

**Senate Bill No. 455**

(By Senators Green, Edgell, Fitzsimmons, D. Hall and Yost)

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[Introduced March 6, 2013; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

10 A BILL to amend and reenact §19-23-6, §19-23-7, §19-23-9 and §19-  
11 23-12b of the Code of West Virginia, 1931, as amended; to  
12 amend and reenact §29-22A-3, §29-22A-10 and §29-22A-10b of  
13 said code; and to amend and reenact §29-22C-8, §29-22C-10 and  
14 §29-22C-26 of said code, all relating to providing that within  
15 the minimum and maximum set by the commission, the number of  
16 horse races or dog races to be held on a racing day be set by  
17 the licensee; providing for use of funds paid to Horsemen's  
18 Benevolent and Protective Association from special fund for  
19 payment of regular purses; decreasing the number of dates  
20 required for a horse or dog race meeting license application;  
21 decreasing the number of live racing dates required for  
22 receiving telecasts and accepting wagers on horse and dog race  
23 meetings; decreasing the number of dates on which live racing  
24 must be conducted by racetrack table games licensee; providing

1 for distribution of certain amounts of net terminal income  
2 derived from racetrack video lottery terminals; providing for  
3 annual racetrack table games license renewal fee; and  
4 decreasing percentage of table games privilege tax.

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

6 That §19-23-6, §19-23-7, §19-23-9 and §19-23-12b of the Code  
7 of West Virginia, 1931, as amended, be amended and reenacted; that  
8 §29-22A-3, §29-22A-10 and §29-22A-10b of said code be amended and  
9 reenacted; and that §29-22C-8, §29-22C-10 and §29-22C-26 of said  
10 code be amended and reenacted, all to read as follows:

11 **CHAPTER 19. AGRICULTURE.**

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

13 **§19-23-6. Powers and authority of Racing Commission.**

14 The Racing Commission has full jurisdiction over and shall  
15 supervise all horse race meetings, all dog race meetings and all  
16 persons involved in the holding or conducting of horse or dog race  
17 meetings and, in this regard, it has plenary power and authority:

18 (1) To investigate applicants and determine the eligibility of  
19 the applicants for a license or permit or construction permit under  
20 the provisions of this article;

21 (2) To fix, from time to time, the annual fee to be paid to  
22 the Racing Commission for any permit required under the provisions  
23 of section two of this article;

1           (3) To promulgate reasonable rules implementing and making  
2 effective the provisions of this article and the powers and  
3 authority conferred and the duties imposed upon the Racing  
4 Commission under the provisions of this article, including, but not  
5 limited to, reasonable rules under which all horse races, dog  
6 races, horse race meetings and dog race meetings shall be held and  
7 conducted, all of which reasonable rules shall be promulgated in  
8 accordance with the provisions of article three, chapter twenty-  
9 nine-a of this code except that the Racing Commission shall  
10 promulgate separate rules, in accordance with article three,  
11 chapter twenty-nine-a, pertaining to the kinds of legal combination  
12 wagers which may be placed in connection with the pari-mutuel  
13 system of wagering authorized by this article;

14           (4) To register colors and assumed names and to fix, from time  
15 to time, the annual fee to be paid to the Racing Commission for any  
16 such registration;

17           (5) To fix and regulate the minimum purse to be offered during  
18 any horse or dog race meeting;

19           (6) To fix a minimum and a maximum number of horse races or  
20 dog races to be held on any respective racing day: Provided, That  
21 within the parameters established, the licensee or permit holder  
22 may set the actual number of races to be held on any respective  
23 racing day;

24           (7) To enter the office, horse racetrack, dog racetrack,

1 kennel, facilities and other places of business of any licensee to  
2 determine whether the provisions of this article and its reasonable  
3 rules are being complied with, and for this purpose, the Racing  
4 Commission, its executive director, representatives and employees  
5 may visit, investigate and have free access to any such office,  
6 horse racetrack, dog racetrack, kennel, facilities and other places  
7 of business;

8       (8) To investigate alleged violations of the provisions of  
9 this article, its reasonable rules, orders and final decisions and  
10 to take appropriate disciplinary action against any licensee or  
11 permit holder or construction permit holder for a violation or  
12 institute appropriate legal action for enforcement or take  
13 disciplinary action and institute legal action;

14       (9) By reasonable rules, to authorize stewards, starters and  
15 other racing officials to impose reasonable fines or other  
16 sanctions upon a person connected with or involved in any horse or  
17 dog racing or any horse or dog race meeting and to authorize  
18 stewards to rule off the grounds of any horse or dog racetrack any  
19 tout, bookmaker or other undesirable individual determined inimical  
20 to the best interests of horse and dog racing or the pari-mutuel  
21 system of wagering in connection therewith;

22       (10) To require at any time the removal of any racing official  
23 or racing employee of any licensee for the violation of any  
24 provision of this article, any reasonable rule of the Racing

1 Commission or for any fraudulent practice;

2       (11) To acquire, establish, maintain and operate, or to  
3 provide by contract for the maintenance and operation of, a testing  
4 laboratory and related facilities for the purpose of conducting  
5 saliva, urine and other tests on the horse or dog or horses or dogs  
6 run or to be run in any horse or dog race meeting and to purchase  
7 all equipment and supplies considered necessary or desirable in  
8 connection with the acquisition, establishment, maintenance and  
9 operation of any testing laboratory and related facilities and all  
10 such tests;

11       (12) To hold up, in any disputed horse or dog race, the  
12 payment of any purse pending a final determination of the results  
13 thereof;

14       (13) To require each licensee to file an annual balance sheet  
15 and profit and loss statement pertaining to the licensee's horse or  
16 dog racing activities in this state together with a list of each  
17 licensee's stockholders or other persons having any beneficial  
18 interest in the horse or dog racing activities of the licensee;

19       (14) To issue subpoenas for the attendance of witnesses and  
20 subpoenas duces tecum for the production of any books, records and  
21 other pertinent documents and to administer oaths and affirmations  
22 to such witnesses, whenever, in the judgment of the Racing  
23 Commission, it is necessary to do so for the effective discharge of  
24 its duties under the provisions of this article;

1           (15) To keep accurate and complete records of its proceedings  
2 and to certify the same as may be appropriate;

3           (16) To take any other action that may be reasonable or  
4 appropriate to effectuate the provisions of this article and its  
5 reasonable rules;

6           (17) To provide breeders' awards, purse supplements and moneys  
7 for capital improvements at racetracks in compliance with section  
8 thirteen-b of this article; and

9           (18) To mediate on site, upon request of a party, all disputes  
10 existing between the racetrack licensees located in this state and  
11 representatives of a majority of the horse owners and trainers  
12 licensed at the track which threaten to disrupt any scheduled  
13 racing event or events. The Racing Commission shall, upon the  
14 request of a party, mediate on site all disputes existing between  
15 racetrack licensees and representatives of pari-mutuel clerks which  
16 threaten to disrupt any scheduled racing event or events. When a  
17 request for mediation is made, the commission shall designate from  
18 among its members one person to act as mediator in each dispute  
19 that arises. Each opposing party involved in any dispute shall  
20 negotiate in good faith with the goal of reaching a fair and mutual  
21 resolution. The mediator may issue recommendations designed to  
22 assist each side toward reaching a fair compromise. No owner or  
23 operator or any horse owner or trainer or any pari-mutuel clerk  
24 licensed at the track is required to abide by any recommendation

1 made by any mediator acting pursuant to this subsection.

2 The Racing Commission shall not interfere in the internal  
3 business or internal affairs of any licensee.

4 **§19-23-7. Application for license; forms; time for filing;**  
5 **disclosure required; verification; bond;**  
6 **application for permit.**

7 (a) Any racing association desiring to hold or conduct a horse  
8 or dog race meeting, where the pari-mutuel system of wagering is  
9 permitted and conducted, during any calendar year, shall file with  
10 the Racing Commission an application for a license to hold or  
11 conduct such horse or dog race meeting. A separate application  
12 shall be filed for each separate license sought for each horse or  
13 dog race meeting which such applicant proposes to hold or conduct.  
14 The Racing Commission shall prescribe blank forms to be used in  
15 making such application. Such application shall be filed on or  
16 before a day to be fixed by the Racing Commission and shall  
17 disclose, but not be limited to, the following:

18 (1) If the applicant be an individual, the full name and  
19 address of the applicant;

20 (2) If the applicant be a partnership, firm or association,  
21 the full name and address of each partner or member thereof, the  
22 name of the partnership, firm or association and its post-office  
23 address;

24 (3) If the applicant be a corporation, its name, the state of

1 its incorporation, its post-office address, the full name and  
2 address of each officer and director thereof, and if a foreign  
3 corporation, whether it is qualified to do business in this state;

4 (4) The dates, totaling not less than ~~two hundred~~ one hundred  
5 fifty, such applicant intends to hold or conduct such horse or dog  
6 race meeting (which may be on any day including Sundays);

7 (5) The location of the horse or dog racetrack, place or  
8 enclosure where such applicant proposes to hold or conduct such  
9 horse or dog race meeting;

10 (6) Whether the applicant, any partner, member, officer or  
11 director has previously applied for a license under the provisions  
12 of this article or for a similar license in this or any other  
13 state, and if so, whether such license was issued or refused, and,  
14 if issued, whether it was ever suspended or revoked; and

15 (7) Such other information as the Racing Commission may  
16 reasonably require which may include information relating to any  
17 criminal record of the applicant, if an individual, or of each  
18 partner or member, if a partnership, firm or association, or of  
19 each officer and director, if a corporation.

