

1 **nonpayment penalties; commission control of**
2 **accounting for net terminal income; settlement of**
3 **accounts; manual reporting and payment may be**
4 **required; request for reports; examination of**
5 **accounts and records.**

6 (a) The commission shall provide to manufacturers, or
7 applicants applying for a manufacturer's permit, the protocol
8 documentation data necessary to enable the respective
9 manufacturer's video lottery terminals to communicate with the
10 commission's central computer for transmitting auditing program
11 information and for activation and disabling of video lottery
12 terminals.

13 (b) The gross terminal income of a licensed racetrack shall be
14 remitted to the commission through the electronic transfer of
15 funds. Licensed racetracks shall furnish to the commission all
16 information and bank authorizations required to facilitate the
17 timely transfer of moneys to the commission. Licensed racetracks
18 must provide the commission thirty days' advance notice of any
19 proposed account changes in order to assure the uninterrupted
20 electronic transfer of funds. From the gross terminal income
21 remitted by the licensee to the commission, the commission shall
22 deduct an amount sufficient to reimburse the commission for its

1 actual costs and expenses incurred in administering racetrack video
2 lottery at the licensed racetrack, and the resulting amount after
3 the deduction is the net terminal income. The amount deducted for
4 administrative costs and expenses of the commission may not exceed
5 four percent of gross terminal income: *Provided*, That any amounts
6 deducted by the commission for its actual costs and expenses that
7 exceeds its actual costs and expenses shall be deposited into the
8 State Lottery Fund. For the fiscal years ending on June, 30, 2006,
9 2007, 2008, 2009, 2010 and 2011, the term "actual costs and
10 expenses" shall include transfers of no more than \$20 million in
11 any year to the Revenue Center Construction Fund created by
12 subsection (1), section eighteen, article twenty-two of this
13 chapter for the purpose of constructing a state office building.
14 For all fiscal years beginning on or after July 1, 2001, the
15 commission shall not receive an amount of gross terminal income in
16 excess of the amount of gross terminal income received during the
17 fiscal year ending on June 30, 2001, but four percent of any amount
18 of gross terminal income received in excess of the amount of gross
19 terminal income received during the fiscal year ending on June 30,
20 2001, shall be deposited into the fund established in section
21 eighteen-a, article twenty-two of this chapter.

22 © Net terminal income shall be divided as set out in this

1 subsection. For all fiscal years beginning on or after July 1,
2 2001, any amount of net terminal income received in excess of the
3 amount of net terminal income received during the fiscal year
4 ending on June 30, 2001, shall be divided as set out in section
5 ten-b of this article. The licensed racetrack's share is in lieu
6 of all lottery agent commissions and is considered to cover all
7 costs and expenses required to be expended by the licensed
8 racetrack in connection with video lottery operations. The
9 division shall be made as follows:

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

13 (2) ~~Until the first day of July, two thousand five, fourteen~~
14 ~~percent~~ Seven percent of net terminal income at a licensed
15 racetrack shall be deposited in the special fund established by the
16 licensee, and used for payment of regular purses in addition to
17 other amounts provided ~~for~~ in article twenty-three, chapter
18 nineteen of this code; ~~on and after the first day of July, two~~
19 ~~thousand five, the rate shall be seven percent of net terminal~~
20 ~~income~~

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

1 That:

2 (A) Beginning July 1, 1999, and thereafter, any amount in
3 excess of the two percent received during the fiscal year 1999 by
4 a county in which a racetrack is located that has participated in
5 the West Virginia Thoroughbred Development Fund since on or before
6 January 1, 1999, shall be divided as follows:

7 (I) The county shall receive fifty percent of the excess
8 amount; and

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

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

20 (I) The county shall receive fifty percent of the excess
21 amount; and

22 (ii) The municipality shall receive fifty percent of the

1 excess amount; and

2 © This proviso shall not affect the amount to be received
3 under this subdivision by any other county other than a county
4 described in paragraph (A) or (B) of this proviso;

