



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

22           (1) The commission shall deduct an amount sufficient to  
23 reimburse the commission for its actual costs and expenses incurred

1 in administering racetrack video lottery at the licensed racetrack.  
2 ~~and~~ The resulting amount after the deduction is the net terminal  
3 income. The amount deducted for administrative costs and expenses  
4 of the commission may not exceed four percent of gross terminal  
5 income. ~~Provided, That any~~ Amounts deducted by the commission for  
6 its actual costs and expenses that ~~exceeds~~ exceed its actual costs  
7 and expenses shall be deposited into the State Lottery Fund. For  
8 the fiscal years ending June 30, 2011, through June 30, 2020, the  
9 term "actual costs and expenses" may include transfers of up to \$10  
10 million in surplus allocations for each fiscal year, as calculated  
11 by the commission when it has closed its books for the fiscal year,  
12 to the Licensed Racetrack Modernization Fund created by subdivision  
13 (2), subsection (b) of this section. For all fiscal years  
14 beginning on or after July 1, 2001, the commission shall not  
15 receive an amount of gross terminal income in excess of the amount  
16 of gross terminal income received during the fiscal year ending on  
17 June 30, 2001, but four percent of any amount of gross terminal  
18 income received in excess of the amount of gross terminal income  
19 received during the fiscal year ending on June 30, 2001, shall be  
20 deposited into the fund established in section eighteen-a, article  
21 twenty-two of this chapter; and

22 (2) A Licensed Racetrack Modernization Fund is created within  
23 the lottery fund. For all fiscal years beginning on or after July  
24 1, 2011, and ending with the fiscal year beginning July 1, 2020,

1 the commission shall deposit such amounts as are available  
2 according to subdivision (1), subsection (b) of this section into  
3 a separate facility modernization account maintained within the  
4 Licensed Racetrack Modernization Fund for each racetrack. Each  
5 racetrack's share of each year's deposit shall be calculated in the  
6 same ratio as each racetrack's apportioned contribution to the four  
7 percent administrative costs and expenses allowance provided for in  
8 subdivision (1), subsection (b) of this section for that year. For  
9 each \$2 expended by a licensed racetrack for facility modernization  
10 improvements at the racetrack, having a useful life of three or  
11 more years and placed in service after July 1, 2011, the licensed  
12 racetrack shall receive \$1 in recoupment from its facility  
13 modernization account. If the licensed racetrack's facility  
14 modernization account contains a balance in any fiscal year, the  
15 unexpended balance from that fiscal year will be available for  
16 matching for one additional fiscal year, after which time the  
17 remaining unused balance carried forward ~~shall revert~~ reverts to  
18 the lottery fund. For purposes of this section, the term "facility  
19 modernization improvements" includes acquisitions of new and unused  
20 video lottery terminals and related equipment. Video lottery  
21 terminals financed through the recoupment provided in this  
22 subdivision must be retained by the licensee in its West Virginia  
23 licensed location for a period of not less than five years from the  
24 date of initial installation.

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

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

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

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

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

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

21          (ii) The municipality shall receive fifty percent of the  
22 excess amount; and

23          (C) This proviso ~~shall~~ does not affect the amount to be  
24 received under this subdivision by any other county other than a

1 county described in paragraph (A) or (B) of this proviso;

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

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

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

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

19       (8) (A) The Tourism Promotion Fund established in section  
20 twelve, article two, chapter five-b of this code shall receive  
21 three percent of the net terminal income: *Provided*, That for the  
22 fiscal year beginning July 1, 2003, the tourism commission shall  
23 transfer from the Tourism Promotion Fund \$5 million of the three  
24 percent of the net terminal income described in this section and

1 section ten-b of this article into the fund administered by the  
2 West Virginia Economic Development Authority pursuant to section  
3 seven, article fifteen, chapter thirty-one of this code, \$5 million  
4 into the Capitol Renovation and Improvement Fund administered by  
5 the Department of Administration pursuant to section six, article  
6 four, chapter five-a of this code and \$5 million into the Tax  
7 Reduction and Federal Funding Increased Compliance Fund; and

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

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

18 (ii) 0.375 percent of the total amount of net terminal income  
19 described in this section and in section ten-b of this article  
20 shall be deposited in equal amounts into the Development Office  
21 Promotion Fund created under section three-b, article two, chapter  
22 five-b of this code and the Cultural Facilities and Capitol  
23 Resources Matching Grant Program Fund created under section three,  
24 article one, chapter twenty-nine of this code.



