

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 615**

5 (By Senator Kessler (Mr. President))

6 _____
7 [Originating in the Committee on the Judiciary;
8 reported March 29, 2013.]
9 _____

10
11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §29-22-18f; to amend
14 and reenact §29-22A-10 of said code; and to amend and reenact
15 §29-22C-8 of said code, all relating to amending the table
16 game license renewal fee for West Virginia pari-mutuel
17 racetracks for one year, creating the Lottery Administrative
18 Reserve Fund, providing for a one-time transfer from the
19 Lottery Administrative Reserve Fund to the Community Based
20 Service Fund, and making technical corrections.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new section, designated §29-22-18f; that §29-
24 22A-10 of said code be amended and reenacted; and that §29-22C-8 of
25 said code be amended and reenacted, all to read as follows:

26 **ARTICLE 22. STATE LOTTERY ACT.**

1 **§29-22-18f. Creating the Lottery Administrative Reserve Fund;**
2 **distribution of reserve funds.**

3 (a) A Lottery Administrative Reserve Fund is created within
4 the Lottery Fund. For the fiscal year ending on June 30, 2013,
5 only, the commission shall deposit a total of \$4 million, to be
6 considered as part of its actual costs and expenses, in proportions
7 determined in the sole discretion of the commission, from amounts
8 distributed according to subsection (d), section eighteen, of this
9 article, subdivision (1), subsection (b), section ten, article
10 twenty-two-a of this chapter, subdivision (1), subsection (a),
11 section 1408, article twenty-two-b of this chapter and subsection
12 (e), section twenty-two, article twenty-five of this chapter.

13 (b) For the fiscal year beginning July 1, 2013, only, the
14 commission shall transfer \$4 million from the Lottery
15 Administrative Reserve Fund to the Community Based Service Fund in
16 the State Treasury.

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

18 **§29-22A-10. Accounting and reporting; commission to provide**
19 **communications protocol data; distribution of net**
20 **terminal income; remittance through electronic**
21 **transfer of funds; establishment of accounts and**
22 **nonpayment penalties; commission control of**
23 **accounting for net terminal income; settlement of**
24 **accounts; manual reporting and payment may be**
25 **required; request for reports; examination of**

1 **accounts and records.**

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

9 (b) The gross terminal income of a licensed racetrack shall be
10 remitted to the commission through the electronic transfer of
11 funds. Licensed racetracks shall furnish to the commission all
12 information and bank authorizations required to facilitate the
13 timely transfer of moneys to the commission. Licensed racetracks
14 must provide the commission thirty-days' advance notice of any
15 proposed account changes in order to assure the uninterrupted
16 electronic transfer of funds. From the gross terminal income
17 remitted by the licensee to the commission:

18 (1) The commission shall deduct an amount sufficient to
19 reimburse the commission for its actual costs and expenses incurred
20 in administering racetrack video lottery at the licensed racetrack.
21 The resulting amount after the deduction is the net terminal
22 income. The amount deducted for administrative costs and expenses
23 of the commission may not exceed four percent of gross terminal
24 income: *Provided*, That any amounts deducted by the commission for
25 its actual costs and expenses that exceeds its actual costs and
26 expenses shall be deposited into the State Lottery Fund. For the

1 fiscal years ending June 30, 2011, through June 30, 2020, the term
2 "actual costs and expenses" may include transfers of up to \$10
3 million in surplus allocations for each fiscal year, as calculated
4 by the commission when it has closed its books for the fiscal year,
5 to the Licensed Racetrack Modernization Fund created by subdivision
6 (2), subsection (b) of this section. For all fiscal years
7 beginning on or after July 1, 2001, the commission shall not
8 receive an amount of gross terminal income in excess of the amount
9 of gross terminal income received during the fiscal year ending on
10 June 30, 2001, but four percent of any amount of gross terminal
11 income received in excess of the amount of gross terminal income
12 received during the fiscal year ending on June 30, 2001, shall be
13 deposited into the fund established in section eighteen-a, article
14 twenty-two of this chapter; and

15 (2) A Licensed Racetrack Modernization Fund is created within
16 the Lottery Fund. For all fiscal years beginning on or after July
17 1, 2011, and ending with the fiscal year beginning July 1, 2020,
18 the commission shall deposit such amounts as are available
19 according to subdivision (1), subsection (b) of this section into
20 a separate facility modernization account maintained within the
21 Licensed Racetrack Modernization Fund for each racetrack. Each
22 racetrack's share of each year's deposit shall be calculated in the
23 same ratio as each racetrack's apportioned contribution to the four
24 percent administrative costs and expenses allowance provided for in
25 subdivision (1), subsection (b) of this section for that year. For
26 each \$2 expended by a licensed racetrack for facility modernization

1 improvements at the racetrack, having a useful life of three or
2 more years and placed in service after July 1, 2011, the licensed
3 racetrack shall receive \$1 in recoupment from its facility
4 modernization account. If the licensed racetrack's facility
5 modernization account contains a balance in any fiscal year, the
6 unexpended balance from that fiscal year will be available for
7 matching for one additional fiscal year, after which time the
8 remaining unused balance carried forward shall revert to the
9 lottery fund. For purposes of this section, the term "facility
10 modernization improvements" includes acquisitions of new and unused
11 video lottery terminals and related equipment. Video lottery
12 terminals financed through the recoupment provided in this
13 subdivision must be retained by the licensee in its West Virginia
14 licensed location for a period of not less than five years from the
15 date of initial installation.