20 (b) Such application shall be verified by the oath or  
21 affirmation of the applicant for such license, if an individual, or  
22 if the applicant is a partnership, firm, association or  
23 corporation, by a partner, member or officer thereof, as the case  
24 may be. When required by the Racing Commission, an applicant for



1 a license shall also furnish evidence satisfactory to the Racing  
2 Commission of such applicant's ability to pay all taxes due the  
3 state, purses, salaries of officials and other expenses incident to  
4 the horse or dog race meeting for which a license is sought. In  
5 the event the applicant is not able to furnish such satisfactory  
6 evidence of such applicant's ability to pay such expenses and fees,  
7 the Racing Commission may require bond or other adequate security  
8 before the requested license is issued.

9 (c) Any person desiring to obtain a permit, as required by the  
10 provisions of section two of this article, shall make application  
11 therefor on a form prescribed by the Racing Commission. The  
12 application for any such permit shall be accompanied by the fee  
13 prescribed therefor by the Racing Commission. Each applicant for  
14 a permit shall set forth in the application such information as the  
15 Racing Commission shall reasonably require.

16 **§19-23-9. Pari-mutuel system of wagering authorized; licensee**  
17 **authorized to deduct commissions from pari-mutuel**  
18 **pools; retention of breakage; auditing; minors.**

19 (a) The pari-mutuel system of wagering upon the results of any  
20 horse or dog race at any horse or dog race meeting conducted or  
21 held by any licensee is hereby authorized if, and only if, such  
22 pari-mutuel wagering is conducted by the licensee within the  
23 confines of the licensee's horse racetrack or dog racetrack and the  
24 provisions of section one, article ten, chapter sixty-one of this

1 code relating to gaming shall not apply to the pari-mutuel system  
2 of wagering in manner and form as provided in this article at any  
3 horse or dog race meeting within this state where horse or dog  
4 racing is permitted for any purse by any licensee. A licensee  
5 shall permit or conduct only the pari-mutuel system of wagering  
6 within the confines of the licensee's racetrack at which any horse  
7 or dog race meeting is conducted or held.

8 (b) A licensee is hereby expressly authorized to deduct a  
9 commission from the pari-mutuel pools as follows:

10 (1) The commission deducted by any licensee from the pari-  
11 mutuel pools on thoroughbred horse racing, except from thoroughbred  
12 horse racing pari-mutuel pools involving what is known as multiple  
13 betting in which the winning pari-mutuel ticket or tickets are  
14 determined by a combination of two or more winning horses, shall  
15 not exceed seventeen and one-fourth percent of the total of the  
16 pari-mutuel pools for the day. Out of the commission mentioned in  
17 this subdivision, the licensee: (i) Shall pay the pari-mutuel  
18 pools tax provided in subsection (b), section ten of this article;  
19 (ii) shall make a deposit into a special fund to be established by  
20 the licensee and to be used for the payment of regular purses  
21 offered for thoroughbred racing by the licensee, which deposits out  
22 of pari-mutuel pools for each day during the months of January,  
23 February, March, October, November and December shall be seven and  
24 three hundred seventy-five one-thousandths percent of the pari-

1 mutuel pools and which, out of pari-mutuel pools for each day  
2 during all other months, shall be six and eight hundred seventy-  
3 five one-thousandths percent of the pari-mutuel pools, which shall  
4 take effect beginning fiscal year 1990; (iii) shall pay one tenth  
5 of one percent of the pari-mutuel pools into the General Fund of  
6 the county commission of the county in which the racetrack is  
7 located, except if within a municipality, then to the Municipal  
8 General Fund; and (iv) Any licensee which has participated in the  
9 West Virginia Thoroughbred Development Fund for a period of more  
10 than four consecutive calendar years prior to December 31, 1992,  
11 shall make a deposit into a special fund to be established by the  
12 Racing Commission and to be used for the payment of breeders  
13 awards, restrictive races and stakes purses as authorized by  
14 section thirteen-b of this article, which deposits out of pari-  
15 mutuel pools shall, from the effective date of this section, be two  
16 percent of the pools. The remainder of the commission shall be  
17 retained by the licensee.

18       Each licensee that permits or conducts pari-mutuel wagering at  
19 the licensee's thoroughbred horse racetrack shall annually pay  
20 \$500,000 from the special fund required by this section to be  
21 established by the licensee for the payment of regular purses  
22 offered for thoroughbred racing by the licensee into a special fund  
23 established by the Racing Commission for transfer to a pension plan  
24 established by the Racing Commission for all back stretch

1 personnel, including, but not limited to, exercise riders,  
2 trainers, grooms and stable forepersons licensed by the Racing  
3 Commission to participate in horse racing in this state and their  
4 dependents.

5       Each thoroughbred racetrack licensee is authorized to enter  
6 into an agreement with its local Horsemen's Benevolent and  
7 Protective Association under which an agreed upon percentage of up  
8 to two percent of purses actually paid during the preceding month  
9 may be paid to the local Horsemen's Benevolent and Protective  
10 Association from the special fund required by this section for  
11 their respective medical trusts for backstretch personnel and  
12 administrative fees specifically related to such medical trusts for  
13 backstretch personnel: *Provided*, That such administrative fees may  
14 not include payments for legal actions; legal fees; lobbying  
15 expenses; reimbursement of expenses of board members of such  
16 associations; reimbursement for travel and meals of staff and  
17 employees of such associations; or administrative costs, wages and  
18 expenses incurred other than those incurred specifically in  
19 administration of medical trusts for backstretch personnel. The  
20 foregoing expenses set forth as ineligible administrative fees may  
21 be paid from membership dues paid to or contributions made to a  
22 Horsemen's Benevolent and Protective Association, or any other  
23 lawful source.

24       The commission deducted by any licensee from the pari-mutuel

1 pools on thoroughbred horse racing involving what is known as  
2 multiple betting in which the winning pari-mutuel ticket or tickets  
3 are determined by a combination of two winning horses shall not  
4 exceed nineteen percent and by a combination of three or more  
5 winning horses shall not exceed twenty-five percent of the total of  
6 such pari-mutuel pools for the day. Out of the commission, as is  
7 mentioned in this paragraph, the licensee: (i) Shall pay the pari-  
8 mutuel pools tax provided in subsection (b), section ten of this  
9 article; (ii) shall make a deposit into a special fund to be  
10 established by the licensee and to be used for the payment of  
11 regular purses offered for thoroughbred racing by the licensee,  
12 which deposits out of pari-mutuel pools for each day during the  
13 months of January, February, March, October, November and December,  
14 for pools involving a combination of two winning horses shall be  
15 eight and twenty-five one-hundredths percent and out of pari-mutuel  
16 pools for each day during all other months shall be seven and  
17 seventy-five one-hundredths percent of the pari-mutuel pools, and  
18 involving a combination of three or more winning horses for the  
19 months of January, February, March, October, November and December  
20 the deposits out of the fund shall be eleven and twenty-five one-  
21 hundredths percent of the pari-mutuel pools, and which, out of  
22 pari-mutuel pools for each day during all other months, shall be  
23 ten and seventy-five one-hundredths percent of the pari-mutuel  
24 pools; (iii) shall pay one tenth of one percent of the pari-mutuel

1 pools into the General Fund of the county commission of the county  
2 in which the racetrack is located, except if within a municipality,  
3 then to the Municipal General Fund; and (iv) any licensee which has  
4 participated in the West Virginia Thoroughbred Development Fund for  
5 a period of more than four consecutive calendar years prior to  
6 December 31, 1992, shall make a deposit into a special fund to be  
7 established by the Racing Commission and to be used for the payment  
8 of breeder awards, for restrictive races and stakes purses which  
9 deposits out of pari-mutuel pools shall, from the effective date of  
10 this section, be two percent of the pools. The remainder of the  
11 commission shall be retained by the licensee.

12       The commission deducted by the licensee under this subdivision  
13 may be reduced only by mutual agreement between the licensee and a  
14 majority of the trainers and horse owners licensed by subsection  
15 (a), section two of this article or their designated  
16 representative. The reduction in licensee commissions may be for  
17 a particular race, racing day or days or for a horse race meeting.  
18 Fifty percent of the reduction shall be retained by the licensee  
19 from the amounts required to be paid into the special fund  
20 established by the licensee under the provisions of this  
21 subdivision. The Racing Commission shall promulgate any reasonable  
22 rules that are necessary to implement the foregoing provisions.

23       (2) The commission deducted by any licensee from the pari-  
24 mutuel pools on harness racing shall not exceed seventeen and one-

1 half percent of the total of the pari-mutuel pools for the day.  
2 Out of the commission the licensee shall pay the pari-mutuel pools  
3 tax provided in subsection (c), section ten of this article and  
4 shall pay one tenth of one percent into the General Fund of the  
5 county commission of the county in which the racetrack is located,  
6 except if within a municipality, then to the Municipal General  
7 Fund. The remainder of the commission shall be retained by the  
8 licensee.