5 (4) One percent of net terminal income shall be paid for and
6 on behalf of all employees of the licensed racing association by
7 making a deposit into a special fund to be established by the
8 Racing Commission to be used for payment into the pension plan for
9 all employees of the licensed racing association;

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

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

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

22 (8) ~~(A) The tourism promotion fund established in section~~

1 ~~twelve, article two, chapter five-b of this code shall receive~~
2 ~~three percent of the net terminal income: *Provided*, That for the~~
3 ~~fiscal year beginning the first day of July, two thousand three,~~
4 ~~the tourism commission shall transfer from the tourism promotion~~
5 ~~fund five million dollars of the three percent of the net terminal~~
6 ~~income described in this section and section ten-b of this article~~
7 ~~into the fund administered by the West Virginia economic~~
8 ~~development authority pursuant to section seven, article fifteen,~~
9 ~~chapter thirty-one of this code, five million dollars into the~~
10 ~~capitol renovation and improvement fund administered by the~~
11 ~~Department of Administration pursuant to section six, article four,~~
12 ~~chapter five-a of this code and five million dollars into the tax~~
13 ~~reduction and federal funding increased compliance fund; and~~

14 ~~(B) Notwithstanding any provision of paragraph (A) of this~~
15 ~~subdivision to the contrary, for each fiscal year beginning after~~
16 ~~the thirtieth day of June, two thousand four, this Three percent~~
17 ~~of net terminal income and the three percent of net terminal income~~
18 ~~described in paragraph (B), subdivision (8), subsection (a),~~
19 ~~section ten-b of this article shall be distributed as provided in~~
20 ~~this paragraph as follows:~~

21 ~~(I) (A) 1.375 percent of the total amount of net terminal~~
22 ~~income described in this section and in section ten-b of this~~

1 article shall be deposited into the Tourism Promotion Fund created
2 under section twelve, article two, chapter five-b of this code;

3 ~~(ii)~~ (B) 0.375 percent of the total amount of net terminal
4 income described in this section and in section ten-b of this
5 article shall be deposited in equal amounts into the Development
6 Office Promotion Fund created under section three-b, article two,
7 chapter five-b of this code and the Cultural Facilities and Capitol
8 Resources Matching Grant Program Fund created under section three,
9 article one, chapter twenty-nine of this code;

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

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

20 ~~(v)~~ (E) 0.0625 percent of the total amount of net terminal
21 income described in this section and in section ten-b of this
22 article shall be deposited into the 2004 Capitol Complex Parking

1 Garage Fund administered by the Department of Administration
2 pursuant to section five-a, article four, chapter five-a of this
3 code;

4 (9) (A) ~~On and after the first day of July, two thousand five,~~
5 Seven percent of net terminal income shall be deposited into the
6 Workers' Compensation Debt Reduction Fund created in section five,
7 article two-d, chapter twenty-three of this code: *Provided, That*
8 in any fiscal year when the amount of money generated by this
9 subdivision totals \$11 million, all subsequent distributions under
10 this subdivision shall be deposited in the special fund established
11 by the licensee and used for the payment of regular purses in
12 addition to the other amounts provided ~~for~~ in article twenty-three,
13 chapter nineteen of this code;

14 (B) The deposit of the seven percent of net terminal income
15 into the Worker's Compensation Debt Reduction Fund pursuant to this
16 subdivision shall expire and not be imposed with respect to these
17 funds and shall be deposited in the special fund established by the
18 licensee and used for payment of regular purses in addition to the
19 other amounts provided ~~for~~ in article twenty-three, chapter
20 nineteen of this code, on and after the first day of the month
21 following the month in which the Governor certifies to the
22 Legislature that: (I) The revenue bonds issued pursuant to article

1 two-d, chapter twenty-three of this code, have been retired or
2 payment of the debt service provided for; and (ii) that an
3 independent certified actuary has determined that the unfunded
4 liability of the old fund, as defined in chapter twenty-three of
5 this code, has been paid or provided for in its entirety; and