16 (c) The amount resulting after the deductions required by
17 subsection (b) of this section constitutes net terminal income that
18 shall be divided as set out in this subsection. For all fiscal
19 years beginning on or after July 1, 2001, any amount of net
20 terminal income received in excess of the amount of net terminal
21 income received during the fiscal year ending on June 30, 2001,
22 shall be divided as set out in section ten-b of this article. The
23 licensed racetrack's share is in lieu of all lottery agent
24 commissions and is considered to cover all costs and expenses
25 required to be expended by the licensed racetrack in connection
26 with video lottery operations. The division shall be made as

1 follows:

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

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

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

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

19 (i) The county shall receive fifty percent of the excess
20 amount; and

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

25 (B) Beginning July 1, 1999, and thereafter, any amount in
26 excess of the two percent received during the fiscal year 1999 by

1 a county in which a racetrack other than a racetrack described in
2 paragraph (A) of this proviso is located and where the racetrack
3 has been located in a municipality within the county since on or
4 before January 1, 1999, shall be divided, if applicable, as
5 follows:

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

8 (ii) The municipality shall receive fifty percent of the
9 excess amount; and

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

13 (4) One percent of net terminal income shall be paid for and
14 on behalf of all employees of the licensed racing association by
15 making a deposit into a special fund to be established by the
16 Racing Commission to be used for payment into the pension plan for
17 all employees of the licensed racing association;

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

24 (6) The West Virginia Racing Commission shall receive one
25 percent of the net terminal income which shall be deposited and
26 used as provided in section thirteen-c, article twenty-three,

1 chapter nineteen of this code.

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

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

17 (B) Notwithstanding any provision of paragraph (A) of this
18 subdivision to the contrary, for each fiscal year beginning after
19 June 30, 2004, this three percent of net terminal income and the
20 three percent of net terminal income described in paragraph (B),
21 subdivision (8), subsection (a), section ten-b of this article
22 shall be distributed as provided in this paragraph as follows:

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

1 (ii) 0.375 percent of the total amount of net terminal income
2 described in this section and in section ten-b of this article
3 shall be deposited into the Development Office Promotion Fund
4 created under section three-b, article two, chapter five-b of this
5 code;

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

10 (iv) 0.6875 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 Capitol Renovation and Improvement Fund
13 administered by the Department of Administration pursuant to
14 section six, article four, chapter five-a of this code; and

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

20 (9) (A) On and after July 1, 2005, seven percent of net
21 terminal income shall be deposited into the Workers' Compensation
22 Debt Reduction Fund created in section five, article two-d, chapter
23 twenty-three of this code: *Provided, however,* That in any fiscal
24 year when the amount of money generated by this subdivision totals
25 \$11 million, all subsequent distributions under this subdivision
26 shall be deposited in the special fund established by the licensee

1 and used for the payment of regular purses in addition to the other
2 amounts provided in article twenty-three, chapter nineteen of this
3 code;

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

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

20 (A) For the fiscal year beginning July 1, 2003, the veterans
21 memorial program shall receive one percent of the net terminal
22 income until sufficient moneys have been received to complete the
23 veterans memorial on the grounds of the State Capitol Complex in
24 Charleston, West Virginia. The moneys shall be deposited in the
25 State Treasury in the Division of Culture and History special fund
26 created under section three, article one-i, chapter twenty-nine of

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

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

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

19 (e) The commission's central control computer shall keep
20 accurate records of all income generated by each video lottery
21 terminal. The commission shall prepare and mail to the licensed
22 racetrack a statement reflecting the gross terminal income
23 generated by the licensee's video lottery terminals. Each licensed
24 racetrack shall report to the commission any discrepancies between
25 the commission's statement and each terminal's mechanical and
26 electronic meter readings. The licensed racetrack is solely

1 responsible for resolving income discrepancies between actual money
2 collected and the amount shown on the accounting meters or on the
3 commission's billing statement.

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

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

1 transfer.

2 (h) Licensed racetracks may, upon request, receive additional
3 reports of play transactions for their respective video lottery
4 terminals and other marketing information not considered
5 confidential by the commission. The commission may charge a
6 reasonable fee for the cost of producing and mailing any report
7 other than the billing statements.

8 (i) The commission has the right to examine all accounts, bank
9 accounts, financial statements and records in a licensed
10 racetrack's possession, under its control or in which it has an
11 interest and the licensed racetrack shall authorize all third
12 parties in possession or in control of the accounts or records to
13 allow examination of any of those accounts or records by the
14 commission.

