

Senate Bill No. 615

(By Senator Kessler (Mr. President))

[Introduced March 22, 2013; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact 29-22C-8 of said code, all relating to providing for distribution of certain amounts of net terminal income derived from racetrack video lottery terminals; and amending the method for determining a table game license renewal fee for West Virginia pari-mutuel racetracks.

Be it enacted by the Legislature of West Virginia:

That §29-22A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22C-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net

1 **terminal income; remittance through electronic**
2 **transfer of funds; establishment of accounts and**
3 **nonpayment penalties; commission control of**
4 **accounting for net terminal income; settlement of**
5 **accounts; manual reporting and payment may be**
6 **required; request for reports; examination of**
7 **accounts and records.**

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

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

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

24 (2) A Licensed Racetrack Modernization Fund is created within

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

1 licensed location for a period of not less than five years from the
2 date of initial installation.

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

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

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

24 (3) The county where the video lottery terminals are located

1 shall receive two percent of the net terminal income: *Provided,*
2 That:

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

8 (i) The county shall receive fifty percent of the excess
9 amount; and

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

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

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

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

24 (C) This proviso shall not affect the amount to be received

1 under this subdivision by any other county other than a county
2 described in paragraph (A) or (B) of this proviso;

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

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

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

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

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

1 percent of the net terminal income described in this section and
2 section ten-b of this article into the fund administered by the
3 West Virginia Economic Development Authority pursuant to section
4 seven, article fifteen, chapter thirty-one of this code, \$5 million
5 into the Capitol Renovation and Improvement Fund administered by
6 the Department of Administration pursuant to section six, article
7 four, chapter five-a of this code and \$5 million into the Tax
8 Reduction and Federal Funding Increased Compliance Fund; 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 three percent of net terminal income and the
12 three percent of net terminal income described in paragraph (B),
13 subdivision (8), subsection (a), section ten-b of this article
14 shall be distributed as provided in this paragraph as follows:

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

19 (ii) 0.375 percent of the total amount of net terminal income
20 described in this section and in section ten-b of this article
21 shall be deposited into the Development Office Promotion Fund
22 created under section three-b, article two, chapter five-b of this
23 code;

24 (iii) 0.5 percent of the total amount of net terminal income

1 described in this section and in section ten-b of this article
2 shall be deposited into the Research Challenge Fund created under
3 section ten, article one-b, chapter eighteen-b of this code;

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

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

14 (9) (A) On and after July 1, 2005, seven percent of net
15 terminal income shall be deposited into the Workers' Compensation
16 Debt Reduction Fund created in section five, article two-d, chapter
17 twenty-three of this code: Provided, That beginning on July 1,
18 2013, and thereafter, the first \$3 million generated by this
19 subdivision shall be deposited into the Community-Based Services
20 Fund for use as set forth in section twenty-seven, article twenty-
21 two-c of this chapter: Provided, however, That in any fiscal year
22 when the amount of money generated by this subdivision totals \$11
23 \$14 million, with \$3 million having been deposited into the
24 Community-Based Services Fund and \$11 million having been deposited

1 into the Workers' Compensation Debt Reduction Fund, all subsequent
2 distributions under this subdivision shall be deposited in the
3 special fund established by the licensee and used for the payment
4 of regular purses in addition to the other amounts provided in
5 article twenty-three, chapter nineteen of this code;

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

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

1 (A) For the fiscal year beginning July 1, 2003, the veterans
2 memorial program shall receive one percent of the net terminal
3 income until sufficient moneys have been received to complete the
4 veterans memorial on the grounds of the State Capitol Complex in
5 Charleston, West Virginia. The moneys shall be deposited in the
6 State Treasury in the Division of Culture and History special fund
7 created under section three, article one-i, chapter twenty-nine of
8 this code: *Provided*, That only after sufficient moneys have been
9 deposited in the fund to complete the veterans memorial and to pay
10 in full the annual bonded indebtedness on the veterans memorial,
11 not more than \$20,000 of the one percent of net terminal income
12 provided in this subdivision shall be deposited into a special
13 revenue fund in the State Treasury, to be known as the "John F.
14 'Jack' Bennett Fund". The moneys in this fund shall be expended by
15 the Division of Veterans Affairs to provide for the placement of
16 markers for the graves of veterans in perpetual cemeteries in this
17 state. The Division of Veterans Affairs shall promulgate
18 legislative rules pursuant to the provisions of article three,
19 chapter twenty-nine-a of this code specifying the manner in which
20 the funds are spent, determine the ability of the surviving spouse
21 to pay for the placement of the marker and setting forth the
22 standards to be used to determine the priority in which the
23 veterans grave markers will be placed in the event that there are
24 not sufficient funds to complete the placement of veterans grave

