

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 550**

5 (By Senators Klempa, Kessler (Acting President), Wills, Snyder,
6 Yost, Miller, Edgell and D. Facemire)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 23, 2011.]
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12
13 A BILL to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new section, designated §19-23-12d; to amend
15 and reenact §29-22A-6, §29-22A-10 and §29-22A-10c of said
16 code; and to amend and reenact §29-25-19 and §29-25-22 of said
17 code, all relating to allowing simulcast pari-mutuel racing
18 within the confines of gaming facilities located at historic
19 resort hotels; defining terms; permitting the issuing of
20 licenses; providing for payments; setting forth conditions for
21 out-of-state tracks and interstate pools; registering of
22 persons conducting wagering activities; setting forth the
23 licensee's retainage; setting forth the amounts of payments
24 made by a licensee and to whom they are to be paid; requiring
25 compliance with federal law; authorizing rulemaking; exempting
26 pari-mutuel wagering and equipment from state sales taxes;
27 permitting licensees at racetracks and historic resort hotels
28 to establish minimum and maximum wager limits at video lottery

1 terminals; authorizing the use of video lottery terminal bill
2 acceptors for all United States currency; reducing the
3 required life for capital investments by licensees at
4 racetracks to be reimbursed from the Capital Investment Fund;
5 extending the time for recoupment of expenditures for capital
6 improvements; requiring historic resort hotels to pay a
7 portion of certain proceeds into the Human Resources Fund;
8 creating a Licensed Racetrack and Historic Resort Hotel
9 Facility Modernization Fund; and providing that up to \$10
10 million annually from annual surpluses in the commission's
11 administrative allowance be deposited into that new fund.

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

13 That the Code of West Virginia, 1931, as amended, be amended
14 by adding thereto a new section, designated §19-23-12d; that
15 §29-22A-6, §29-22A-10 and §29-22A-10c of said code be amended and
16 reenacted; and that §29-25-19 and §29-25-22 of said code be amended
17 and reenacted, all to read as follows:

18 **CHAPTER 19. AGRICULTURE.**

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

20 **§19-23-12d. Simulcast races and pari-mutuel wagering at authorized**
21 **gaming facility in historic resort hotel.**

22 (a) *Definitions.* -- In addition to the words and phrases
23 defined in section three of this article, the words and phrases
24 defined in subsection (b) of this section have the meanings
25 provided in that subsection when used in this section, unless the
26 context in which the term or phrase is used clearly indicates that
27 a different meaning is intended.

1 (b) *Defined words and phrases.* --

2 (1) "Applicant" means any gaming licensee who is licensed
3 under article twenty-five, chapter twenty-nine of this code,
4 applying for a license under this section to conduct pari-mutuel
5 wagering on televised horse and dog races.

6 (2) "Designated pari-mutuel wagering area" means one or more
7 specific areas of an existing historic resort hotel within which
8 the Racing Commission has authorized the gaming licensee to offer
9 pari-mutuel wagering to patrons of the hotel.

10 (3) "Gaming facility" means a designated area on the premises
11 of an existing historic resort hotel in which pari-mutuel wagering
12 is conducted by a gaming licensee.

13 (4) "Gaming licensee" means the licensed operator of a gaming
14 facility under article twenty-five, chapter twenty-nine of this
15 code, who is also licensed under this article to offer pari-mutuel
16 wagering on simulcast horse or dog races or on both types of races.

17 (5) "Historic resort hotel" means a historic resort hotel as
18 defined in section two, article twenty-five, chapter twenty-nine of
19 this code.

20 (6) "In-state host track" means a racetrack within this state
21 licensed to conduct horse or dog race meetings at which pari-mutuel
22 wagering is conducted and which is an in-state sending track.

23 (7) "In-state sending track" means a racetrack in this state
24 licensed under this article to conduct horse or dog race meetings
25 at which pari-mutuel wagering is conducted and which is equipped to
26 conduct simulcasting of those races and intertrack pari-mutuel
27 wagering on those races.

28 (8) "In-state track" means an in-state host track or an

1 in-state sending track.

2 (9) "Interstate common pool" means a pari-mutuel pool
3 established within this state or in another state or foreign nation
4 within which is combined comparable pari-mutuel pools of one or
5 more receiving legal wagering entities located in one or more
6 states or foreign nations upon a race at a sending track located
7 within or outside of this state for the purpose of establishing
8 payoff prices in the various jurisdictions.

9 (10) "Intertrack wagering" means parimutuel wagering on
10 simulcast horse or dog races held at an in-state sending track by
11 patrons at a gaming facility licensed under this section and the
12 electronic transmission of the wagers to the in-state sending
13 track.

14 (11) "License" means a license issued by the Racing Commission
15 pursuant to this section, including:

16 (A) A license to operate a gaming facility in which
17 pari-mutuel wagering on simulcast races will be available to
18 patrons;

19 (B) A license to be employed in connection with the operation
20 of a gaming facility at which pari-mutuel wagering is offered on
21 simulcast races; or

22 (C) A license to provide management services under a contract
23 to a gaming facility licensed under this article.

24 (12) "Licensed gaming facility employee" means any individual
25 licensed or registered to be employed by a gaming licensee in
26 connection with the operation of a pari-mutuel wagering pursuant to
27 this section.