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

8 ~~(A) For the fiscal year beginning the first day of July, two~~
9 ~~thousand three, the veterans memorial program shall receive one~~
10 ~~percent of the net terminal income until sufficient moneys have~~
11 ~~been received to complete the veterans memorial on the grounds of~~
12 ~~the state Capitol complex in Charleston, West Virginia. The moneys~~
13 ~~shall be deposited in the state Treasury in the Division of Culture~~
14 ~~and History special fund created under section three, article one-~~
15 ~~I, chapter twenty-nine of this code: Provided, That only after~~
16 ~~sufficient moneys have been deposited in the fund to complete the~~
17 ~~veterans memorial and to pay in full the annual bonded indebtedness~~
18 ~~on the veterans memorial, not more than twenty thousand dollars of~~
19 ~~the one percent of net terminal income provided for in this~~
20 ~~subdivision shall be deposited into a special revenue fund in the~~
21 ~~state Treasury, to be known as the "John F. 'Jack' Bennett Fund".~~
22 ~~The moneys in this fund shall be expended by the division of~~

~~1 Veterans Affairs to provide for the placement of markers for the
2 graves of veterans in perpetual cemeteries in this state. The
3 division of Veterans Affairs shall promulgate legislative rules
4 pursuant to the provisions of article three, chapter twenty-nine-a
5 of this code specifying the manner in which the funds are spent,
6 determine the ability of the surviving spouse to pay for the
7 placement of the marker and setting forth the standards to be used
8 to determine the priority in which the veterans grave markers will
9 be placed in the event that there are not sufficient funds to
10 complete the placement of veterans grave markers in any one year,
11 or at all. Upon payment in full of the bonded indebtedness on the
12 veterans memorial, one hundred thousand dollars of the one percent
13 of net terminal income provided for in this subdivision shall be
14 deposited in the special fund in the Division of Culture and
15 History created under section three, article one-I, chapter twenty-
16 nine of this code and be expended by the Division of Culture and
17 History to establish a West Virginia veterans memorial archives
18 within the cultural center to serve as a repository for the
19 documents and records pertaining to the veterans memorial, to
20 restore and maintain the monuments and memorial on the capitol
21 grounds: *Provided, however,* That five hundred thousand dollars of
22 the one percent of net terminal income shall be deposited in the~~

1 ~~state Treasury in a special fund of the Department of~~
2 ~~Administration, created under section five, article four, chapter~~
3 ~~five-a of this code, to be used for construction and maintenance of~~
4 ~~a parking garage on the state Capitol complex; and the remainder of~~
5 ~~the one percent of net terminal income shall be deposited in equal~~
6 ~~amounts in the capitol dome and improvements fund created under~~
7 ~~section two, article four, chapter five-a of this code and cultural~~
8 ~~facilities and capitol resources matching grant program fund~~
9 ~~created under section three, article one of this chapter.~~

10 ~~(B) For each fiscal year beginning after the thirtieth day of~~
11 ~~June, two thousand four:~~

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

18 ~~(ii) (B)~~ (B) The remainder of the one percent of net terminal
19 income and all of the one percent of net terminal income described
20 in ~~paragraph (B),~~ subdivision ~~(9)~~ (10), subsection (a), section
21 ten-b of this article twenty-two-a shall be distributed as follows:
22 The net terminal income shall be deposited in equal amounts into

1 the Capitol Dome and Capitol Improvements Fund created under
2 section two, article four, chapter five-a of this code and the
3 Cultural Facilities and Capitol Resources Matching Grant Program
4 Fund created under section three, article one, chapter twenty-nine
5 of this code until a total of \$1.5 million is deposited into the
6 Cultural Facilities and Capitol Resources Matching Grant Program
7 Fund; thereafter, the remainder shall be deposited into the Capitol
8 Dome and Capitol Improvements Fund.

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

20 (e) The commission's central control computer shall keep
21 accurate records of all income generated by each video lottery
22 terminal. The commission shall prepare and mail to the licensed

1 racetrack a statement reflecting the gross terminal income
2 generated by the licensee's video lottery terminals. Each licensed
3 racetrack shall report to the commission any discrepancies between
4 the commission's statement and each terminal's mechanical and
5 electronic meter readings. The licensed racetrack is solely
6 responsible for resolving income discrepancies between actual money
7 collected and the amount shown on the accounting meters or on the
8 commission's billing statement.