1 markers in any one year, or at all. Upon payment in full of the
2 bonded indebtedness on the veterans memorial, \$100,000 of the one
3 percent of net terminal income provided in this subdivision shall
4 be deposited in the special fund in the Division of Culture and
5 History created under section three, article one-i, chapter twenty-
6 nine of this code and be expended by the Division of Culture and
7 History to establish a West Virginia veterans memorial archives
8 within the Cultural Center to serve as a repository for the
9 documents and records pertaining to the veterans memorial, to
10 restore and maintain the monuments and memorial on the Capitol
11 grounds: *Provided, however,* That \$500,000 of the one percent of net
12 terminal income shall be deposited in the State Treasury in a
13 special fund of the Department of Administration, created under
14 section five, article four, chapter five-a of this code, to be used
15 for construction and maintenance of a parking garage on the State
16 Capitol Complex; and the remainder of the one percent of net
17 terminal income shall be deposited in equal amounts in the Capitol
18 Dome and Improvements Fund created under section two, article four,
19 chapter five-a of this code and Cultural Facilities and Capitol
20 Resources Matching Grant Program Fund created under section three,
21 article one of this chapter.

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

23 (i) Five hundred thousand dollars of the one percent of net
24 terminal income shall be deposited in the State Treasury in a

1 special fund of the Department of Administration, created under
2 section five, article four, chapter five-a of this code, to be used
3 for construction and maintenance of a parking garage on the State
4 Capitol Complex; and

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

18 (d) Each licensed racetrack shall maintain in its account an
19 amount equal to or greater than the gross terminal income from its
20 operation of video lottery machines, to be electronically
21 transferred by the commission on dates established by the
22 commission. Upon a licensed racetrack's failure to maintain this
23 balance, the commission may disable all of a licensed racetrack's
24 video lottery terminals until full payment of all amounts due is

1 made. Interest shall accrue on any unpaid balance at a rate
2 consistent with the amount charged for state income tax delinquency
3 under chapter eleven of this code. The interest shall begin to
4 accrue on the date payment is due to the commission.

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

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

1 Any accounting discrepancies which cannot be otherwise resolved
2 shall be resolved in favor of the commission.

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

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

22 (i) The commission has the right to examine all accounts, bank
23 accounts, financial statements and records in a licensed
24 racetrack's possession, under its control or in which it has an

1 interest and the licensed racetrack shall authorize all third
2 parties in possession or in control of the accounts or records to
3 allow examination of any of those accounts or records by the
4 commission.

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

6 **§29-22C-8. License to operate a racetrack with West Virginia**
7 **Lottery table games.**

8 (a) *Racetrack table games licenses.* -- The commission may
9 issue up to four racetrack table games licenses to operate West
10 Virginia Lottery table games in accordance with the provisions of
11 this article. The Legislature intends that no more than four
12 licenses to operate a racetrack with West Virginia Lottery table
13 games in this state shall be permitted in any event.

14 (b) *Grant of license.* -- Upon the passage of a local option
15 election in a county in accordance with the provisions of section
16 seven of this article, the commission shall immediately grant a
17 West Virginia Lottery table games license, and a license for the
18 right to conduct West Virginia Lottery table games as assignee to
19 the intellectual property rights of the state, to allow the
20 licensee to conduct West Virginia table games at the licensed pari-
21 mutuel racetrack identified on the local option election ballot,
22 provided that racetrack holds a valid racetrack video lottery
23 license issued by the commission pursuant to article twenty-two-a

1 of this chapter and a valid racing license granted by the West
2 Virginia Racing Commission pursuant to the provision of article
3 twenty-three, chapter nineteen of this code and has otherwise met
4 the requirements for licensure under the provisions of this article
5 and the rules of the commission.

6 (c) *Location.* -- A racetrack table games license authorizes
7 the operation of West Virginia Lottery table games on the grounds
8 of the particular licensed facility identified in the racetrack
9 video lottery license issued pursuant to article twenty-two-a and
10 the license to conduct horse or dog racing issued pursuant to
11 article twenty-three, chapter nineteen of this code.

12 (d) *Floor plan submission requirement.* -- Prior to commencing
13 the operation of any table games in a designated gaming area, a
14 racetrack table games licensee shall submit to the commission for
15 its approval a detailed floor plan depicting the location of the
16 designated gaming area in which table games gaming equipment will
17 be located and its proposed arrangement of the table games gaming
18 equipment. Any floor plan submission that satisfies the
19 requirements of the rules promulgated by the commission shall be
20 considered approved by the commission unless the racetrack table
21 games licensee is notified in writing to the contrary within one
22 month of filing a detailed floor plan.

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

24 (1) *Approval.* -- A racetrack table games licensee may not

1 enter into any management service contract that would permit any
2 person other than the licensee to act as the commission's agent in
3 operating West Virginia Lottery table games unless the management
4 service contract is: (A) With a person licensed under this article
5 to provide management services; (B) is in writing; and (C) the
6 contract has been approved by the commission.