28 (13) "Out-of-state host track" means a racetrack in a

1 jurisdiction other than this state, the operator of which is
2 lawfully permitted to conduct a horse or dog race meeting and which
3 conducts horse or dog races upon which pari-mutuel wagers may be
4 placed.

5 (14) "Out-of-state track" means an out-of-state host track or
6 an out-of-State sending track.

7 (15) "Out-of-state sending track" means a racetrack in a
8 jurisdiction other than the State of West Virginia which is
9 lawfully permitted to conduct a horse or dog race meeting and to
10 provide simulcast horse or dog races to a racetrack in this state.

11 (16) "Participation agreement" means the written contract that
12 provides for the establishment or implementation of simulcasting of
13 horse or dog races and pari-mutuel wagering. Each contract shall
14 set forth the manner in which the pari-mutuel wagering system shall
15 be managed, operated and capitalized, as well as how expenses and
16 revenues shall be allocated and distributed by and among the
17 licensed gaming facility under this section and the other eligible
18 participants in the contract.

19 (17) "Premises of an existing historic resort hotel" means the
20 historic resort hotel, attachments of the historic resort hotel,
21 and the traditional, immediate grounds of the historic resort
22 hotel.

23 (18) "Receiving gaming facility" means a licensed racetrack or
24 authorized gaming facility within this state licensed under this
25 article which is equipped to receive simulcast horse and dog races
26 and to conduct intertrack or interstate wagering on those races.

27 (19) "Simulcast horse or dog races" means horse or dog races
28 conducted at an in-state sending track or an out-of-state sending

1 track, as the case may be, and transmitted simultaneously by
2 picture to the authorized gaming facility licensed under this
3 section or other legal wagering facility.

4 (20) "Simulcasting" means the simultaneous audio or visual
5 transmission of horse or dog races conducted at in-state and
6 out-of-state racetracks to the gaming facility licensee under this
7 section and pari-mutuel wagering on the results of those races.

8 (c) *Application for license.* -- An applicant who is licensed
9 under article twenty-five, chapter twenty-nine of this code may
10 apply to the West Virginia Racing Commission for a license to
11 conduct at the historic resort hotel pari-mutuel wagering on
12 simulcast horse and dog races held at a licensed racetrack in this
13 state, or in another jurisdiction, where pari-mutuel wagering is
14 permitted and conducted. The application shall be submitted in the
15 form prescribed by the commission and provide the information
16 required by the commission.

17 (d) *Issuance of license.* -- Within sixty days after an
18 application is filed pursuant to subsection (b) of this section,
19 the Racing Commission shall act on the application and either grant
20 or deny the application: *Provided,* That issuance of the license
21 shall not be unreasonably withheld. Once issued, the license shall
22 expire, be renewed, revoked or suspended on the same basis as
23 licenses issued under this article to racetracks to hold live
24 racing and conduct pari-mutuel wagering.

25 (e) *Transmission of races from in-state sending tracks.* -- An
26 in-state sending track may transmit to a gaming licensee under this
27 section all or some of the live races conducted at the racetrack.

28 (f) *Receipt of simulcasts transmitted from out-of-state*

1 tracks. -- The gaming licensee under this section may, in
2 accordance with this article, and any applicable rules of the
3 Racing Commission and with the approval of the commission, receive
4 at the facility simulcast horse or dog races, or both, conducted at
5 out-of-state sending tracks.

6 (g) *Payments to sending track.* - The authorized gaming
7 facility receiving a simulcast horse or dog race from an
8 out-of-state sending track shall pay to the out-of-state sending
9 track for the transmission such amount, if any, as may be agreed
10 upon by the authorized gaming facility and the out-of-state sending
11 track. The authorized gaming facility accepting pari-mutuel wagers
12 on a horse or dog race conducted at an out-of-state host track
13 shall pay to the out-of-state host track such amount, if any, as
14 provided for in the agreement, if any, between the authorized
15 gaming facility and the out-of-state host track.

16 (h) *Conditions for participation by out-of-state tracks;*
17 *interstate common pools.* --

18 (1) Except as provided in subdivision (2) of this subsection,
19 the Racing Commission shall not permit an out-of-state sending
20 track or an out-of-state host track to participate in simulcast
21 pari-mutuel wagering or qualify as an out-of-state host track,
22 respectively, unless the pari-mutuel pools respecting the
23 authorized gaming facility under this article are combined with
24 comparable pari-mutuel pools at the out-of-state track. The types
25 of wagering, takeout, distribution of winnings, rules of racing,
26 method of calculating breakage, and the percentage of deposits
27 remaining undistributed from a pari-mutuel pool after payment is
28 made to winning ticket holders shall be determined in accordance

1 with the law or policy applicable to the out-of-state track.

2 (2) With the prior approval of the Racing Commission and the
3 concurrence of the out-of-state track, an authorized gaming
4 facility under this article and receiving tracks or entities in
5 other states other than the state in which the out-of-state track
6 is located may form an interstate common pool. With respect to such
7 interstate common pools, the Racing Commission may approve types of
8 wagering, takeout, distribution of winnings, rules of racing,
9 method of calculating breakage, and a percentage of deposits
10 remaining undistributed from a parimutuel pool after payment is
11 made to winning ticket holders which are different from those which
12 would otherwise be applied in this state but which are consistent
13 for all parties to the interstate common pool.