9 (3) The commission deducted by any licensee from the pari-  
10 mutuel pools on dog racing, except from dog racing pari-mutuel  
11 pools involving what is known as multiple betting in which the  
12 winning pari-mutuel ticket or tickets are determined by a  
13 combination of two or more winning dogs, shall not exceed sixteen  
14 and thirty one-hundredths percent of the total of all pari-mutuel  
15 pools for the day. The commission deducted by any licensee from  
16 the pari-mutuel pools on dog racing involving what is known as  
17 multiple betting in which the winning pari-mutuel ticket or tickets  
18 are determined by a combination of two winning dogs shall not  
19 exceed nineteen percent, by a combination of three winning dogs  
20 shall not exceed twenty percent and by a combination of four or  
21 more winning dogs shall not exceed twenty-one percent of the total  
22 of such pari-mutuel pools for the day. The foregoing commissions  
23 are in effect for the fiscal years 1990 and 1991. Thereafter, the  
24 commission shall be at the percentages in effect prior to the

1 effective date of this article unless the Legislature, after  
2 review, determines otherwise. Out of the commissions, the licensee  
3 shall pay the pari-mutuel pools tax provided in subsection (d),  
4 section ten of this article and one tenth of one percent of such  
5 pari-mutuel pools into the General Fund of the county commission of  
6 the county in which the racetrack is located. In addition, out of  
7 the commissions, if the racetrack is located within a municipality,  
8 then the licensee shall also pay three tenths of one percent of the  
9 pari-mutuel pools into the Municipal General Fund; or, if the  
10 racetrack is located outside of a municipality, then the licensee  
11 shall also pay three tenths of one percent of the pari-mutuel pools  
12 into the State Road Fund for use by the Division of Highways in  
13 accordance with the provisions of this subdivision. The remainder  
14 of the commission shall be retained by the licensee.

15 For the purposes of this section, "municipality" means and  
16 includes any Class I, Class II and Class III city and any Class IV  
17 town or village incorporated as a municipal corporation under the  
18 laws of this state prior to January 1, 1987.

19 Each dog racing licensee, when required by the provisions of  
20 this subdivision to pay a percentage of its commissions to the  
21 State Road Fund for use by the Division of Highways, shall transmit  
22 the required funds, in such manner and at such times as the Racing  
23 Commission shall by procedural rule direct, to the State Treasurer  
24 for deposit in the State Treasury to the credit of the Division of



1 Highways State Road Fund. All funds collected and received in the  
2 State Road Fund pursuant to the provisions of this subdivision  
3 shall be used by the Division of Highways in accordance with the  
4 provisions of article seventeen-a, chapter seventeen of this code  
5 for the acquisition of right-of-way for, the construction of, the  
6 reconstruction of and the improvement or repair of any interstate  
7 or other highway, secondary road, bridge and toll road in the  
8 state. If on July 1, 1989, any area encompassing a dog racetrack  
9 has incorporated as a Class I, Class II or Class III city or as a  
10 Class IV town or village, whereas such city, town or village was  
11 not incorporated as such on January 1, 1987, then on and after July  
12 1, 1989, any balances in the State Road Fund existing as a result  
13 of payments made under the provisions of this subdivision may be  
14 used by the State Road Fund for any purpose for which other moneys  
15 in the fund may lawfully be used and in lieu of further payments to  
16 the State Road Fund, the licensee of a racetrack which is located  
17 in the municipality shall thereafter pay three tenths of one  
18 percent of the pari-mutuel pools into the General Fund of the  
19 municipality. If no incorporation occurs before July 1, 1989, then  
20 payments to the State Road Fund shall thereafter continue as  
21 provided under the provisions of this subdivision.

22 A dog racing licensee, before deducting the commissions  
23 authorized by this subdivision, shall give written notification to  
24 the Racing Commission not less than thirty days prior to any change

1 in the percentage rates for the commissions. The Racing Commission  
2 shall prescribe blank forms for filing the notification. The  
3 notification shall disclose the following: (A) The revised  
4 commissions to be deducted from the pari-mutuel pools each day on  
5 win, place and show betting and on different forms of multiple  
6 bettings; (B) the dates to be included in the revised betting; and  
7 (C) such other information as may be required by the Racing  
8 Commission.

9 The licensee shall establish a special fund to be used only  
10 for capital improvements or long-term debt amortization or both:  
11 *Provided*, That any licensee, heretofore licensed for a period of  
12 eight years prior to the effective date of the amendment made to  
13 this section during the regular session of the Legislature held in  
14 the year 1987, shall establish the special fund to be used only for  
15 capital improvements or physical plant maintenance, or both, at the  
16 licensee's licensed facility or at the licensee's commonly owned  
17 racing facility located within this state. Deposits made into the  
18 funds shall be in an amount equal to twenty-five percent of the  
19 increased rate total over and above the applicable rate in effect  
20 as of January 1, 1987, of the pari-mutuel pools for the day. Any  
21 amount deposited into the funds must be expended or liability  
22 therefor incurred within a period of two years from the date of  
23 deposit. Any funds not expended shall be transferred immediately  
24 into the state General Fund after expiration of the two-year

1 period.

2       The licensee shall make a deposit into a special fund  
3 established by the licensee and used for payment of regular purses  
4 offered for dog racing, which deposits out of the licensee's  
5 commissions for each day shall be three and seventy-five one-  
6 hundredths percent of the pari-mutuel pools.

7       The licensee shall further establish a special fund to be used  
8 exclusively for marketing and promotion programs; the funds shall  
9 be in an amount equal to five percent over and above the applicable  
10 rates in effect as of January 1, 1987, of the total pari-mutuel  
11 pools for the day.

12       The Racing Commission shall prepare and transmit annually to  
13 the Governor and the Legislature a report of the activities of the  
14 Racing Commission under this subdivision. The report shall include  
15 a statement of: The amount of commissions retained by licensees;  
16 the amount of taxes paid to the state; the amounts paid to  
17 municipalities, counties and the Division of Highways Dog Racing  
18 Fund; the amounts deposited by licensees into special funds for  
19 capital improvements or long-term debt amortization and a certified  
20 statement of the financial condition of any licensee depositing  
21 into the fund; the amounts paid by licensees into special funds and  
22 used for regular purses offered for dog racing; the amounts paid by  
23 licensees into special funds and used for marketing and promotion  
24 programs; and such other information as the Racing Commission may

1 consider appropriate for review.

2       (c) In addition to any commission, a licensee of horse race or  
3 dog race meetings shall also be entitled to retain the legitimate  
4 breakage, which shall be made and calculated to the dime, and from  
5 the breakage, the licensee of a horse race meeting (excluding dog  
6 race meetings), shall deposit daily fifty percent of the total of  
7 the breakage retained by the licensee into the special fund created  
8 pursuant to the provisions of subdivision (1), subsection (b) of  
9 this section for the payment of regular purses.

10       (d) The director of audit, and any other Auditors employed by  
11 the Racing Commission who are also certified public accountants or  
12 experienced public accountants, shall have free access to the space  
13 or enclosure where the pari-mutuel system of wagering is conducted  
14 or calculated at any horse or dog race meeting for the purpose of  
15 ascertaining whether or not the licensee is deducting and retaining  
16 only a commission as provided in this section and is otherwise  
17 complying with the provisions of this section. They shall also,  
18 for the same purposes only, have full and free access to all  
19 records and papers pertaining to the pari-mutuel system of wagering  
20 and shall report to the Racing Commission in writing, under oath,  
21 whether or not the licensee has deducted and retained any  
22 commission in excess of that permitted under the provisions of this  
23 section or has otherwise failed to comply with the provisions of  
24 this section.

1 (e) No licensee shall permit or allow any individual under the  
2 age of eighteen years to wager at any horse or dog racetrack,  
3 knowing or having reason to believe that the individual is under  
4 the age of eighteen years.

5 (f) Notwithstanding the foregoing provisions of subdivision  
6 (1), subsection (b) of this section, to the contrary, a  
7 thoroughbred licensee qualifying for and paying the alternate  
8 reduced tax on pari-mutuel pools provided in section ten of this  
9 article shall distribute the commission authorized to be deducted  
10 by subdivision (1), subsection (b) of this section as follows: (i)  
11 The licensee shall pay the alternate reduced tax provided in  
12 section ten of this article; (ii) the licensee shall pay one tenth  
13 of one percent of the pari-mutuel pools into the General Fund of  
14 the county commission of the county in which the racetrack is  
15 located, except if within a municipality, then to the Municipal  
16 General Fund; (iii) the licensee shall pay one half of the  
17 remainder of the commission into the special fund established by  
18 the licensee and to be used for the payment of regular purses  
19 offered for thoroughbred racing by the licensee; and (iv) the  
20 licensee shall retain the amount remaining after making the  
21 payments required in this subsection.

22 (g) Each kennel which provides or races dogs owned or leased  
23 by others shall furnish to the commission a surety bond in an  
24 amount to be determined by the commission to secure the payment to

1 the owners or lessees of the dogs the portion of any purse owed to  
2 the owner or lessee.