1 (iii) 0.5 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 Research Challenge Fund created under  
4 section ~~ten~~, twelve, article one-b, chapter eighteen-b of this  
5 code;

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

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

16 (9) (A) On and after July 1, 2005, seven percent of net  
17 terminal income shall be deposited into the Workers' Compensation  
18 Debt Reduction Fund created in section five, article two-d, chapter  
19 twenty-three of this code. ~~Provided, That~~ In any fiscal year when  
20 the amount of money generated by this subdivision totals \$11  
21 million, all subsequent distributions under this subdivision shall  
22 be deposited in the special fund established by the licensee and  
23 used for the payment of regular purses in addition to the other  
24 amounts provided in article twenty-three, chapter nineteen of this

1 code;

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

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

18       (A) For the fiscal year beginning July 1, 2003, the Veterans  
19 Memorial Program shall receive one percent of the net terminal  
20 income until sufficient moneys have been received to complete the  
21 veterans memorial on the grounds of the State Capitol Complex in  
22 Charleston, West Virginia. The moneys shall be deposited in the  
23 State Treasury in the Division of Culture and History Special Fund  
24 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 to provide for the placement of  
9 markers for the graves of veterans in perpetual cemeteries in this  
10 state. The Division of Veterans Affairs shall promulgate  
11 legislative rules pursuant to the provisions of article three,  
12 chapter twenty-nine-a of this code specifying the manner in which  
13 the funds are spent, determine the ability of the surviving spouse  
14 to pay for the placement of the marker and setting forth the  
15 standards to be used to determine the priority in which the  
16 veterans grave markers will be placed in the event that there are  
17 not sufficient funds to complete the placement of veterans grave  
18 markers in any one year or at all. Upon payment in full of the  
19 bonded indebtedness on the veterans memorial, \$100,000 of the one  
20 percent of net terminal income provided in this subdivision shall  
21 be deposited in the special fund in the Division of Culture and  
22 History created under section three, article one-i, chapter  
23 twenty-nine of this code and be expended by the Division of Culture  
24 and History to establish a West Virginia veterans memorial archives

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

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

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

22 (ii) The remainder of the one percent of net terminal income  
23 and all of the one percent of net terminal income described in  
24 paragraph (B), ~~subdivision (9)~~ subdivision (10), subsection (a),

1 section ten-b of this article shall be distributed as follows: The  
2 net terminal income shall be deposited in equal amounts into the  
3 Capitol Dome and Capitol Improvements Fund created under section  
4 two, article four, chapter five-a of this code and the Cultural  
5 Facilities and Capitol Resources Matching Grant Program Fund  
6 created under section three, article one, chapter twenty-nine of  
7 this code until a total of \$1,500,000 is deposited into the  
8 Cultural Facilities and Capitol Resources Matching Grant Program  
9 Fund; thereafter, the remainder shall be deposited into the Capitol  
10 Dome and Capitol Improvements Fund.

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

22 (e) The commission's central control computer shall keep  
23 accurate records of all income generated by each video lottery  
24 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  
23 required. The licensed racetracks shall report an amount equal to  
24 the total amount of cash inserted into each video lottery terminal

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

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

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

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

23 (a) For all years beginning on or after July 1, 2001, any  
24 amount of net terminal income generated annually by a licensed

1 racetrack in excess of the amount of net terminal income generated  
2 by that licensed racetrack during the fiscal year ending on June  
3 30, 2001, shall be divided as follows:

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

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

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

17 (A) Any amount by which the total amount under this section  
18 and subdivision (3), subsection (c), section ten of this article is  
19 in excess of the two percent received during fiscal year 1999 by a  
20 county in which a racetrack is located that has participated in the  
21 West Virginia Thoroughbred Development Fund since on or before  
22 January 1, 1999, shall be divided as follows:

23 (i) The county shall receive fifty percent of the excess  
24 amount; and



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

5           (B) Any amount by which the total amount under this section  
6 and subdivision (3), subsection (c), section ten of this article is  
7 in excess of the two percent received during fiscal year 1999 by a  
8 county in which a racetrack other than a racetrack described in  
9 paragraph (A) of this proviso is located and where the racetrack  
10 has been located in a municipality within the county since on or  
11 before January 1, 1999, shall be divided, if applicable, as  
12 follows:

13           (i) The county shall receive fifty percent of the excess  
14 amount; and

15           (ii) The municipality shall receive fifty percent of the  
16 excess amount; and

17           (C) This proviso ~~shall~~ does not affect the amount to be  
18 received under this subdivision by any county other than a county  
19 described in paragraph (A) or (B) of this proviso;

20           (4) One half of one percent of net terminal income shall be  
21 paid for and on behalf of all employees of the licensed racing  
22 association by making a deposit into a special fund to be  
23 established by the Racing Commission to be used for payment into  
24 the pension plan for all employees of the licensed racing

1 association;

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

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

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

14       (8) The Tourism Promotion Fund established in section twelve,  
15 article two, chapter five-b of this code shall receive three  
16 percent of the net terminal income: *Provided*, That for each fiscal  
17 year beginning after June 30, 2004, this three percent of net  
18 terminal income shall be distributed pursuant to the provisions of  
19 paragraph (B), subdivision (8), subsection (c), section ten of this  
20 article;

21       (9) (A) On and after July 1, 2005, four percent of net  
22 terminal income shall be deposited into the Workers' Compensation  
23 Debt Reduction Fund created in section five, article two-d, chapter  
24 twenty-three of this code: *Provided*, That in any fiscal year when

1 the amount of money generated by this subdivision together with the  
2 total allocation transferred by the operation of subdivision (9),  
3 subsection (c), section ten of this article totals \$11 million, all  
4 subsequent distributions under this subdivision (9) during that  
5 fiscal year shall be deposited in the special fund established by  
6 the licensee and used for payment of regular purses in addition to  
7 other amounts provided in article twenty-three, chapter nineteen of  
8 this code;

9 (B) The deposit of the four 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, which shall be deposited in the special fund established by  
13 the licensee and used for payment of regular purses in addition to  
14 the other amounts provided in article twenty-three, chapter  
15 nineteen of this code on and after the first day of the month  
16 following the month in which the Governor certifies to the  
17 Legislature that: (i) The revenue bonds issued pursuant to article  
18 two-d, chapter twenty-three of this code have been retired or  
19 payment of the debt service is provided for; and (ii) that an  
20 independent certified actuary has determined that the unfunded  
21 liability of the Old Fund, as defined in chapter twenty-three of  
22 this code, has been paid or provided in its entirety; and

23 (10) (A) One percent of the net terminal income shall be  
24 deposited in equal amounts in the Capitol Dome and Improvements

1 Fund created under section two, article four, chapter five-a of  
2 this code and cultural facilities and Capitol Resources Matching  
3 Grant Program Fund created under section three, article one of this  
4 chapter; and

5 (B) Notwithstanding any provision of paragraph (A) of this  
6 subdivision to the contrary, for each fiscal year beginning after  
7 June 30, 2004, this one percent of net terminal income shall be  
8 distributed pursuant to the provisions of subparagraph (ii),  
9 paragraph (B), ~~subdivision (9)~~, subdivision (10), subsection (c),  
10 section ten of this article.

11 (b) The commission may establish orderly and effective  
12 procedures for the collection and distribution of funds under this  
13 section in accordance with the provisions of this section and  
14 section ten of this article.

NOTE: The purpose of this bill is to allocate one half of net terminal income from racetrack video lottery distributed to the Development Office Promotion Fund to the Cultural Facilities and Capitol Resources Matching Grant Program Fund and technical changes.

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