14 (i) *Licensing or registration of persons conducting*
15 *wagering-related activities.* -- All persons engaged in conducting
16 wagering-related activities at the authorized gaming facility
17 licensed under this section, whether employed directly by the
18 licensee or by a person or entity conducting or operating the
19 simulcast racing and pari-mutuel wagering facility under an
20 agreement with the licensee, shall be licensed or registered in
21 accordance with such rules as may be promulgated by the Racing
22 Commission. All other employees at the simulcast racing and
23 pari-mutuel wagering facility shall be licensed or registered in
24 accordance with regulations of the Racing Commission: *Provided,*
25 *That when the employee is licensed by the Lottery Commission, that*
26 *employee must register with the Racing Commission is not required*
27 *to have a separate license issued by the Racing Commission. The*
28 *Racing Commission shall have the authority to promulgate rules,*

1 regulations and conditions under which all such licenses are
2 issued, or registrations made, in this state and to revoke or
3 refuse to issue a license, or revoke or refuse to accept a
4 registration, if in the opinion of the commission the revocation or
5 refusal is in the public interest: *Provided*, That the rules,
6 regulations and conditions are uniform in their application to both
7 the gaming facility licensed under this section and racetracks
8 licensed under this article to hold race meetings at which
9 pari-mutuel wagering is conducted. The fees under this subsection
10 may not be in excess of the fee charge for a similar occupational
11 permit or license at a licensed racetrack.

12 (j) *Retainage of gaming licensee.* -- The gaming licensee under
13 this section shall retain from pari-mutuel wagers a basic
14 commission of seventeen and twenty-five one-hundredths percent on
15 horse races and a basic commission of sixteen and twenty-five
16 one-hundredths percent on dog races. Breakage shall be calculated
17 and distributed in the manner provided in subsection (c), section
18 nine of this article.

19 (k) *Payments by the licensee.* -- Out of the commission
20 retained or deducted by a gaming licensee under the provisions of
21 subsection (j) of this section, the gaming licensee shall pay:

22 (1) One-tenth of one percent into the General Revenue Fund of
23 county commission of the county in which the historic resort hotel
24 is located;

25 (2) Each day, the daily pari-mutuel pools tax calculated under
26 section ten of this article; and

27 (3) The amount required to be paid under the terms of a
28 contract with a host licensed racing association in this state or

1 in another jurisdiction that permits pari-mutual wagering on horse
2 or dog races held or conducted in that jurisdiction.

3 (l) After making the payments required by subsection (k) of
4 this section, the remaining balance may be retained by the gaming
5 licensee under this section.

6 (m) *Compliance with federal law.* -- The federal Interstate
7 Horseracing Act of 1978, P. L. 95-515, 15 U.S.C. §§3001-3007, is
8 instructive as the legislative intent of this section.

9 (n) *Promulgation of rules.* -- The Racing Commission shall
10 promulgate rules in accordance with article three, chapter
11 twenty-nine-a of this code, it deems necessary to implement and
12 efficiently administer this section: *Provided,* That the rules are
13 to be consistent with the rules promulgated for pari-mutuel
14 wagering on televised races at the racetracks.

15 (o) *Pari-mutuel wagers and equipment exempt from sales tax.* --
16 Notwithstanding any provision of this code to the contrary, the
17 license tax imposed in section ten of this article shall be in lieu
18 of payment of the tax imposed by article fifteen, chapter eleven of
19 this code, on pari-mutuel wagering and on the purchase of
20 equipment, services and supplies directly used in pari-mutual
21 wagering under this section.

22 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

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

24 **§29-22A-6. Video lottery terminal hardware and software**
25 **requirements; hardware specifications; software**
26 **requirements for randomness testing; software**
27 **requirements for percentage payout; software**
28 **requirements for continuation of video lottery game**

1 **after malfunction; software requirements for play**
2 **transaction records.**

3 (a) The commission may approve video lottery terminals and in
4 doing so shall take into account advancements in computer
5 technology, competition from nearby states and the preservation of
6 jobs in the West Virginia pari-mutuel racing industry. In
7 approving video lottery terminals licensed for placement in this
8 state, the commission shall ensure that the terminals meet the
9 following hardware specifications:

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

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

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

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

26 (5) A minimum of one electronic or mechanical coin acceptor or
27 other means accurately and efficiently to establish credits shall
28 be installed on each video lottery terminal. Each video lottery

1 terminal may also contain bill acceptors for ~~one or more of the~~
2 ~~following: One dollar bills, five dollar bills, ten dollar bills~~
3 ~~and twenty dollar bills~~ any legal United States currency. All coin
4 and bill acceptors shall be approved by the commission prior to use
5 on any video lottery terminal in this state.

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

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

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

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

20 (10) Each video lottery terminal shall contain a single
21 printing mechanism capable of printing an original ticket and
22 retaining an exact legible copy within the video lottery terminal
23 or other means of capturing and retaining an electronic copy of the
24 ticket data as approved by the commission: *Provided*, That such
25 printing mechanism is optional on any video lottery terminal which
26 is designed and equipped exclusively for coin or token payouts. The
27 following information shall be recorded on the ticket when credits
28 accrued on a video lottery terminal are redeemed for cash:

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

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

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

13 (12) The rules of play for each game shall be displayed on the
14 video lottery terminal face or screen. The commission may reject
15 any rules of play which are incomplete, confusing, misleading or
16 inconsistent with game rules approved by the commission. For each
17 video lottery game there shall be a display detailing the credits
18 awarded for the occurrence of each possible winning combination of
19 numbers or symbols. A video lottery terminal may allow ~~up to five~~
20 ~~dollars to be wagered on a single game~~ the amounts of minimum and
21 maximum wagers on a single game to be determined by licensee or
22 permit holder in the exercise of its business judgment subject to
23 the approval of the commission. All information required by this
24 subdivision shall be displayed under glass or another transparent
25 substance. No stickers or other removable devices shall be placed
26 on the video lottery terminal screen or face without the prior
27 approval of the commission.