3 **§19-23-12b. Televised racing days; merging of pari-mutuel wagering**  
4 **pools.**

5 (a) For the purposes of this section:

6 (1) "Televised racing day" means a calendar day, assigned by  
7 the commission, at a licensed racetrack on which pari-mutuel  
8 betting is conducted on horse or dog races run at other racetracks  
9 in this state or at racetracks outside of this state which are  
10 broadcast by television at a licensed racetrack and which day or  
11 days have had the prior written approval of the representative of  
12 the majority of the owners and trainers who hold permits required  
13 by section two of this article; and

14 (2) "Host racing association" means any person who, pursuant  
15 to a license or other permission granted by the host governmental  
16 entity, conducts the horse or dog race upon which wagers are  
17 placed.

18 (b) A licensee conducting not less than ~~two hundred twenty one~~  
19 hundred fifty live racing dates for each horse or dog race meeting  
20 may, with the prior approval of the state Racing Commission,  
21 contract with any legal wagering entity in this state or in any  
22 other governmental jurisdiction to receive telecasts and accept  
23 wagers on races conducted by the legal wagering entity: *Provided,*  
24 That at those thoroughbred racetracks the licensee, in applying for

1 racing dates, shall apply for not less than ~~two hundred ten~~ one  
2 hundred fifty live racing dates for each horse race meeting:  
3 *Provided, however,* That at those thoroughbred racetracks that have  
4 participated in the West Virginia Thoroughbred Development Fund for  
5 a period of more than four consecutive calendar years prior to  
6 December 31, 1992, the licensee may apply for not less than one  
7 hundred ~~fifty-nine~~ fifty live racing dates during the calendar year  
8 1997. If, thereafter, for reasons beyond the licensee's control,  
9 related to adverse weather conditions, unforeseen casualty  
10 occurrences or a shortage of thoroughbred horses eligible to  
11 compete for purses, the licensee concludes that this number of  
12 racing days cannot be attained, the licensee may file a request  
13 with the Racing Commission to reduce the authorized live racing  
14 days. Upon receipt of the request the Racing Commission shall  
15 within seventy-two hours of the receipt of the request notify the  
16 licensee and the representative of a majority of the owners and  
17 trainers at the requesting track and the representative of the  
18 majority of the mutuel clerks at the requesting track that such  
19 request has been received and that if no objection to the request  
20 is received within ten days of the notification the request will be  
21 approved: *Provided further,* That the commission shall give  
22 consideration to whether there existed available unscheduled  
23 potential live racing dates following the adverse weather or  
24 casualty and prior to the end of the race meeting which could be

1 used as new live racing dates in order to maintain the full live  
2 racing schedule previously approved by the Racing Commission. If  
3 an objection is received by the commission within the time limits,  
4 the commission shall, within thirty days of receipt of such  
5 objection, set a hearing on the question of reducing racing days,  
6 which hearing shall be conducted at a convenient place in the  
7 county in which the requesting racetrack is located. The  
8 commission shall hear from all parties concerned and, based upon  
9 testimony and documentary evidence presented at the hearing, shall  
10 determine the required number of live racing days: *And provided*  
11 *further*, That the commission shall not reduce the number of live  
12 racing days below one hundred ~~eighty-five~~ fifty days for a horse  
13 race meeting unless the licensee requesting such reduction has:  
14 (i) Filed with the commission a current financial statement, which  
15 shall be subject to independent audit; and (ii) met the burden of  
16 proving that just cause exists for such requested reduction in live  
17 racing days. The telecasts may be received and wagers accepted at  
18 any location authorized by the provisions of section twelve-a of  
19 this article. The contract must receive the approval of the  
20 representative of the majority of the owners and trainers who hold  
21 permits required by section two of this article at the receiving  
22 thoroughbred racetrack.

23 (c) The commission may allow the licensee to commingle its  
24 wagering pools with the wagering pools of the host racing



1 association. If the pools are commingled, the wagering at the  
2 licensee's racetrack must be on tabulating equipment capable of  
3 issuing pari-mutuel tickets and be electronically linked with the  
4 equipment at the sending racetrack. Subject to the approval of the  
5 commission, the types of betting, licensee commissions and  
6 distribution of winnings on pari-mutuel pools of the sending  
7 licensee racetrack are those in effect at the licensee racetrack.  
8 Breakage for pari-mutuel pools on a televised racing day must be  
9 calculated in accordance with the law or rules governing the  
10 sending racetrack and must be distributed in a manner agreed to  
11 between the licensee and the sending racetrack. For the televised  
12 racing services it provides, the host racing association shall  
13 receive a fee to be paid by the receiving licensee racetrack which  
14 shall be in an amount to be agreed upon by the receiving licensee  
15 racetrack and the host racing association.

16 (d) The commission may assign televised racing days at any  
17 time. When a televised racing day is assigned, the commission  
18 shall assign either a steward or an auditor to preside over the  
19 televised races at the licensee racetrack.

20 (e) (1) From the licensee commissions authorized by subsection  
21 (c) of this section, the licensee shall pay one tenth of one  
22 percent of each commission into the General Fund of the county, in  
23 which the racetrack is located and at which the wagering occurred  
24 and there is imposed and the licensee shall pay, for each televised

1 racing day on which the total pari-mutuel pool exceeds \$100,000,  
2 the greater of either: (i) The total of the daily license tax and  
3 the pari-mutuel pools tax required by section ten of this article;  
4 or (ii) a daily license tax of \$1,250. For each televised racing  
5 day on which the total pari-mutuel pool is \$100,000, the licensee  
6 shall pay a daily license tax of \$500 plus an additional license  
7 tax of \$100 for each \$10,000, or part thereof, that the pari-mutuel  
8 pool exceeds \$50,000, but does not exceed \$100,000. The  
9 calculation of the total pari-mutuel pool for purposes of this  
10 subsection shall include only one half of all wagers placed at a  
11 licensed racetrack in this state on televised races conducted at  
12 another licensed racetrack within this state. Payments of the tax  
13 imposed by this section are subject to the requirements of  
14 subsection (e), section ten of this article.

15 (2) From the licensee commissions authorized by subsection (c)  
16 of this section, after payments are made in accordance with the  
17 provisions of subdivision (1) of this subsection, the licensee  
18 shall pay, for each televised racing day, one fourth of one percent  
19 of the total pari-mutuel pools for and on behalf of all employees  
20 of the licensed racing association by making a deposit into a  
21 special fund to be established by the Racing Commission and to be  
22 used for payments into the pension plan for all employees of the  
23 licensed racing association.

24 (3) From the licensee commissions authorized by subsection (c)

1 of this section, after payments are made in accordance with the  
2 provisions of subdivisions (1) and (2) of this subsection,  
3 thoroughbred licensees shall pay, one-half percent of net simulcast  
4 income and for each televised racing day on or after July 1, 1997,  
5 an additional five and one-half percent of net simulcast income  
6 into the West Virginia Thoroughbred Development Fund established by  
7 the Racing Commission according to section thirteen-b of this  
8 article: *Provided*, That no licensee qualifying for the alternate  
9 tax provisions of subsection (b), section ten of this article shall  
10 be required to make the payments unless the licensee has  
11 participated in the West Virginia Thoroughbred Development Fund for  
12 a period of more than four consecutive calendar years prior to  
13 December 31, 1992. For the purposes of this section, the term "net  
14 simulcast income" means the total commission deducted each day by  
15 the licensee from the pari-mutuel pools on simulcast horse or dog  
16 races, less direct simulcast expenses, including, but not limited  
17 to, the cost of simulcast signals, telecommunication costs and  
18 decoder costs.

19 (f) After deducting the tax and other payments required by  
20 subsection (e) of this section, the amount required to be paid  
21 under the terms of the contract with the host racing association  
22 and the cost of transmission, the horse racing association shall  
23 make a deposit equal to fifty percent of the remainder into the  
24 purse fund established under the provisions of subdivision (1),

1 subsection (b), section nine of this article. After deducting the  
2 tax and other payments required by subsection (e) of this section,  
3 dog racetracks shall pay an amount equal to two tenths of one  
4 percent of the daily simulcast pari-mutuel pool to the "West  
5 Virginia Racing Commission Special Account-West Virginia Greyhound  
6 Breeding Development Fund".

7 (g) The provisions of the "Federal Interstate Horseracing Act  
8 of 1978", also known as Public Law 95-515, Section 3001-3007 of  
9 Title 15, U.S. Code, as amended, controls in determining the intent  
10 of this section.

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

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

13 **§29-22A-3. Definitions.**

14 As used in this article:

15 (a) "Applicant" means any person applying for any video  
16 lottery license or permit.

17 (b) "Associated equipment" means any hardware located on a  
18 licensed racetrack's premises which is connected to the video  
19 lottery system for the purpose of performing communication,  
20 validation or other functions, but not including the video lottery  
21 terminals or the communication facilities of a regulated public  
22 utility.

23 (c) "Background investigation" means a security, criminal and  
24 credit investigation of a person, as defined in this section, who

1 has applied for a video lottery license or permit, or who has been  
2 granted a video lottery license or permit.

3 (d) "Central computer," "central control computer" or "central  
4 site system" means any central site computer provided to and  
5 controlled by the commission to which video lottery terminals  
6 communicate for purposes of information retrieval and terminal  
7 activation and to disable programs.