9 (f) Until an accounting discrepancy is resolved in favor of
10 the licensed racetrack, the commission may make no credit
11 adjustments. For any video lottery terminal reflecting a
12 discrepancy, the licensed racetrack shall submit to the commission
13 the maintenance log which includes current mechanical meter
14 readings and the audit ticket which contains electronic meter
15 readings generated by the terminal's software. If the meter
16 readings and the commission's records cannot be reconciled, final
17 disposition of the matter shall be determined by the commission.
18 Any accounting discrepancies which cannot be otherwise resolved
19 shall be resolved in favor of the commission.

20 (g) Licensed racetracks shall remit payment by mail if the
21 electronic transfer of funds is not operational or the commission
22 notifies licensed racetracks that remittance by this method is

1 required. The licensed racetracks shall report an amount equal to
2 the total amount of cash inserted into each video lottery terminal
3 operated by a licensee, minus the total value of game credits which
4 are cleared from the video lottery terminal in exchange for winning
5 redemption tickets, and remit the amount as generated from its
6 terminals during the reporting period. The remittance shall be
7 sealed in a properly addressed and stamped envelope and deposited
8 in the United States mail no later than noon on the day when the
9 payment would otherwise be completed through electronic funds
10 transfer.

11 (h) Licensed racetracks may, upon request, receive additional
12 reports of play transactions for their respective video lottery
13 terminals and other marketing information not considered
14 confidential by the commission. The commission may charge a
15 reasonable fee for the cost of producing and mailing any report
16 other than the billing statements.

17 (I) The commission has the right to examine all accounts, bank
18 accounts, financial statements and records in a licensed
19 racetrack's possession, under its control or in which it has an
20 interest and the licensed racetrack shall authorize all third
21 parties in possession or in control of the accounts or records to
22 allow examination of any of those accounts or records by the

1 commission.

2 **§29-22A-10b. Distribution of excess net terminal income.**

3 (a) For all years beginning on or after July 1, 2001, any
4 amount of net terminal income generated annually by a licensed
5 racetrack in excess of the amount of net terminal income generated
6 by that licensed racetrack during the fiscal year ending on June
7 30, 2001, shall be divided as follows:

8 (1) The commission shall receive forty-one percent of net
9 terminal income, which the commission shall deposit in the State
10 Excess Lottery Revenue Fund created in section eighteen-a, article
11 twenty-two of this chapter;

12 ~~(2) Until the first day of July, two thousand five, eight~~
13 ~~percent~~ Four percent of net terminal income at a licensed racetrack
14 shall be deposited in the special fund established by the licensee
15 and used for payment of regular purses in addition to other amounts
16 provided in article twenty-three, chapter nineteen of this code; ~~on~~
17 ~~and after the first day of July, two thousand five, the rate shall~~
18 ~~be four percent of net terminal income~~

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

22 (A) Any amount by which the total amount under this section

1 and subdivision (3), subsection ©, section ten of this article is
2 in excess of the two percent received during fiscal year 1999 by a
3 county in which a racetrack is located that has participated in the
4 West Virginia Thoroughbred Development Fund since on or before
5 January 1, 1999, shall be divided as follows:

6 (I) The county shall receive fifty percent of the excess
7 amount; and

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

12 (B) Any amount by which the total amount under this section
13 and subdivision (3), subsection ©, section ten of this article is
14 in excess of the two percent received during fiscal year one 1999
15 by a county in which a racetrack other than a racetrack described
16 in paragraph (A) of this proviso is located and where the racetrack
17 has been located in a municipality within the county since on or
18 before January 1, 1999, shall be divided, if applicable, as
19 follows:

20 (I) The county shall receive fifty percent of the excess
21 amount; and

22 (ii) The municipality shall receive fifty percent of the

1 excess amount; and

2 © This proviso shall not affect the amount to be received
3 under this subdivision by any county other than a county described
4 in paragraph (A) or (B) of this proviso;