28 (13) Communication equipment and devices shall be installed to

1 enable each video lottery terminal to communicate with the
2 commission's central computer system by use of a communications
3 protocol provided by the commission to each permitted manufacturer,
4 which protocol shall include information retrieval and terminal
5 activation and disable programs, and the commission may require
6 each licensed racetrack to pay the cost of a central site computer
7 as a part of the licensing requirement.

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

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

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

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

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

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

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

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

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

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

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

28 (e) Each video lottery terminal shall at all times maintain

1 electronic accounting regardless of whether the terminal is being
2 supplied with electrical power. Each meter shall be capable of
3 maintaining a total of no less than eight digits in length for each
4 type of data required. The electronic meters shall record the
5 following information:

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

8 (2) Number of credits wagered;

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

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

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

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

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

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

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

17 (10) Number of cumulative credits representing money inserted
18 by a player and credits for video lottery games won but not
19 collected.

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

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

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

12 **§29-22A-10. Accounting and reporting; commission to provide**
13 **communications protocol data; distribution of net terminal**
14 **income; remittance through electronic transfer of funds;**
15 **establishment of accounts and nonpayment penalties; commission**
16 **control of accounting for net terminal income; settlement of**
17 **accounts; manual reporting and payment may be required;**
18 **request for reports; examination of accounts and records.**

19 (a) The commission shall provide to manufacturers, or
20 applicants applying for a manufacturer's permit, the protocol
21 documentation data necessary to enable the respective
22 manufacturer's video lottery terminals to communicate with the
23 commission's central computer for transmitting auditing program
24 information and for activation and disabling of video lottery
25 terminals.

26 (b) The gross terminal income of a licensed racetrack shall be
27 remitted to the commission through the electronic transfer of
28 funds. Licensed racetracks shall furnish to the commission all

1 information and bank authorizations required to facilitate the
2 timely transfer of moneys to the commission. Licensed racetracks
3 must provide the commission thirty days' advance notice of any
4 proposed account changes in order to assure the uninterrupted
5 electronic transfer of funds. From the gross terminal income
6 remitted by the licensee to the commission:

7 (1) The commission shall deduct an amount sufficient to
8 reimburse the commission for its actual costs and expenses incurred
9 in administering racetrack video lottery at the licensed racetrack.
10 and the resulting amount after the deduction is the net terminal
11 income. The amount deducted for administrative costs and expenses
12 of the commission may not exceed four percent of gross terminal
13 income: *Provided*, That any amounts deducted by the commission for
14 its actual costs and expenses that exceeds its actual costs and
15 expenses shall be deposited into the State Lottery Fund. For the
16 fiscal years ending June 30, ~~2006, 2007, 2008, 2009, 2010 and 2011~~
17 through June 30, 2020, the term "actual costs and expenses" shall
18 may include transfers of no more than \$20 up to \$10 million in
19 surplus allocations for each fiscal year, as calculated by the
20 commission when it has closed its books for the fiscal year, to the
21 Revenue Center Construction Fund Licensed Racetrack Modernization
22 Fund created by subsection (1), section eighteen, article
23 twenty-two of this chapter for the purpose of constructing a state
24 office building subdivision(2), subsection (b) of this section. For
25 all fiscal years beginning on or after July 1, 2001, the commission
26 shall not receive an amount of gross terminal income in excess of
27 the amount of gross terminal income received during the fiscal year
28 ending on June 30, 2001, but four percent of any amount of gross

1 terminal income received in excess of the amount of gross terminal
2 income received during the fiscal year ending on June 30, 2001,
3 shall be deposited into the fund established in section eighteen-a,
4 article twenty-two of this chapter; and

5 (2) A Licensed Racetrack Modernization Fund is created within
6 the lottery fund. For all fiscal years beginning on or after July
7 1, 2011, and ending with the fiscal year beginning July 1, 2020,
8 the commission shall deposit such amounts as are available
9 according to subdivision (1), subsection (b) of this section into
10 a separate facility modernization account maintained within the
11 Licensed Racetrack Modernization Fund for each racetrack. Each
12 racetrack's share of each year's deposit shall be calculated in the
13 same ratio as each racetrack's apportioned contribution to the four
14 percent administrative costs and expenses allowance provided for in
15 subdivision (1), subsection (b) of this section for that year. For
16 each two dollars expended by a licensed racetrack for facility
17 modernization improvements at the racetrack, having a useful life
18 of three or more years and placed in service after July 1, 2011,
19 the licensed racetrack shall receive \$1 in recoupment from its
20 facility modernization account. If the licensed racetrack's
21 facility modernization account contains a balance in any fiscal
22 year, the unexpended balance from that fiscal year will be
23 available for matching for one additional fiscal year, after which
24 time, the remaining unused balance carried forward shall revert to
25 the lottery fund. For purposes of this section, the term "facility
26 modernization improvements" includes acquisitions of new and unused
27 video lottery terminals and related equipment. Video lottery
28 terminals financed through the recoupment provided in this

1 subdivision must be retained by the licensee in its West Virginia
2 licensed location for a period of not less than five years from the
3 date of initial installation.

