

Senate Bill No. 111

(By Senator Plymale)

[Introduced January 14, 2015; referred to the Committee on Finance.]

9 A BILL to amend and reenact §29-22A-10 and §29-22A-10b of the Code of West Virginia, 1931,
10 as amended, all relating to allocation of certain amount of net terminal income from racetrack
11 video lottery currently distributed to the Development Office Promotion Fund to the Cultural
12 Facilities and Capitol Resources Matching Grant Program Fund; and making technical
13 changes.

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

15 That §29-22A-10 and §29-22A-10b of the Code of West Virginia, 1931, as amended, be
16 amended and reenacted, all to read as follows:

17 ARTICLE 22A. RACETRACK VIDEO LOTTERY.

18 **§29-22A-10. Accounting and reporting; commission to provide communications protocol**
19 **data; distribution of net terminal income; remittance through electronic**
20 **transfer of funds; establishment of accounts and nonpayment penalties;**
21 **commission control of accounting for net terminal income; settlement of**

1 **accounts; manual reporting and payment may be required; request for**
2 **reports; examination of accounts and records.**

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

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

14 (1) The commission shall deduct an amount sufficient to reimburse the commission for its
15 actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack.
16 ~~and~~ The resulting amount after the deduction is the net terminal income. The amount deducted for
17 administrative costs and expenses of the commission may not exceed four percent of gross terminal
18 income. ~~Provided, That any~~ Amounts deducted by the commission for its actual costs and expenses
19 that ~~exceeds~~ exceed its actual costs and expenses shall be deposited into the state Lottery Fund. For
20 the fiscal years ending June 30, 2011, through June 30, 2020, the term "actual costs and expenses"
21 may include transfers of up to \$10 million in surplus allocations for each fiscal year, as calculated

1 by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack
2 Modernization Fund created by subdivision (2), subsection (b) of this section. For all fiscal years
3 beginning on or after July 1, 2001, the commission ~~shall~~ may not receive an amount of gross terminal
4 income in excess of the amount of gross terminal income received during the fiscal year ending on
5 June 30, 2001, but four percent of any amount of gross terminal income received in excess of the
6 amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be
7 deposited into the fund established in section eighteen-a, article twenty-two of this chapter; and

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

1 acquisitions of new and unused video lottery terminals and related equipment. Video lottery
2 terminals financed through the recoupment provided in this subdivision must be retained by the
3 licensee in its West Virginia licensed location for a period of not less than five years from the date
4 of initial installation.

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

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

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

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

21 (A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received

1 during the fiscal year 1999 by a county in which a racetrack is located that has participated in the
2 West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided
3 as follows:

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

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

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

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

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

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

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

20 (5) The West Virginia Thoroughbred Development Fund created under section thirteen-b,
21 article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding

1 Development Fund created under section ten of ~~said~~ that article shall receive an equal share of a total
2 of not less than one and one-half percent of the net terminal income;

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

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

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

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

20 (i) 1.375 percent of the total amount of net terminal income described in this section and in
21 section ten-b of this article shall be deposited into the Tourism Promotion Fund created under section

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

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

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

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

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

18 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into
19 the Workers' Compensation Debt Reduction Fund created in section five, article two-d, chapter
20 twenty-three of this code. ~~Provided, That~~ In any fiscal year when the amount of money generated by
21 this subdivision totals \$11 million, all subsequent distributions under this subdivision shall be

1 deposited in the special fund established by the licensee and used for the payment of regular purses
2 in addition to the other amounts provided in article twenty-three, chapter nineteen of this code;

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

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

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

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

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

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

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

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

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

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

16 (g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not
17 operational or the commission notifies licensed racetracks that remittance by this method is required.
18 The licensed racetracks shall report an amount equal to the total amount of cash inserted into each
19 video lottery terminal operated by a licensee, minus the total value of game credits which are cleared
20 from the video lottery terminal in exchange for winning redemption tickets, and remit the amount
21 as generated from its terminals during the reporting period. The remittance shall be sealed in a

1 properly addressed and stamped envelope and deposited in the United States mail no later than noon
2 on the day when the payment would otherwise be completed through electronic funds transfer.

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

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

11 **§29-22A-10b. Distribution of excess net terminal income.**

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

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

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

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

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

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

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

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

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

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

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

20 (4) One half of one percent of net terminal income shall be paid for and on behalf of all
21 employees of the licensed racing association by making a deposit into a special fund to be

1 established by the Racing Commission to be used for payment into the pension plan for all
2 employees of the licensed racing association;

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

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

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

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

16 (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited into
17 the Workers' Compensation Debt Reduction Fund created in section five, article two-d, chapter
18 twenty-three of this code: *Provided*, That in any fiscal year when the amount of money generated
19 by this subdivision together with the total allocation transferred by the operation of subdivision (9),
20 subsection (C), section ten of this article totals \$11 million, all subsequent distributions under this
21 subdivision (9) during that fiscal year shall be deposited in the special fund established by the

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

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

12 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in the
13 Capitol Dome and Improvements Fund created under section two, article four, chapter five-a of this
14 code and cultural facilities and Capitol Resources Matching Grant Program Fund created under
15 section three, article one of this chapter; and

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

20 (b) The commission may establish orderly and effective procedures for the collection and
21 distribution of funds under this section in accordance with ~~the provisions of this section and section~~

1 ten of this article.

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

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