8 (e) "Commission" or "state Lottery Commission" means the West  
9 Virginia Lottery Commission created by article twenty-two of this  
10 chapter.

11 (f) "Control" means the authority to direct the management and  
12 policies of an applicant or a license or permit holder.

13 (g) "Costs" means the expenses incurred by the commission in  
14 the testing and examination of video lottery terminals and the  
15 performance of background investigations and other related  
16 activities which are charged to and collected from applicants or  
17 license or permit holders.

18 (h) "Director" means the individual appointed by the Governor  
19 to provide management and administration necessary to direct the  
20 State Lottery Office.

21 (i) "Disable" or "terminal disable" means the process of  
22 executing a shutdown command from the central control computer  
23 which causes video lottery terminals to cease functioning.

24 (j) "Display" means the visual presentation of video lottery

1 game features on a video lottery terminal in the form of video  
2 images, actual symbols or both.

3 (k) "EPROM" and "erasable programmable read-only memory chips"  
4 means the electronic storage medium on which the operation software  
5 for all games playable on a video lottery terminal resides and  
6 which can also be in the form of CD-ROM, flash RAM or other new  
7 technology medium that the commission may from time to time approve  
8 for use in video lottery terminals. All electronic storage media  
9 are considered to be the property of the State of West Virginia.

10 (l) "Floor attendant" means a person, employed by a licensed  
11 racetrack, who holds a permit issued by the commission and who  
12 corrects paper jams and bill jams in video lottery terminals and  
13 also provides courtesy services for video lottery players.

14 (m) "Gross terminal income" means the total amount of cash,  
15 vouchers or tokens inserted into the video lottery terminals  
16 operated by a licensee, minus the total value of coins and tokens  
17 won by a player and game credits which are cleared from the video  
18 lottery terminals in exchange for winning redemption tickets.

19 (n) "License" or "video lottery license" means authorization  
20 granted by the commission to a racetrack which is licensed by the  
21 West Virginia Racing Commission to conduct thoroughbred or  
22 greyhound racing meetings pursuant to article twenty-three, chapter  
23 nineteen of this code permitting the racetrack to operate video  
24 lottery terminals authorized by the commission.

1           (o) "Lottery" means the public gaming systems or games  
2 established and operated by the State Lottery Commission.

3           (p) "Manufacturer" means any person holding a permit granted  
4 by the commission to engage in the business of designing, building,  
5 constructing, assembling or manufacturing video lottery terminals,  
6 the electronic computer components of the video lottery terminals,  
7 the random number generator of the video lottery terminals, or the  
8 cabinet in which it is housed, and whose product is intended for  
9 sale, lease or other assignment to a licensed racetrack in West  
10 Virginia, and who contracts directly with the licensee for the  
11 sale, lease or other assignment to a licensed racetrack in West  
12 Virginia.

13           (q) "Net terminal income" means gross terminal income minus an  
14 amount deducted by the commission to reimburse the commission for  
15 its actual costs of administering racetrack video lottery at the  
16 licensed racetrack. No deduction for any or all costs and expenses  
17 of a licensee related to the operation of video lottery games shall  
18 be deducted from gross terminal income.

19           (r) "Noncash prize" means merchandise which a video lottery  
20 player may be given the option to receive in lieu of cash in  
21 exchange for a winning redemption ticket and which shall be  
22 assigned a redemption value equal to the actual cost of the  
23 merchandise to the licensed racetrack.

24           (s) "Own" means any beneficial or proprietary interest in any

1 property or business of an applicant or licensed racetrack.

2       (t) "Pari-mutuel racing facility," "licensed racetrack,"  
3 "racetrack" or "track" means a facility where horse or dog race  
4 meetings are held and the pari-mutuel system of wagering is  
5 authorized pursuant to the provisions of article twenty-three,  
6 chapter nineteen of this code: *Provided*, That for the purposes of  
7 this article, "pari-mutuel racing facility," "licensed racetrack,"  
8 "racetrack" or "track" includes only a facility which was licensed  
9 prior to January 1, 1994, to hold horse or dog race meetings, and  
10 which conducts not less than ~~two hundred twenty~~ one hundred fifty  
11 live racing dates for each horse or dog race meeting or such other  
12 number of live racing dates as may be approved by the Racing  
13 Commission in accordance with the provisions of section twelve-b,  
14 article twenty-three, chapter nineteen of this code.

15       (u) "Permit" means authorization granted by the commission to  
16 a person to function as either a video lottery manufacturer,  
17 service technician or validation manager.

18       (v) "Person" means any natural person, corporation,  
19 association, partnership, limited partnership, or other entity,  
20 regardless of its form, structure or nature.

21       (w) "Player" means a person who plays a video lottery game on  
22 a video lottery terminal at a racetrack licensed by the commission  
23 to conduct video lottery games.

24       (x) "Service technician" means a person, employed by a



1 licensed racetrack, who holds a permit issued by the commission and  
2 who performs service, maintenance and repair on licensed video  
3 lottery terminals in this state.

4 (y) "Video lottery game" means a commission approved, owned  
5 and controlled electronically simulated game of chance which is  
6 displayed on a video lottery terminal and which:

7 (1) Is connected to the commission's central control computer  
8 by an on-line or dial-up communication system;

9 (2) Is initiated by a player's insertion of coins, currency,  
10 vouchers or tokens into a video lottery terminal, which causes game  
11 play credits to be displayed on the video lottery terminal and,  
12 with respect to which, each game play credit entitles a player to  
13 choose one or more symbols or numbers or to cause the video lottery  
14 terminal to randomly select symbols or numbers;

15 (3) Allows the player to win additional game play credits,  
16 coins or tokens based upon game rules which establish the random  
17 selection of winning combinations of symbols or numbers or both and  
18 the number of free play credits, coins or tokens to be awarded for  
19 each winning combination of symbols or numbers or both;

20 (4) Is based upon computer-generated random selection of  
21 winning combinations based totally or predominantly on chance;

22 (5) In the case of a video lottery game which allows the  
23 player an option to select replacement symbols or numbers or  
24 additional symbols or numbers after the game is initiated and in

1 the course of play, either: (A) Signals the player, prior to any  
2 optional selection by the player of randomly generated replacement  
3 symbols or numbers, as to which symbols or numbers should be  
4 retained by the player to present the best chance, based upon  
5 probabilities, that the player may select a winning combination;  
6 (B) signals the player, prior to any optional selection by the  
7 player of randomly generated additional symbols or numbers, as to  
8 whether such additional selection presents the best chance, based  
9 upon probabilities, that the player may select a winning  
10 combination; or (C) randomly generates additional or replacement  
11 symbols and numbers for the player after automatically selecting  
12 the symbols and numbers which should be retained to present the  
13 best chance, based upon probabilities, for a winning combination,  
14 so that in any event, the player is not permitted to benefit from  
15 any personal skill, based upon a knowledge of probabilities, before  
16 deciding which optional numbers or symbols to choose in the course  
17 of video lottery game play;

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

22 (7) Does not use the following game themes commonly associated  
23 with casino gambling: Roulette, dice, or baccarat card games:  
24 *Provided*, That games having a display with symbols which appear to

1 roll on drums to simulate a classic casino slot machine, game  
2 themes of other card games and keno may be used.

3 (z) "Validation manager" means a person who holds a permit  
4 issued by the commission and who performs video lottery ticket  
5 redemption services.

6 (aa) "Video lottery" means a lottery which allows a game to be  
7 played utilizing an electronic computer and an interactive computer  
8 terminal device, equipped with a video screen and keys, a keyboard  
9 or other equipment allowing input by an individual player, into  
10 which the player inserts coins, currency, vouchers or tokens as  
11 consideration in order for play to be available, and through which  
12 terminal device the player may receive free games, coins, tokens or  
13 credit that can be redeemed for cash, annuitized payments over  
14 time, a noncash prize or nothing, as may be determined wholly or  
15 predominantly by chance. "Video lottery" does not include a  
16 lottery game which merely utilizes an electronic computer and a  
17 video screen to operate a lottery game and communicate the results  
18 of the game, such as the game "Travel", and which does not utilize  
19 an interactive electronic terminal device allowing input by an  
20 individual player.

21 (bb) "Video lottery terminal" means a commission-approved  
22 interactive electronic terminal device which is connected with the  
23 commission's central computer system, and which is used for the  
24 purpose of playing video lottery games authorized by the

1 commission. A video lottery terminal may simulate the play of one  
2 or more video lottery games.

3 (cc) "Wager" means a sum of money or thing of value risked on  
4 an uncertain occurrence.