4 (c) ~~Net~~ The amount resulting after the deductions required by
5 subsection (b) of this section constitutes net terminal income that
6 shall be divided as set out in this subsection. For all fiscal
7 years beginning on or after July 1, 2001, any amount of net
8 terminal income received in excess of the amount of net terminal
9 income received during the fiscal year ending on June 30, 2001,
10 shall be divided as set out in section ten-b of this article. The
11 licensed racetrack's share is in lieu of all lottery agent
12 commissions and is considered to cover all costs and expenses
13 required to be expended by the licensed racetrack in connection
14 with video lottery operations. The division shall be made as
15 follows:

16 (1) The commission shall receive thirty percent of net
17 terminal income, which shall be paid into the State Lottery Fund as
18 provided in section ten-a of this article;

19 (2) Until July 1, 2005, fourteen percent of net terminal
20 income at a licensed racetrack shall be deposited in the special
21 fund established by the licensee, and used for payment of regular
22 purses in addition to other amounts provided for in article
23 twenty-three, chapter nineteen of this code, on and after July 1,
24 2005, the rate shall be seven percent of net terminal income;

25 (3) The county where the video lottery terminals are located
26 shall receive two percent of the net terminal income: *Provided,*
27 That:

28 (A) Beginning July 1, 1999, and thereafter, any amount in

1 excess of the two percent received during the fiscal year 1999 by
2 a county in which a racetrack is located that has participated in
3 the West Virginia Thoroughbred Development Fund since on or before
4 January 1, 1999 shall be divided as follows:

5 (i) The county shall receive fifty percent of the excess
6 amount; and

7 (ii) The municipalities of the county shall receive fifty
8 percent of the excess amount, said fifty percent to be divided
9 among the municipalities on a per capita basis as determined by the
10 most recent decennial United States census of population; and

11 (B) Beginning July 1, 1999, and thereafter, any amount in
12 excess of the two percent received during the fiscal year 1999 by
13 a county in which a racetrack other than a racetrack described in
14 paragraph (A) of this proviso is located and where the racetrack
15 has been located in a municipality within the county since on or
16 before January 1, 1999 shall be divided, if applicable, as follows:

17 (i) The county shall receive fifty percent of the excess
18 amount; and

19 (ii) The municipality shall receive fifty percent of the
20 excess amount; and

21 (C) This proviso shall not affect the amount to be received
22 under this subdivision by any other county other than a county
23 described in paragraph (A) or (B) of this proviso;

24 (4) One percent of net terminal income shall be paid for and
25 on behalf of all employees of the licensed racing association by
26 making a deposit into a special fund to be established by the
27 Racing Commission to be used for payment into the pension plan for
28 all employees of the licensed racing association;

1 (5) The West Virginia Thoroughbred Development Fund created
2 under section thirteen-b, article twenty-three, chapter nineteen of
3 this code and the West Virginia Greyhound Breeding Development Fund
4 created under section ten of said article shall receive an equal
5 share of a total of not less than one and one-half percent of the
6 net terminal income;

7 (6) The West Virginia Racing Commission shall receive one
8 percent of the net terminal income which shall be deposited and
9 used as provided in section thirteen-c, article twenty-three,
10 chapter nineteen of this code.

11 (7) A licensee shall receive forty-six and one-half percent of
12 net terminal income.

13 (8) (A) The Tourism Promotion Fund established in section
14 twelve, article two, chapter five-b of this code shall receive
15 three percent of the net terminal income: *Provided*, That for the
16 fiscal year beginning July 1, 2003, the tourism commission shall
17 transfer from the Tourism Promotion Fund \$5 million of the three
18 percent of the net terminal income described in this section and
19 section ten-b of this article into the fund administered by the
20 West Virginia Economic Development Authority pursuant to section
21 seven, article fifteen, chapter thirty-one of this code, \$5 million
22 into the Capitol Renovation and Improvement Fund administered by
23 the Department of Administration pursuant to section six, article
24 four, chapter five-a of this code and \$5 million into the Tax
25 Reduction and Federal Funding Increased Compliance Fund; and

26 (B) Notwithstanding any provision of paragraph (A) of this
27 subdivision to the contrary, for each fiscal year beginning after
28 June 30, 2004, this three percent of net terminal income and the

1 three percent of net terminal income described in paragraph (B),
2 subdivision (8), subsection (a), section ten-b of this article
3 shall be distributed as provided in this paragraph as follows:

4 (i) 1.375 percent of the total amount of net terminal income
5 described in this section and in section ten-b of this article
6 shall be deposited into the Tourism Promotion Fund created under
7 section twelve, article two, chapter five-b of this code;

8 (ii) 0.375 percent of the total amount of net terminal income
9 described in this section and in section ten-b of this article
10 shall be deposited into the Development Office Promotion Fund
11 created under section three-b, article two, chapter five-b of this
12 code;

13 (iii) 0.5 percent of the total amount of net terminal income
14 described in this section and in section ten-b of this article
15 shall be deposited into the Research Challenge Fund created under
16 section ten, article one-b, chapter eighteen-b of this code;