5 (4) One half of one percent of net terminal income shall be
6 paid for and on behalf of all employees of the licensed racing
7 association by making a deposit into a special fund to be
8 established by the Racing Commission to be used for payment into
9 the pension plan for all employees of the licensed racing
10 association;

11 (5) The West Virginia Thoroughbred Development Fund created
12 under section thirteen-b, article twenty-three, chapter nineteen of
13 this code and the West Virginia Greyhound Breeding Development Fund
14 created under section ten of said article shall receive an equal
15 share of a total of not less than one and one-half percent of the
16 net terminal income.

17 (6) The West Virginia Racing Commission shall receive one
18 percent of the net terminal income which shall be deposited and
19 used as provided in section thirteen-c, article twenty-three,
20 chapter nineteen of this code;

21 (7) A licensee shall receive forty-two percent of net terminal
22 income;

1 (8) ~~The tourism promotion fund established in section twelve,~~
2 ~~article two, chapter five-b of this code shall receive three~~
3 ~~percent of the net terminal income: *Provided, That for each fiscal*~~
4 ~~year beginning after the thirtieth day of June, two thousand four,~~
5 ~~this~~ Three percent of net terminal income shall be distributed
6 pursuant to the provisions of ~~paragraph (B),~~ subdivision (8),
7 subsection ©, section ten of this article;

8 (9) (A) ~~On and after the first day of July, two thousand five,~~
9 Four percent of net terminal income shall be deposited into the
10 Workers' Compensation Debt Reduction Fund created in section five,
11 article two-d, chapter twenty-three of this code: *Provided, That*
12 *in any fiscal year when the amount of money generated by this*
13 *subdivision together with the total allocation transferred by the*
14 *operation of subdivision (9), subsection ©, section ten of this*
15 *article totals \$11 million, all subsequent distributions under this*
16 *subdivision (9) during that fiscal year shall be deposited in the*
17 *special fund established by the licensee and used for payment of*
18 *regular purses in addition to other amounts provided in article*
19 *twenty-three, chapter nineteen of this code;*

20 (B) The deposit of the four percent of net terminal income
21 into the Worker's Compensation Debt Reduction Fund pursuant to this
22 subdivision shall expire and not be imposed with respect to these

1 funds, which shall be deposited in the special fund established by
2 the licensee and used for payment of regular purses in addition to
3 the other amounts provided in article twenty-three, chapter
4 nineteen of this code on and after ~~the first~~ day one of the month
5 following the month in which the Governor certifies to the
6 Legislature that: (I) The revenue bonds issued pursuant to article
7 two-d, chapter twenty-three of this code have been retired or
8 payment of the debt service is provided for; and (ii) that an
9 independent certified actuary has determined that the unfunded
10 liability of the Old Fund, as defined in chapter twenty-three of
11 this code, has been paid or provided in its entirety; and

12 (10) ~~(A) One percent of the net terminal income shall be~~
13 ~~deposited in equal amounts in the capitol dome and improvements~~
14 ~~fund created under section two, article four, chapter five-a of~~
15 ~~this code and cultural facilities and capitol resources matching~~
16 ~~grant program fund created under section three, article one of this~~
17 ~~chapter; and~~

18 ~~(B) Notwithstanding any provision of paragraph (A) of this~~
19 ~~subdivision to the contrary, for each fiscal year beginning after~~
20 ~~the thirtieth day of June, two thousand four, this~~ One percent of
21 the net terminal income shall be distributed pursuant to the
22 provisions of ~~subparagraph (ii),~~ paragraph (B), subdivision ~~(9)~~

1 (10), subsection ©, section ten of this article.

2 (b) The commission may establish orderly and effective
3 procedures for the collection and distribution of funds under this
4 section in accordance with the provisions of this section and
5 section ten of this article.

NOTE: The purpose of this bill is to increase the amount of net terminal income allocated to the Cultural Facilities and Capitol Resources Matching Grant Program Fund.

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