5 **§29-22A-10. Accounting and reporting; commission to provide**  
6 **communications protocol data; distribution of net**  
7 **terminal income; remittance through electronic**  
8 **transfer of funds; establishment of accounts and**  
9 **nonpayment penalties; commission control of**  
10 **accounting for net terminal income; settlement of**  
11 **accounts; manual reporting and payment may be**  
12 **required; request for reports; examination of**  
13 **accounts and records.**

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

21 (b) The gross terminal income of a licensed racetrack shall be  
22 remitted to the commission through the electronic transfer of  
23 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, 2011, through June 30, 2020, the term  
17 "actual costs and expenses" may include transfers of up to \$10  
18 million in surplus allocations for each fiscal year, as calculated  
19 by the commission when it has closed its books for the fiscal year,  
20 to the Licensed Racetrack Modernization Fund created by subdivision  
21 (2), subsection (b) of this section. For all fiscal years  
22 beginning on or after July 1, 2001, the commission shall not  
23 receive an amount of gross terminal income in excess of the amount  
24 of gross terminal income received during the fiscal year ending on

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

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

1 remaining unused balance carried forward shall revert to the  
2 lottery fund. For purposes of this section, the term "facility  
3 modernization improvements" includes acquisitions of new and unused  
4 video lottery terminals and related equipment. Video lottery  
5 terminals financed through the recoupment provided in this  
6 subdivision must be retained by the licensee in its West Virginia  
7 licensed location for a period of not less than five years from the  
8 date of initial installation.

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

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

24 (2) Until July 1, 2005, fourteen percent of net terminal

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

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

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

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

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

20 (B) Beginning July 1, 1999, and thereafter, any amount in  
21 excess of the two percent received during the fiscal year 1999 by  
22 a county in which a racetrack other than a racetrack described in  
23 paragraph (A) of this proviso is located and where the racetrack  
24 has been located in a municipality within the county since on or



1 before January 1, 1999, shall be divided, if applicable, as  
2 follows:

3 (i) The county shall receive fifty percent of the excess  
4 amount; and

5 (ii) The municipality shall receive fifty percent of the  
6 excess amount; and

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

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

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

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

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

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

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

22           (i) 1.375 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 Tourism Promotion Fund created under

1 section twelve, article two, chapter five-b of this code;

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

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

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

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

21 (9) (A) On and after July 1, 2005, seven 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 beginning on July 1,

1 2013, and thereafter, the first \$6 million generated by this  
2 subdivision shall be deposited into the Community-Based Services  
3 Fund for use as set forth in section twenty-seven of article  
4 twenty-two-c, chapter twenty-nine of this code: *Provided, however,*  
5 That in any fiscal year when the amount of money generated by this  
6 subdivision totals ~~\$11~~ \$17 million, with \$6 million having been  
7 deposited into the Community-Based Services Fund and \$11 million  
8 having been deposited into the Workers' Compensation Debt Reduction  
9 Fund, all subsequent distributions under this subdivision shall be  
10 deposited in the special fund established by the licensee and used  
11 for the payment of regular purses in addition to the other amounts  
12 provided in article twenty-three, chapter nineteen of this code;

13 (B) The deposit of the seven percent of net terminal income  
14 into the Worker's Compensation Debt Reduction Fund pursuant to this  
15 subdivision shall expire and not be imposed with respect to these  
16 funds and the first \$6 million of such funds shall thereafter be  
17 deposited into the Community-Based Services Fund for use as set  
18 forth in section twenty-seven of article twenty-two-c, chapter  
19 twenty-nine of this code, and any additional amounts shall be  
20 deposited in the special fund established by the licensee and used  
21 for payment of regular purses in addition to the other amounts  
22 provided in article twenty-three, chapter nineteen of this code, on  
23 and after the first day of the month following the month in which  
24 the Governor certifies to the Legislature that: (i) The revenue

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

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

9 (A) For the fiscal year beginning July 1, 2003, the veterans  
10 memorial program shall receive one percent of the net terminal  
11 income until sufficient moneys have been received to complete the  
12 veterans memorial on the grounds of the State Capitol Complex in  
13 Charleston, West Virginia. The moneys shall be deposited in the  
14 State Treasury in the Division of Culture and History special fund  
15 created under section three, article one-i, chapter twenty-nine of  
16 this code: *Provided*, That only after sufficient moneys have been  
17 deposited in the fund to complete the veterans memorial and to pay  
18 in full the annual bonded indebtedness on the veterans memorial,  
19 not more than \$20,000 of the one percent of net terminal income  
20 provided in this subdivision shall be deposited into a special  
21 revenue fund in the State Treasury, to be known as the "John F.  
22 'Jack' Bennett Fund". The moneys in this fund shall be expended by  
23 the Division of Veterans Affairs to provide for the placement of  
24 markers for the graves of veterans in perpetual cemeteries in this

1 state. The Division of Veterans Affairs shall promulgate  
2 legislative rules pursuant to the provisions of article three,  
3 chapter twenty-nine-a of this code specifying the manner in which  
4 the funds are spent, determine the ability of the surviving spouse  
5 to pay for the placement of the marker and setting forth the  
6 standards to be used to determine the priority in which the  
7 veterans grave markers will be placed in the event that there are  
8 not sufficient funds to complete the placement of veterans grave  
9 markers in any one year, or at all. Upon payment in full of the  
10 bonded indebtedness on the veterans memorial, \$100,000 of the one  
11 percent of net terminal income provided in this subdivision shall  
12 be deposited in the special fund in the Division of Culture and  
13 History created under section three, article one-i, chapter twenty-  
14 nine of this code and be expended by the Division of Culture and  
15 History to establish a West Virginia veterans memorial archives  
16 within the Cultural Center to serve as a repository for the  
17 documents and records pertaining to the veterans memorial, to  
18 restore and maintain the monuments and memorial on the Capitol  
19 grounds: *Provided, however,* That \$500,000 of the one percent of  
20 net terminal income shall be deposited in the State Treasury in a  
21 special fund of the Department of Administration, created under  
22 section five, article four, chapter five-a of this code, to be used  
23 for construction and maintenance of a parking garage on the State  
24 Capitol Complex; and the remainder of the one percent of net

1 terminal income shall be deposited in equal amounts in the Capitol  
2 Dome and Improvements Fund created under section two, article four,  
3 chapter five-a of this code and Cultural Facilities and Capitol  
4 Resources Matching Grant Program Fund created under section three,  
5 article one of this chapter.

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

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

13 (ii) The remainder of the one percent of net terminal income  
14 and all of the one percent of net terminal income described in  
15 paragraph (B), subdivision (9), subsection (a), section ten-b of  
16 this article shall be distributed as follows: The net terminal  
17 income shall be deposited in equal amounts into the Capitol Dome  
18 and Capitol Improvements Fund created under section two, article  
19 four, chapter five-a of this code and the Cultural Facilities and  
20 Capitol Resources Matching Grant Program Fund created under section  
21 three, article one, chapter twenty-nine of this code until a total  
22 of \$1,500,000 is deposited into the Cultural Facilities and Capitol  
23 Resources Matching Grant Program Fund; thereafter, the remainder  
24 shall be deposited into the Capitol Dome and Capitol Improvements

1 Fund.

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

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

24       (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

1 reports of play transactions for their respective video lottery  
2 terminals and other marketing information not considered  
3 confidential by the commission. The commission may charge a  
4 reasonable fee for the cost of producing and mailing any report  
5 other than the billing statements.

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

13 **§29-22A-10b. Distribution of excess net terminal income.**

14 (a) For all years beginning on or after July 1, 2001, any  
15 amount of net terminal income generated annually by a licensed  
16 racetrack in excess of the amount of net terminal income generated  
17 by that licensed racetrack during the fiscal year ending on June  
18 30, 2001, shall be divided as follows:

19 (1) The Commission shall receive forty-one percent of net  
20 terminal income, which the commission shall deposit in the State  
21 Excess Lottery Revenue Fund created in section eighteen-a, article  
22 twenty-two of this chapter;

23 (2) Until July 1, 2005, eight percent of net terminal income  
24 at a licensed racetrack shall be deposited in the special fund

1 established by the licensee and used for payment of regular purses  
2 in addition to other amounts provided in article twenty-three,  
3 chapter nineteen of this code; on and after July 1, 2005, the rate  
4 shall be four percent of net terminal income;

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

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

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

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

20 (B) Any amount by which the total amount under this section  
21 and subdivision (3), subsection (c), section ten of this article is  
22 in excess of the two percent received during fiscal year 1999 by a  
23 county in which a racetrack other than a racetrack described in  
24 paragraph (A) of this proviso is located and where the racetrack

1 has been located in a municipality within the county since on or  
2 before January 1, 1999, shall be divided, if applicable, as  
3 follows:

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

6 (ii) The municipality shall receive fifty percent of the  
7 excess amount; and

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

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

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

23 (6) The West Virginia Racing Commission shall receive one  
24 percent of the net terminal income which shall be deposited and

1 used as provided in section thirteen-c, article twenty-three,  
2 chapter nineteen of this code;

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

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

12 (9) (A) On and after July 1, 2005, four percent of net  
13 terminal income shall be deposited into the Workers' Compensation  
14 Debt Reduction Fund created in section five, article two-d, chapter  
15 twenty-three of this code: *Provided*, That beginning on July 1,  
16 2013, and thereafter, the first \$6 million generated by this  
17 subdivision, together with the total allocation transferred by the  
18 operation of subdivision (9), subsection (c), section ten of this  
19 article, shall be deposited into the Community-Based Services Fund  
20 for use as set forth in section twenty-seven of article twenty-two-  
21 c, chapter twenty-nine of this code: *Provided, however*, That in  
22 any fiscal year when the amount of money generated by this  
23 subdivision together with the total allocation transferred by the  
24 operation of subdivision (9), subsection (c), section ten of this