17 (iv) 0.6875 percent of the total amount of net terminal income
18 described in this section and in section ten-b of this article
19 shall be deposited into the Capitol Renovation and Improvement Fund
20 administered by the Department of Administration pursuant to
21 section six, article four, chapter five-a of this code; and

22 (v) 0.0625 percent of the total amount of net terminal income
23 described in this section and in section ten-b of this article
24 shall be deposited into the 2004 Capitol Complex Parking Garage
25 Fund administered by the Department of Administration pursuant to
26 section five-a, article four, chapter five-a of this code;

27 (9) (A) On and after July 1, 2005, seven percent of net
28 terminal income shall be deposited into the Workers' Compensation

1 Debt Reduction Fund created in section five, article two-d, chapter
2 twenty-three of this code: *Provided*, That in any fiscal year when
3 the amount of money generated by this subdivision totals \$11
4 million, all subsequent distributions under this subdivision shall
5 be deposited in the special fund established by the licensee and
6 used for the payment of regular purses in addition to the other
7 amounts provided ~~for~~ in article twenty-three, chapter nineteen of
8 this code;

9 (B) The deposit of the seven percent of net terminal income
10 into the Worker's Compensation Debt Reduction Fund pursuant to this
11 subdivision shall expire and not be imposed with respect to these
12 funds and shall be deposited in the special fund established by the
13 licensee and used for payment of regular purses in addition to the
14 other amounts provided in article twenty-three, chapter nineteen of
15 this code, on and after the first day of the month following the
16 month in which the Governor certifies to the Legislature that: (i)
17 The revenue bonds issued pursuant to article two-d, chapter
18 twenty-three of this code, have been retired or payment of the debt
19 service provided for; and (ii) that an independent certified
20 actuary has determined that the unfunded liability of the old fund,
21 as defined in chapter twenty-three of this code, has been paid or
22 provided for in its entirety; and

23 (10) The remaining one percent of net terminal income shall be
24 deposited as follows:

25 (A) For the fiscal year beginning July 1, 2003, the veterans
26 memorial program shall receive one percent of the net terminal
27 income until sufficient moneys have been received to complete the
28 veterans memorial on the grounds of the State Capitol Complex in

1 Charleston, West Virginia. The moneys shall be deposited in the
2 State Treasury in the Division of Culture and History special fund
3 created under section three, article one-i, chapter twenty-nine of
4 this code: *Provided*, That only after sufficient moneys have been
5 deposited in the fund to complete the veterans memorial and to pay
6 in full the annual bonded indebtedness on the veterans memorial,
7 not more than \$20,000 of the one percent of net terminal income
8 provided in this subdivision shall be deposited into a special
9 revenue fund in the State Treasury, to be known as the "John F.
10 'Jack' Bennett Fund". The moneys in this fund shall be expended by
11 the Division of Veterans Affairs to provide for the placement of
12 markers for the graves of veterans in perpetual cemeteries in this
13 state. The Division of Veterans Affairs shall promulgate
14 legislative rules pursuant to the provisions of article three,
15 chapter twenty-nine-a of this code specifying the manner in which
16 the funds are spent, determine the ability of the surviving spouse
17 to pay for the placement of the marker and setting forth the
18 standards to be used to determine the priority in which the
19 veterans grave markers will be placed in the event that there are
20 not sufficient funds to complete the placement of veterans grave
21 markers in any one year, or at all. Upon payment in full of the
22 bonded indebtedness on the veterans memorial, \$100,000 of the one
23 percent of net terminal income provided ~~for~~ in this subdivision
24 shall be deposited in the special fund in the Division of Culture
25 and History created under section three, article one-i, chapter
26 twenty-nine of this code and be expended by the Division of Culture
27 and History to establish a West Virginia veterans memorial archives
28 within the Cultural Center to serve as a repository for the

1 documents and records pertaining to the veterans memorial, to
2 restore and maintain the monuments and memorial on the capitol
3 grounds: *Provided, however,* That \$500,000 of the one percent of
4 net terminal income shall be deposited in the State Treasury in a
5 special fund of the Department of Administration, created under
6 section five, article four, chapter five-a of this code, to be used
7 for construction and maintenance of a parking garage on the state
8 Capitol Complex; and the remainder of the one percent of net
9 terminal income shall be deposited in equal amounts in the Capitol
10 Dome and Improvements Fund created under section two, article four,
11 chapter five-a of this code and Cultural Facilities and Capitol
12 Resources Matching Grant Program Fund created under section three,
13 article one of this chapter.

14 (B) For each fiscal year beginning after June 30, 2004:

15 (i) Five hundred thousand dollars of the one percent of net
16 terminal income shall be deposited in the State Treasury in a
17 special fund of the Department of Administration, created under
18 section five, article four, chapter five-a of this code, to be used
19 for construction and maintenance of a parking garage on the State
20 Capitol Complex; and

21 (ii) The remainder of the one percent of net terminal income
22 and all of the one percent of net terminal income described in
23 paragraph (B), subdivision (9), subsection (a), section ten-b of
24 this article shall be distributed as follows: The net terminal
25 income shall be deposited in equal amounts into the Capitol Dome
26 and Capitol Improvements Fund created under section two, article
27 four, chapter five-a of this code and the Cultural Facilities and
28 Capitol Resources Matching Grant Program Fund created under section

1 three, article one, chapter twenty-nine of this code until a total
2 of \$1,500,000 is deposited into the Cultural Facilities and Capitol
3 Resources Matching Grant Program Fund; thereafter, the remainder
4 shall be deposited into the Capitol Dome and Capitol Improvements
5 Fund.