15 **ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.**

16 **§29-22C-8. License to operate a racetrack with West Virginia**
17 **Lottery table games.**

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

24 (b) *Grant of license.* - Upon the passage of a local option
25 election in a county in accordance with the provisions of section

1 seven of this article, the commission shall immediately grant a
2 West Virginia Lottery table games license, and a license for the
3 right to conduct West Virginia Lottery table games as assignee to
4 the intellectual property rights of the state, to allow the
5 licensee to conduct West Virginia table games at the licensed pari-
6 mutuel racetrack identified on the local option election ballot,
7 provided that racetrack holds a valid racetrack video lottery
8 license issued by the commission pursuant to article twenty-two-a
9 of this chapter and a valid racing license granted by the West
10 Virginia Racing Commission pursuant to the provision of article
11 twenty-three, chapter nineteen of this code and has otherwise met
12 the requirements for licensure under the provisions of this article
13 and the rules of the commission.

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

20 (d) *Floor plan submission requirement.* - Prior to commencing
21 the operation of any table games in a designated gaming area, a
22 racetrack table games licensee shall submit to the commission for
23 its approval a detailed floor plan depicting the location of the
24 designated gaming area in which table games gaming equipment will
25 be located and its proposed arrangement of the table games gaming
26 equipment. Any floor plan submission that satisfies the

1 requirements of the rules promulgated by the commission shall be
2 considered approved by the commission unless the racetrack table
3 games licensee is notified in writing to the contrary within one
4 month of filing a detailed floor plan.

5 (e) *Management service contracts.* -

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

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

18 (3) *Prohibition on assignment or transfer.* - A management
19 services contract may not be assigned or transferred to a third
20 party.

21 (4) *Other commission approvals and licenses.* - The duties and
22 responsibilities of a management services provider under a
23 management services contract may not be assigned, delegated,
24 subcontracted or transferred to a third party to perform without
25 the prior approval of the commission. Third parties must be
26 licensed under this article before providing service. The

1 commission may by rule clarify application of this subdivision and
2 provide exceptions to its application. The commission shall
3 license and require the display of West Virginia Lottery game logos
4 on appropriate game surfaces and other gaming items and locations
5 as the commission considers appropriate.

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

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

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

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

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

26 (1) An initial racetrack table games license fee of \$1,500,000

1 shall be paid to the commission at the time of issuance of the
2 racetrack table games license, regardless of the number of months
3 remaining in the license year for which it is issued. All licenses
4 expire at the end of the day on June 30 each year.

5 (2) The commission shall annually renew a racetrack table
6 games license as of July 1, of each year provided the licensee:

7 (A) Successfully renews its racetrack video lottery license
8 under article twenty-two-a of this chapter before July 1;

9 (B) Pays to the commission the annual license renewal fee of
10 \$2,500,000 required by this section at the time it files its
11 application for renewal of its license under article twenty-two-a
12 of this chapter: Provided, That only for the license year beginning
13 July 1, 2013, the annual license renewal fee shall be \$1,500,000;
14 and

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

19 (3) *Annual license surcharge for failure to construct hotel on*
20 *premises.* - It is the intent of the Legislature that each racetrack
21 for which a racetrack table games license has been issued be or
22 become a destination tourism resort facility. To that end, it is
23 important that each racetrack for which a racetrack table games
24 license has been issued operate a hotel with significant amenities.
25 Therefore, in addition to all other taxes and fees required by the
26 provisions of this article, there is hereby imposed, upon each

1 racetrack for which a racetrack table games license has been issued
2 an annual license surcharge, payable to the commission in the
3 amount of \$2,500,000 if that racetrack does not operate a hotel on
4 its racing property that contains at least one hundred fifty guest
5 rooms with significant amenities within three years of the passage
6 of the local option election in its county authorizing table games
7 at the racetrack, provided the time for completion of the hotel
8 shall be extended by the same number of days as the completion of
9 the hotel is delayed by a force majeure events or conditions beyond
10 the reasonable control of the racetrack licensee. The surcharge
11 shall be paid upon each renewal of its racetrack table games
12 license made after the expiration of the three year period, and may
13 be extended by the above force majeure events or conditions, until
14 the racetrack opens a qualifying hotel.

15 (4) If the licensee fails to apply to renew its license under
16 article twenty-three, chapter nineteen and article twenty-two-a,
17 chapter twenty-nine of this code until after the license expires,
18 the commission shall renew its license under this article at the
19 time it renews its license under article twenty-two-a of this
20 chapter provided the licensee has paid the annual license fee
21 required by this section and during the preceding license year the
22 licensee complied with all provisions of this article, all rules
23 adopted by the commission and all final orders of the commission
24 applicable to the licensee.

25 (h) *Facility qualifications.* - A racetrack table games
26 licensee shall demonstrate that the racetrack with West Virginia

1 Lottery table games will: (1) Be accessible to disabled
2 individuals in accordance with applicable federal and state laws;
3 (2) be licensed in accordance with this article, and all other
4 applicable federal, state and local laws; and (3) meet any other
5 qualifications specified in rules adopted by the commission.

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

10 The surety bond shall be:

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

14 (2) In a form approved by the commission; and

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

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

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

8 (1) *Commission office space.* - A racetrack table games
9 licensee shall provide to the commission, at no cost to the
10 commission, suitable office space at the racetrack facility for the
11 commission to perform the duties required of it by this article and
12 the rules of the commission.