1 article totals ~~\$11,000,000~~ \$17 million, with \$6 million having been  
2 deposited into the Community-Based Services Fund and \$11 million  
3 having been deposited into the Workers' Compensation Debt Reduction  
4 Fund, all subsequent distributions under this subdivision (9)  
5 during that fiscal year shall be deposited in the special fund  
6 established by the licensee and used for payment of regular purses  
7 in addition to other amounts provided in article twenty-three,  
8 chapter nineteen of 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~~ and the first \$6 million of such funds shall  
13 thereafter be deposited into the Community-Based Services Fund for  
14 use as set forth in section twenty-seven of article twenty-two-c,  
15 chapter twenty-nine of this code, and any additional amounts shall  
16 be deposited in the special fund established by the licensee and  
17 used for payment of regular purses in addition to the other amounts  
18 provided in article twenty-three, chapter nineteen of this code on  
19 and after the first day of the month following the month in which  
20 the Governor certifies to the Legislature that: (i) The revenue  
21 bonds issued pursuant to article two-d, chapter twenty-three of  
22 this code have been retired or payment of the debt service is  
23 provided for; and (ii) that an independent certified actuary has  
24 determined that the unfunded liability of the old fund, as defined

1 in chapter twenty-three of this code, has been paid or provided in  
2 its entirety; and

3 (10) (A) One percent of the net terminal income shall be  
4 deposited in equal amounts in the Capitol Dome and Improvements  
5 Fund created under section two, article four, chapter five-a of  
6 this code and Cultural Facilities and Capitol Resources Matching  
7 Grant Program Fund created under section three, article one of this  
8 chapter; and

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

15 (b) The commission may establish orderly and effective  
16 procedures for the collection and distribution of funds under this  
17 section in accordance with the provisions of this section and  
18 section ten of this article.

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

20 **§29-22C-8. License to operate a racetrack with West Virginia**  
21 **Lottery table games.**

22 (a) *Racetrack table games licenses.* -- The commission may  
23 issue up to four racetrack table games licenses to operate West

1 Virginia Lottery table games in accordance with the provisions of  
2 this article. The Legislature intends that no more than four  
3 licenses to operate a racetrack with West Virginia Lottery table  
4 games in this state shall be permitted in any event.

5 (b) *Grant of license.* -- Upon the passage of a local option  
6 election in a county in accordance with the provisions of section  
7 seven of this article, the commission shall immediately grant a  
8 West Virginia Lottery table games license, and a license for the  
9 right to conduct West Virginia Lottery table games as assignee to  
10 the intellectual property rights of the state, to allow the  
11 licensee to conduct West Virginia table games at the licensed pari-  
12 mutuel racetrack identified on the local option election ballot,  
13 provided that racetrack holds a valid racetrack video lottery  
14 license issued by the commission pursuant to article twenty-two-a  
15 of this chapter and a valid racing license granted by the West  
16 Virginia Racing Commission pursuant to the provision of article  
17 twenty-three, chapter nineteen of this code and has otherwise met  
18 the requirements for licensure under the provisions of this article  
19 and the rules of the commission.

20 (c) *Location.* -- A racetrack table games license authorizes  
21 the operation of West Virginia Lottery table games on the grounds  
22 of the particular licensed facility identified in the racetrack  
23 video lottery license issued pursuant to article twenty-two-a and  
24 the license to conduct horse or dog racing issued pursuant to



1 article twenty-three, chapter nineteen of this code.

2       (d) *Floor plan submission requirement.* -- Prior to commencing  
3 the operation of any table games in a designated gaming area, a  
4 racetrack table games licensee shall submit to the commission for  
5 its approval a detailed floor plan depicting the location of the  
6 designated gaming area in which table games gaming equipment will  
7 be located and its proposed arrangement of the table games gaming  
8 equipment. Any floor plan submission that satisfies the  
9 requirements of the rules promulgated by the commission shall be  
10 considered approved by the commission unless the racetrack table  
11 games licensee is notified in writing to the contrary within one  
12 month of filing a detailed floor plan.

13       (e) *Management service contracts.* --

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

21       (2) *Material change.* -- The licensed racetrack table games  
22 licensee shall submit any material change in a management service  
23 contract previously approved by the commission to the commission  
24 for its approval or rejection before the material change may take

1 effect.

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

5       (4) *Other commission approvals and licenses.* -- The duties and  
6 responsibilities of a management services provider under a  
7 management services contract may not be assigned, delegated,  
8 subcontracted or transferred to a third party to perform without  
9 the prior approval of the commission. Third parties must be  
10 licensed under this article before providing service. The  
11 commission may by rule clarify application of this subdivision and  
12 provide exceptions to its application. The commission shall  
13 license and require the display of West Virginia Lottery game logos  
14 on appropriate game surfaces and other gaming items and locations  
15 as the commission considers appropriate.

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

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

24       (2) On the effective date of this article, the provisions of

1 section twenty-three of this article apply to all video lottery  
2 games conducted within a racetrack facility, notwithstanding any  
3 inconsistent provisions contained in article twenty-two-a of this  
4 chapter to the contrary.

5 (3) On and after the effective date of this article, vacation  
6 of the premises after service of beverages ceases is not required,  
7 notwithstanding to the contrary any inconsistent provisions of this  
8 code or inconsistent rules promulgated by the Alcohol Beverage  
9 Control Commissioner with respect to hours of sale of those  
10 beverages, or required vacation of the premises.

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

12 (1) An initial racetrack table games license fee of \$1,500,000  
13 shall be paid to the commission at the time of issuance of the  
14 racetrack table games license, regardless of the number of months  
15 remaining in the license year for which it is issued. All licenses  
16 expire at the end of the day on June 30 each year.

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

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

21 (B) Pays to the commission the annual license renewal fee of  
22 \$2,500,000 required by this section at the time it files its  
23 application for renewal of its license under article twenty-two-a  
24 of this chapter: Provided, That beginning July 1, 2013, and

1 thereafter, the annual license renewal fee required by this section  
2 shall be \$1 million due at the time of filing such application for  
3 renewal of a license under article twenty-two-a of this chapter;  
4 and

5 (C) During the current license year, the licensee complied  
6 with all provisions of this article, all rules adopted by the  
7 commission and all final orders of the commission applicable to the  
8 licensee.

9 (3) *Annual license surcharge for failure to construct hotel on*  
10 *premises.* -- It is the intent of the Legislature that each  
11 racetrack for which a racetrack table games license has been issued  
12 be or become a destination tourism resort facility. To that end,  
13 it is important that each racetrack for which a racetrack table  
14 games license has been issued operate a hotel with significant  
15 amenities. Therefore, in addition to all other taxes and fees  
16 required by the provisions of this article, there is hereby  
17 imposed, upon each racetrack for which a racetrack table games  
18 license has been issued an annual license surcharge, payable to the  
19 commission in the amount of \$2,500,000 if that racetrack does not  
20 operate a hotel on its racing property that contains at least one  
21 hundred fifty guest rooms with significant amenities within three  
22 years of the passage of the local option election in its county  
23 authorizing table games at the racetrack, provided the time for  
24 completion of the hotel shall be extended by the same number of

1 days as the completion of the hotel is delayed by a force majeure  
2 events or conditions beyond the reasonable control of the racetrack  
3 licensee. The surcharge shall be paid upon each renewal of its  
4 racetrack table games license made after the expiration of the  
5 three year period, and may be extended by the above force majeure  
6 events or conditions, until the racetrack opens a qualifying hotel.

7 (4) If the licensee fails to apply to renew its license under  
8 article twenty-three, chapter nineteen and article twenty-two-a,  
9 chapter twenty-nine of this code until after the license expires,  
10 the commission shall renew its license under this article at the  
11 time it renews its license under article twenty-two-a of this  
12 chapter provided the licensee has paid the annual license fee  
13 required by this section and during the preceding license year the  
14 licensee complied with all provisions of this article, all rules  
15 adopted by the commission and all final orders of the commission  
16 applicable to the licensee.

17 (h) *Facility qualifications.* -- A racetrack table games  
18 licensee shall demonstrate that the racetrack with West Virginia  
19 Lottery table games will: (1) Be accessible to disabled  
20 individuals in accordance with applicable federal and state laws;  
21 (2) be licensed in accordance with this article, and all other  
22 applicable federal, state and local laws; and (3) meet any other  
23 qualifications specified in rules adopted by the commission.

24 (i) *Surety bond.* -- A racetrack table games licensee shall

1 execute a surety bond to be given to the state to guarantee the  
2 licensee faithfully makes all payments in accordance with the  
3 provisions of this article and rules promulgated by the commission.  
4 The surety bond shall be:

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

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

9 (3) With a surety approved by the commission who is licensed  
10 to write surety insurance in this state. The bond shall remain in  
11 effect during the term of the license and may not be canceled by a  
12 surety on less than thirty days' notice in writing to the  
13 commission. The total and aggregate liability of the surety on the  
14 bond is limited to the amount specified in the bond.

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

21 (k) *Audits.* -- When applying for a license and annually  
22 thereafter prior to license renewal, a racetrack table games  
23 licensee shall submit to the commission an annual audit, by a  
24 certified public accountant, of the financial transactions and

1 condition of the licensee's total operations. The audit shall be  
2 made in accordance with generally accepted accounting principles  
3 and applicable federal and state laws.