7 (2) *Material change.* -- The licensed racetrack table games
8 licensee shall submit any material change in a management service
9 contract previously approved by the commission to the commission
10 for its approval or rejection before the material change may take
11 effect.

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

15 (4) *Other commission approvals and licenses.* -- The duties and
16 responsibilities of a management services provider under a
17 management services contract may not be assigned, delegated,
18 subcontracted or transferred to a third party to perform without
19 the prior approval of the commission. Third parties must be
20 licensed under this article before providing service. The
21 commission may by rule clarify application of this subdivision and
22 provide exceptions to its application. The commission shall
23 license and require the display of West Virginia Lottery game logos
24 on appropriate game surfaces and other gaming items and locations

1 as the commission considers appropriate.

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

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

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

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

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

22 (1) An initial racetrack table games license fee of \$1,500,000
23 shall be paid to the commission at the time of issuance of the
24 racetrack table games license, regardless of the number of months

1 remaining in the license year for which it is issued. All licenses
2 expire at the end of the day on June 30 each year.

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

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

7 (B) Pays to the commission the annual license renewal fee of
8 ~~\$2,500,000 required by this section at the time it files its~~
9 ~~application for renewal of its license under article twenty-two-a~~
10 ~~of this chapter~~ that is calculated by determining the annual
11 average gross receipts of the West Virginia pari-mutuel racetracks
12 with table games licenses, as that term is defined in section two,
13 article five of this chapter, for the last full fiscal year of
14 adjusted gross receipts available, and dividing that number into
15 the licensee's adjusted gross receipts for the same full fiscal
16 year to obtain a percentage, and by multiplying the resulting
17 percentage by \$2,500,000 at the time it files its application for
18 renewal of its license under article twenty-two-a of this chapter:
19 Provided, That the amount required to be paid by such licensee
20 shall not be less that \$1,500,000 or more than \$2,500,000; and

21 (C) During the current license year, the licensee complied
22 with all provisions of this article, all rules adopted by the
23 commission and all final orders of the commission applicable to the
24 licensee.

1 (3) *Annual license surcharge for failure to construct hotel on*
2 *premises.* -- It is the intent of the Legislature that each
3 racetrack for which a racetrack table games license has been issued
4 be or become a destination tourism resort facility. To that end,
5 it is important that each racetrack for which a racetrack table
6 games license has been issued operate a hotel with significant
7 amenities. Therefore, in addition to all other taxes and fees
8 required by the provisions of this article, there is hereby
9 imposed, upon each racetrack for which a racetrack table games
10 license has been issued an annual license surcharge, payable to the
11 commission in the amount of \$2,500,000 if that racetrack does not
12 operate a hotel on its racing property that contains at least one
13 hundred fifty guest rooms with significant amenities within three
14 years of the passage of the local option election in its county
15 authorizing table games at the racetrack, provided the time for
16 completion of the hotel shall be extended by the same number of
17 days as the completion of the hotel is delayed by a force majeure
18 events or conditions beyond the reasonable control of the racetrack
19 licensee. The surcharge shall be paid upon each renewal of its
20 racetrack table games license made after the expiration of the
21 three year period, and may be extended by the above force majeure
22 events or conditions, until the racetrack opens a qualifying hotel.

23 (4) If the licensee fails to apply to renew its license under
24 article twenty-three, chapter nineteen and article twenty-two-a,

1 chapter twenty-nine of this code until after the license expires,
2 the commission shall renew its license under this article at the
3 time it renews its license under article twenty-two-a of this
4 chapter provided the licensee has paid the annual license fee
5 required by this section and during the preceding license year the
6 licensee complied with all provisions of this article, all rules
7 adopted by the commission and all final orders of the commission
8 applicable to the licensee.

9 (h) *Facility qualifications.* -- A racetrack table games
10 licensee shall demonstrate that the racetrack with West Virginia
11 Lottery table games will: (1) Be accessible to disabled
12 individuals in accordance with applicable federal and state laws;
13 (2) be licensed in accordance with this article, and all other
14 applicable federal, state and local laws; and (3) meet any other
15 qualifications specified in rules adopted by the commission.

16 (i) *Surety bond.* -- A racetrack table games licensee shall
17 execute a surety bond to be given to the state to guarantee the
18 licensee faithfully makes all payments in accordance with the
19 provisions of this article and rules promulgated by the commission.
20 The surety bond shall be:

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

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

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

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

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

20 (l) *Commission office space.* -- A racetrack table games
21 licensee shall provide to the commission, at no cost to the
22 commission, suitable office space at the racetrack facility for the
23 commission to perform the duties required of it by this article and
24 the rules of the commission.

NOTE: The purpose of this bill is to amend the method of determining the table game license fee for West Virginia pari-mutuel racetracks, and to make up for any reduction in revenues from the fee that goes to the Community Based Services Fund with other sources of racetrack video lottery funds.

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