6 (d) Each licensed racetrack shall maintain in its account an
7 amount equal to or greater than the gross terminal income from its
8 operation of video lottery machines, to be electronically
9 transferred by the commission on dates established by the
10 commission. Upon a licensed racetrack's failure to maintain this
11 balance, the commission may disable all of a licensed racetrack's
12 video lottery terminals until full payment of all amounts due is
13 made. Interest shall accrue on any unpaid balance at a rate
14 consistent with the amount charged for state income tax delinquency
15 under chapter eleven of this code. The interest shall begin to
16 accrue on the date payment is due to the commission.

17 (e) The commission's central control computer shall keep
18 accurate records of all income generated by each video lottery
19 terminal. The commission shall prepare and mail to the licensed
20 racetrack a statement reflecting the gross terminal income
21 generated by the licensee's video lottery terminals. Each licensed
22 racetrack shall report to the commission any discrepancies between
23 the commission's statement and each terminal's mechanical and
24 electronic meter readings. The licensed racetrack is solely
25 responsible for resolving income discrepancies between actual money
26 collected and the amount shown on the accounting meters or on the
27 commission's billing statement.

28 (f) Until an accounting discrepancy is resolved in favor of

1 the licensed racetrack, the commission may make no credit
2 adjustments. For any video lottery terminal reflecting a
3 discrepancy, the licensed racetrack shall submit to the commission
4 the maintenance log which includes current mechanical meter
5 readings and the audit ticket which contains electronic meter
6 readings generated by the terminal's software. If the meter
7 readings and the commission's records cannot be reconciled, final
8 disposition of the matter shall be determined by the commission.
9 Any accounting discrepancies which cannot be otherwise resolved
10 shall be resolved in favor of the commission.

11 (g) Licensed racetracks shall remit payment by mail if the
12 electronic transfer of funds is not operational or the commission
13 notifies licensed racetracks that remittance by this method is
14 required. The licensed racetracks shall report an amount equal to
15 the total amount of cash inserted into each video lottery terminal
16 operated by a licensee, minus the total value of game credits which
17 are cleared from the video lottery terminal in exchange for winning
18 redemption tickets, and remit the amount as generated from its
19 terminals during the reporting period. The remittance shall be
20 sealed in a properly addressed and stamped envelope and deposited
21 in the United States mail no later than noon on the day when the
22 payment would otherwise be completed through electronic funds
23 transfer.

24 (h) Licensed racetracks may, upon request, receive additional
25 reports of play transactions for their respective video lottery
26 terminals and other marketing information not considered
27 confidential by the commission. The commission may charge a
28 reasonable fee for the cost of producing and mailing any report

1 other than the billing statements.

2 (i) The commission has the right to examine all accounts, bank
3 accounts, financial statements and records in a licensed
4 racetrack's possession, under its control or in which it has an
5 interest and the licensed racetrack shall authorize all third
6 parties in possession or in control of the accounts or records to
7 allow examination of any of those accounts or records by the
8 commission.

9 **§29-22A-10c. Surcharge; Capital Reinvestment Fund.**

10 (a) For all fiscal years beginning on or after July 1, 2001,
11 there shall be imposed a surcharge of ten percent against the
12 excess of total net terminal income generated from a licensed
13 racetrack for that fiscal year over total net terminal income from
14 that licensed racetrack for the fiscal year ending June 30, 2001.

15 (b) A Capital Reinvestment Fund is hereby created within the
16 Lottery Fund. Forty-two percent of the surcharge amount
17 attributable to each racetrack shall be retained by the commission
18 and deposited into a separate Capital Reinvestment Account for that
19 licensed racetrack. For each dollar expended by a licensed
20 racetrack for capital improvements at the racetrack, at the
21 location of any amenity associated with the licensed racetrack's
22 destination resort facility operations, or at adjacent facilities
23 owned by the licensee, having a useful life of ~~seven~~ three or more
24 years and placed in service after April 1, 2001, the licensed
25 racetrack shall receive \$1 in recoupment from its Capital
26 Reinvestment Fund Account: *Provided*, That in the case of
27 thoroughbred horse tracks, four cents of every dollar in recoupment
28 shall be reserved into a separate account, which shall only be

1 spent on capital improvements and upgrading to facilities used for
2 the housing and care of horses, facilities located inside the
3 perimeter of the racing surface, including the surface thereof,
4 facilities used for housing persons responsible for the care of
5 horses, and that any such capital improvements and upgrading shall
6 be subject to recoupment under this section only if they have been
7 approved by the Horsemen's Benevolent and Protective Association
8 acting on behalf of the horsemen: *Provided, however,* That in the
9 case of greyhound race tracks, four cents of every dollar in
10 recoupment shall be spent on capital improvements and upgrading in
11 the kennel area or other areas at the track. If a licensed
12 racetrack's unrecouped capital improvements exceed its capital
13 reinvestment fund account at the end of any fiscal year, the excess
14 improvements may be carried forward to ~~seven~~ fifteen subsequent
15 fiscal years.

16 (c) Fifty-eight percent of the surcharge amount plus any
17 moneys remaining in a racetrack's Capital Reinvestment Fund Account
18 at the end of any fiscal year shall be deposited in the State
19 Excess Lottery Revenue Fund created in section eighteen-a, article
20 twenty-two of this chapter.