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

9 **§29-22C-10. Duties of racetrack table games licensee.**

10 (a) *General.* -- All racetrack table games licensees shall:

11 (1) Promptly report to the commission any facts or  
12 circumstances related to the operation of a racetrack with West  
13 Virginia Lottery table games which constitute a violation of state  
14 or federal law;

15 (2) Conduct all table games activities and functions in a  
16 manner which does not pose a threat to the public health, safety or  
17 welfare of the citizens of this state and which does not adversely  
18 affect the security or integrity of the operation of West Virginia  
19 Lottery table games;

20 (3) Hold the commission and this state harmless from and  
21 defend and pay for the defense of any and all claims which may be  
22 asserted against a racetrack licensee, the commission, the state or  
23 employees thereof, arising from the licensee's actions or omission  
24 while acting as an agent of the commission by operation of West

1 Virginia Lottery table games pursuant to this article;

2 (4) Assist the commission in maximizing table games revenues;

3 (5) Give preference in hiring to existing employees who have  
4 expressed an interest in transferring to an entry level West  
5 Virginia Lottery Table games job and who have demonstrated the  
6 potential to succeed in that job. To enable these employees to  
7 develop the skills necessary to fill an entry level West Virginia  
8 Lottery table games position, a licensee shall provide customary  
9 industry training for entry level West Virginia Lottery table games  
10 jobs. The dates, times, place and manner of providing such  
11 training, the appropriate qualifications and certifications, the  
12 number of existing employees to be trained, the determination of  
13 standards for evaluating successful performance in live auditions  
14 for such positions and the determination of who shall be given West  
15 Virginia Lottery table game jobs shall be within the sole business  
16 discretion of the licensee's management, provided that among  
17 equally qualified applicants, as determined by the licensee, length  
18 of service shall be the determining factor;

19 (6) Maintain all records required by the commission;

20 (7) Upon request by the commission, provide the commission  
21 access to all records and the physical premises where the  
22 licensee's table games activities and related activities occur, for  
23 the purpose of monitoring or inspecting the licensee's activities  
24 and the table games, gaming equipment and security equipment;



1           (8) Keep current in all payments and obligations to the  
2 commission; and

3           (9) Conduct no less than ~~two hundred twenty~~ one hundred fifty  
4 live racing dates for each horse or dog race meeting or such other  
5 number of live racing dates as may be approved by the Racing  
6 Commission in accordance with the provisions of section twelve-b,  
7 article twenty-three, chapter nineteen of this code, and otherwise  
8 keep in good standing, all licenses and permits granted by the  
9 Racing Commission pursuant to section six, article twenty-three,  
10 chapter nineteen of this code, and any rules promulgated  
11 thereunder.

12           (b) *Specific.* -- All racetrack table games licensees shall:

13           (1) Acquire West Virginia Lottery table games and gaming  
14 equipment by purchase, lease or other assignment and provide a  
15 secure location for the placement, operation and play of the table  
16 games and gaming equipment;

17           (2) Permit no person to tamper with or interfere with the  
18 operation of any West Virginia Lottery table game;

19           (3) Ensure that West Virginia Lottery table games are within  
20 the sight and control of designated employees of the licensed  
21 racetrack with West Virginia Lottery table games and under  
22 continuous observation by security equipment in conformity with  
23 specifications and requirements of the commission;

24           (4) Ensure that West Virginia Lottery table games are placed

1 and remain placed in the specific locations within designated  
 2 gaming areas at the licensed racetrack which have been approved by  
 3 the commission. West Virginia Lottery table games at a licensed  
 4 racetrack shall only be relocated in accordance with the rules of  
 5 the commission;

6 (5) Maintain at all times sufficient cash and gaming tokens,  
 7 chips and electronic cards or other electronic media;

8 (6) Install, post and display conspicuously at locations  
 9 within or about the licensed racetrack with West Virginia Lottery  
 10 table games, signs, redemption information and other promotional  
 11 material as required by the commission; and

12 (7) Assume liability for stolen money from any table game.

13 **§29-22C-26. Tax on the privilege of holding a license to operate**  
 14 **West Virginia Lottery table games.**

15 (a) *Imposition and rate of tax.* -- For the privilege of  
 16 holding a license under this article to operate table games, there  
 17 is levied and shall be collected from the racetrack table games  
 18 licensee the annual privilege tax imposed by this section. The tax  
 19 shall be ~~thirty-five~~ twenty-five percent of the licensee's adjusted  
 20 gross receipts from the operation of West Virginia Lottery table  
 21 games. For purposes of calculating the amount of tax due under  
 22 this section, the licensee shall use the accrual method of  
 23 accounting.

24 (b) *Tax returns and payment of tax.* --

1           (1) The annual tax levied by subsection (a) of this section is  
2 due and payable to the commission in weekly installments on or  
3 before the Wednesday of the calendar week following the week in  
4 which the adjusted gross receipts were received and the tax  
5 accrued.

6           (2) The racetrack table games licensee shall, on or before  
7 Wednesday of each week, make out and submit by electronic  
8 communication to the commission, a return for the preceding week,  
9 in the form prescribed by the commission, showing:

10           (A) The total gross receipts and adjusted gross receipts from  
11 operation of West Virginia Lottery table games during that week;

12           (B) The amount of tax for which the racetrack table games  
13 licensee is liable; and

14           (C) Any additional information necessary in the computation  
15 and collection of the tax required by the commission.

16           (3) The amount of tax shown to be due on the return shall be  
17 remitted by electronic funds transfer simultaneously with the  
18 filing of the return. All payments received pursuant to this  
19 section shall be deposited in the Racetrack Table Games Fund in  
20 accordance with the provisions of section twenty-seven of this  
21 article.

22           (4) When adjusted gross receipts for a week is a negative  
23 number because the winnings paid to patrons wagering on the  
24 racetrack's West Virginia Lottery table games exceeds the

1 racetrack's gross receipts from the purchase of table game tokens,  
2 chips or electronic media by patrons, the commission shall allow  
3 the licensee to, pursuant to rules of the commission, carry over  
4 the negative amount of adjusted gross receipts to returns filed for  
5 subsequent weeks. The negative amount of adjusted gross receipts  
6 may not be carried back to an earlier week and the commission is  
7 not required to refund any tax received by the commission, except  
8 when the licensee surrenders its license to act as agent of the  
9 commission in operating West Virginia lottery table games under  
10 this article and the licensee's last return filed under this  
11 section shows negative adjusted gross receipts. In that case, the  
12 commission shall multiply the amount of negative adjusted gross  
13 receipts by the applicable rate of tax and pay the amount to the  
14 licensee, in accordance with rules of the commission.

15       (c) *Tax imposed by this section is in lieu of other taxes.* --

16       (1) With the exception of the ad valorem property tax  
17 collected under chapter eleven-a of this code, the tax imposed by  
18 this section is in lieu of all other state taxes and fees imposed  
19 on the operation of, or the proceeds from operation of West  
20 Virginia Lottery table games, except as otherwise provided in this  
21 section.

22       The Consumers Sales and Services Tax imposed pursuant to  
23 article fifteen, chapter eleven of this code, shall not apply to  
24 the licensee's gross receipts from any wagering on West Virginia

1 Lottery table games authorized pursuant to this article or to the  
2 licensee's purchase of gaming equipment, supplies or services  
3 directly used in operation of the table games authorized by this  
4 article. These purchases are also exempt from the Use Tax imposed  
5 by article fifteen-a, chapter eleven of this code.

6 (2) With the exception of the ad valorem property tax  
7 collected under chapter eleven-a of this code, the tax imposed by  
8 this section is in lieu of all local taxes and fees levied on or  
9 imposed with respect to the privilege of offering West Virginia  
10 Lottery table games to the public, including, but not limited to,  
11 the municipal business and occupation taxes and amusement taxes  
12 authorized by article thirteen, chapter eight of this code, and the  
13 municipal sales and service tax and use taxes authorized by article  
14 thirteen-c, chapter eight of this code.

15 (d) *Prohibition on credits.* -- Notwithstanding any other  
16 provision of this code to the contrary, no credit may be allowed  
17 against the tax imposed by this section or against any other tax  
18 imposed by any other provision of this code for any investment in  
19 gaming equipment, or for any investment in real property, or in  
20 improvements to the real property, that is used in the operation of  
21 West Virginia Lottery table games.

NOTE: The purpose of this bill is to provide that the number  
of horse races or dog races held on a racing day be set by the

licensee. The bill reduces the number of racing dates required for a horse or dog racing meeting license application. The bill provides for use of funds paid to Horsemen's Benevolent and Protective Association from special fund for payment of regular purses. The bill further decreases the number of live racing dates required for receiving telecasts and accepting wagers on horse and dog race meetings. The bill further decreases the number of dates on which live racing must be conducted by racetrack video lottery and racetrack table games licensee. The bill provides for distribution of certain amounts of net terminal income derived from racetrack video lottery terminals to Community-Based Services Fund to offset reduced racetrack table games license renewal fee and decrease in table game privilege tax. The bill further provides for annual racetrack table games license renewal fee and to decrease percentage of table games privilege tax.

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