seizure or the prosecuting attorney and shall contain the following:

(A) A description of the property seized;

(B) A statement as to who is responsible for the seizure;

(C) A statement of the time and place of seizure;

(D) The identity of the owner or owners of the property, if known;

(E) The identity of the person or persons in possession of the property at the time seized, if known;

(F) A statement of facts upon which probable cause for belief that the seized property is subject to forfeiture pursuant to the provisions of this article is based;

(G) The identity of all persons or corporations having a perfected security interest or lien in the subject property, as well as the identity of all persons or corporations known to the affiant who may be holding a possessory or statutory lien against such property; and

(H) A prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state.

(b) At the time of filing or as soon as practicable thereafter, a copy of the petition for

forfeiture shall be served upon the owner or owners of the seized property, as well as all holders of a perfected security interest or lien or of a possessory or statutory lien in the same class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of the petition for forfeiture shall be served upon any person who was in possession or alleged to be in possession of the property at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as follows:

“To any claimant to the within described property: You have the right to file an answer to this petition setting forth your title in, and right to possession of, the property within thirty days from the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will be entered, and such order is not subject to appeal.”

If no owner or possessors, lienholders or holders of a security interest be found, then such service may be made by Class II legal publication in accordance with the provisions of article 59-3-1, *et seq.*, of this code, and the publication area shall be the county wherein such property was located at the time of seizure and the county wherein the petition for forfeiture is filed.

(c) In addition to the requirements of subsection (b) of this section, the prosecuting attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be responsible for the publication of a further notice. Such further notice that a petition for forfeiture has been filed shall be published by Class II legal advertisement in accordance with article 59-3-1, *et seq.*, of this code. The publication area shall be the county wherein the property was seized and the county wherein the petition for forfeiture is filed. The notice shall advise any claimant to the property of their right to file a claim on or before the date set forth in the notice, which date shall not be less than thirty days from the date of the first publication. The notice shall specify that any claim must clearly state the identity of the claimant and an address where legal process can be served upon that person. In addition, such notice shall contain the following information:

(1) A description of the property seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the property, if known;

(5) The identity of the person or persons in possession of the property at the time of seizure, if known; and

(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state, shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this part 18.

(f) Any order forfeiting property to the state and entered pursuant to this section perfects the state's right, title and interest in the forfeited property and relates back to the date of seizure: *Provided*, That in any proceeding under this article the circuit court shall in its final order make specific findings with respect to whether or not probable cause to seize such property existed at the time of such seizure.

(g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or holder of a bona fide security interest or other valid lien-holder to transfer or attempt to transfer any ownership interest or security interest in seized property with the intent to defeat the purpose of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner or holder of a security interest or other lien-holder from making such a transfer should one come to its attention. Any such transfer, that is made in violation of the provisions of this subsection, shall have no effect upon an order of the court forfeiting seized property to the state if a notice of lis pendens is filed prior to the recording of the instrument of transfer.

(h) The court may void any transfer of property made before or after a forfeiture proceeding has been commenced, which is subject to forfeiture, if the transfer was not to a bona fide purchaser without notice for value.

(i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought pursuant to this part 18 must be filed within one hundred twenty days of the date of entry of the final appealable order. The appellants shall be required to give notice of intent to appeal within thirty days of the entry of such appealable order.

**§29-22B-1806. Disposition of forfeited moneys, securities or other negotiable instruments.**

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this part 18, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding; and

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:

(1) In the case of the funds belonging to the West Virginia state police, the funds shall only be expended at the direction of the superintendent and in accordance with the provisions of section 5A-2-15 and subsection 12-2-2(j) of this code;

(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections 7-5-4 and 5 of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section 8-13-22 of this code.

**§29-22B-1807. Disposition of other forfeited property; distribution of proceeds.**

(a) When property other than that referred to in section 22B-1806 of this part is forfeited under this section, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the chief of the law-enforcement agency that seized said forfeited property, may direct that:

(1) Title to the forfeited property be vested in the law-enforcement agency so petitioning; or (2) The law-enforcement agency responsible for the seizure retain the property for official use; or

(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article 59-3-1, *et seq.*, of this code. The publication area shall be the county where the public auction will be held.

(b) When a law-enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law-enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant to this section shall be paid and applied as follows: First, to the balance due on any security interest preserved by the court; second, to the costs incurred in the storage, maintenance and security of the property; third, to the costs incurred in selling the property.

(d) Any proceeds of a public sale remaining

after distribution pursuant to this section shall be distributed as follows:

(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding; and

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property sold and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the chief of the law-enforcement agency may deem appropriate; however, these funds may not be utilized for regular operating needs.

(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall equitably distribute the forfeited property among the law-enforcement agencies. In the event of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section, among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.

(g) Any funds expended pursuant to the provisions of this section, shall only be expended in the manner provided in subsection 60A-7-705(b), of this code.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this part 18 shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No county or municipality may use anticipated receipts of forfeited property in their

budgetary process.

(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to this section.

(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this part 18, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section 58-4-7 of this code.

(l) The special law-enforcement investigative funds of each law-enforcement agency may be placed in an interest-bearing depository insured by the federal government.

#### **PART 19. MISCELLANEOUS PROVISIONS.**

##### **§29-22B-1901. Effect of this article on certain taxes.**

(a) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, persons who hold a current operator's license or a current limited video lottery retailer's license issued under this article shall be exempt from paying the taxes imposed by articles 11-15-1, *et seq.*, and 11-15A-1, *et seq.*, of this code on their purchases of video lottery terminals and video lottery games.

(b) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, the consideration paid by a patron of a restricted access adult-only facility to play of video lottery games shall be exempt from the tax imposed by article 11-15-1, *et seq.*, of this code.

(c) Notwithstanding the provisions of section 8-13-4 of this code to the contrary, effective the first day of July, 2002, municipalities may not impose the license fees imposed by this article on manufacturers, operators, limited video lottery retailers and service technicians. Municipalities may continue to impose any other license fees they are allowed to impose under this code.

(d) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, municipalities may not impose the municipal business and occupation taxes imposed pursuant to section 8-13-5 of this code, or an amusement tax imposed pursuant to section 8-13-6 of this code on the income of an permittee of video lottery terminals from income derived directly from activities conducted pursuant to the provisions of this article.

(e) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, municipalities may not impose the municipal business and occupation taxes imposed pursuant to section 8-13-5 of this code on payments a limited video lottery retailer receives from an operator of video lottery terminals for activities conducted pursuant to the provisions of this article. *Amended in 2001, 5<sup>th</sup> Extraordinary Session, Chapter 6.*

**§29-22B-1902. 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 video lottery terminal, games or materials or for the operation of any lottery shall apply to operations by the lottery commission or persons licensed pursuant to this article or operations or activities that are authorized in this article.

(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 61-10-1, *et seq.*, 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.

**§29-22B-1903. Timing of implementation.**

The Legislature finds and declares that the success of this state's implementation of video lottery operations under this article requires that the operations be phased in over a manageable transition period designed to allow careful regulation and control of the implementation of operations under this article and also to allow persons possessing devices that are declared by this article to be contraband gambling devices a reasonable opportunity to remove any existing devices from this state.