21 **ARTICLE 25. AUTHORIZED GAMING FACILITY.**

22 **§29-25-19. Consent to presence of law-enforcement officers;**
23 **wagering limits; operations and services; posting**
24 **of betting limits.**

25 (a) *Consent to presence of law-enforcement officers.* -- Any
26 individual entering the gaming facility shall be advised by the
27 posting of a notice or other suitable means of the possible
28 presence of state, county or municipal law-enforcement officers and

1 by entering the gaming facility impliedly consents to the presence
2 of the law-enforcement officers.

3 (b) *Commission discretion in gaming operations.* -- Video
4 lottery terminals operated at the gaming facility may ~~not~~ allow
5 ~~more than five dollars to be wagered on a single game~~ minimum and
6 maximum wagers on a single game the amounts determined by the
7 license in the exercise of its business judgment subject to the
8 approval of the commission.

9 (1) Subject to the approval of the commission, the gaming
10 facility licensee shall, with respect to West Virginia Lottery
11 table games, establish the following:

12 (A) Maximum and minimum wagers;

13 (B) Advertising and promotional activities;

14 (C) Hours of operation;

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

16 (2) The commission may consider multiple factors, including,
17 but not limited to, industry standards, outside competition and any
18 other factors as determined by the commission to be relevant in its
19 decision to approve the gaming facility's determination of those
20 items listed in subdivision (1) of this subsection.

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

25 (1) Minimum and maximum payout percentages;

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

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

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

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

11 **§29-25-22. Historic Resort Hotel Fund; allocation of adjusted**
12 **gross receipts; disposition of license fees.**

13 (a) There is hereby created a special fund in the State
14 Treasury which shall be designated and known as the Historic Resort
15 Hotel Fund. Thirty-six percent of the gross terminal income
16 received by the commission under section twenty of this article and
17 thirty percent of the adjusted gross receipts received by the
18 commission under section twenty-one of this article shall be
19 deposited with the State Treasurer and placed in the Historic
20 Resort Hotel Fund. The fund shall be an interest-bearing account
21 with interest to be credited to and deposited in the Historic
22 Resort Hotel Fund.

23 (b) All expenses of the commission shall be paid from the
24 Historic Resort Hotel Fund, including reimbursement of the State
25 Police for activities performed at the request of the commission in
26 connection with background investigations or enforcement activities
27 pursuant to this article. At no time may the commission's expenses
28 under this article exceed fifteen percent of the total of the

1 annual revenue received from the licensee under this article,
2 including all license fees, taxes or other amounts required to be
3 deposited in the Historic Resort Hotel Fund.

4 (c) A Historic Resort Hotel Modernization Fund is hereby
5 created within the Historic Resort Hotel Fund. For all fiscal
6 years beginning on or after July 1, 2011, the commission shall
7 deduct two and one-half percent from gross terminal income received
8 by the commission under section twenty of this article for the
9 fiscal year and deposit these amounts into a separate facility
10 modernization account maintained within the Historic Resort Hotel
11 Modernization Fund for each historic resort hotel. For each dollar
12 expended by a historic resort hotel for video lottery or table
13 gaming facility modernization improvements at the historic resort
14 hotel, having a useful life of three or more years and placed in
15 service after April 1, 2011, the historic resort hotel shall
16 receive \$1 in recoupment from its facility modernization account.
17 For purposes of this section, the term "video lottery or table
18 gaming facility modernization improvements" include acquisition of
19 computer hardware and software, communications and Internet access
20 equipment, security and surveillance equipment, video lottery
21 terminals and other electronic equipment or other equipment
22 designed to modernize the facility.

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

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

28 (2) Nineteen percent of the Historic Resort Hotel Fund net

1 income shall be paid into the State Debt Reduction Fund established
2 in section twenty-seven, article twenty-two-c of this chapter to be
3 appropriated by the Legislature;

4 (3) The Tourism Promotion Fund established in section twelve,
5 article two, chapter five-b of this code shall receive three percent
6 of the Historic Resort Hotel Fund net income;

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

9 (5) The municipality where the gaming facility is located or
10 the municipality closest to the gaming facility by paved road access
11 as of the effective date of the reenactment of this section by the
12 2009 regular session of the Legislature shall receive two and
13 one-half percent of the Historic Resort Hotel Fund net income;

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

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

26 (8) The governing body of each municipality in the state that
27 is not eligible to receive a distribution under subdivisions (5) and
28 (6) of this subsection shall receive equal shares of two and

1 one-half percent of the Historic Resort Hotel Fund net income:
2 *Provided*, That funds transferred to municipalities under this
3 subdivision shall be used only to pay for debt reduction in
4 municipal police and fire pension funds and the costs of
5 infrastructure improvements and other capital improvements.

6 ~~(d)~~ (e) Notwithstanding any provision of this article to the
7 contrary, all limited gaming facility license fees and license
8 renewal fees received by the commission pursuant to section nine of
9 this article shall be deposited into the Community-Based Service
10 Fund created in section twenty-seven, article twenty-two-c of this
11 chapter.

12 ~~(e)~~ (f) With the exception of the license fees and license
13 renewal fees received by the commission pursuant to section nine of
14 this article, all revenues received from licensees and license
15 applicants under this article shall be retained by the commission
16 as reimbursement for the licensing process.