

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Introduced**

## **House Bill 2718**

### **2015 Carryover**

(BY DELEGATES GEARHEART, BUTLER, HAMRICK, HOWELL,  
HOUSEHOLDER, WESTFALL, MILLER, BORDER, COOPER,  
HANSHAW AND ELLINGTON)

[Introduced January 13, 2016; referred to the  
Committee on Finance.]

1 A BILL to amend and reenact §17-3-1 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §29-22A-10 and §29-22A-10d of said code, all relating to the Racetrack  
 3 Modernization Fund; transferring funds remaining in the Racetrack Modernization Fund to  
 4 the State Road Fund; and closing the Racetrack Modernization Fund.

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

1 That §17-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
 2 and that §29-22A-10 and §29-22A-10d of said code be amended and reenacted, all to read as  
 3 follows:

**CHAPTER 17. ROADS AND HIGHWAYS.**

**ARTICLE 3. STATE ROAD FUND.**

**§17-3-1. What constitutes fund; payments into fund; use of money in fund.**

1 (a) There shall be a State Road Fund, which shall consist of the proceeds of all state license  
 2 taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees  
 3 imposed upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven  
 4 vehicles; all sums of money which may be donated to such fund; all proceeds derived from the  
 5 sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect  
 6 the "Better Roads Amendment" to the Constitution of this State, adopted in November, 1964,  
 7 except that the proceeds from the sale of these bonds shall be kept in a separate and distinct  
 8 account in the State Road Fund; all proceeds from the sale of state bonds issued pursuant to any  
 9 resolution or act of the Legislature carrying into effect the "Safe Roads Amendment of 1996" to the  
 10 Constitution of this state, adopted in the November, 1996, except that the proceeds from the sale  
 11 of these bonds shall be kept in a separate and distinct account in the State Road Fund; all moneys  
 12 and funds appropriated to it by the Legislature; and all moneys allotted or appropriated by the

13 federal government to this state for road construction and maintenance pursuant to any act of the  
14 Congress of the United States; the proceeds of all taxes imposed upon and collected from any  
15 person, firm or corporation and of all taxes or charges imposed upon and collected from any  
16 county, district or municipality for the benefit of the fund; the proceeds of all judgments, decrees or  
17 awards recovered and collected from any person, firm or corporation for damages done to, or  
18 sustained by, any of the state roads or parts thereof; all moneys recovered or received by reason  
19 of the violation of any contract respecting the building, construction or maintenance of any state  
20 road; all penalties and forfeitures imposed, recovered or received by reason thereof; transfers  
21 received from the West Virginia Lottery Commission pursuant to section ten and ten-d, article  
22 twenty-two-a of chapter twenty-nine of this code; and any and all other moneys and funds  
23 appropriated to, imposed and collected for the benefit of such fund, or collected by virtue of any  
24 statute and payable to such fund: *Provided*, That notwithstanding any provisions of this code to  
25 the contrary, 50¢ of every license fee paid pursuant to the provisions of subdivision (2), subsection  
26 (a), section eight, article two, chapter seventeen-b of this code shall be paid to the special fund  
27 established pursuant to the provisions of subsection (a), section twelve, article two, chapter three  
28 of this code.

29 (b) When any money is collected from any of the sources aforesaid, it shall be paid into the  
30 State Treasury by the officer whose duty it is to collect and account for the same, and credited to  
31 the State Road Fund, and shall be used only for the purposes named in this chapter, which are:

32 (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and  
33 set aside and appropriated for that purpose; (b) to pay the expenses of the administration of the  
34 road department; and (c) to pay the cost of maintenance, construction, reconstruction and  
35 improvement of all state roads.

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

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

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

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

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

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

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

27 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all  
28 fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,  
29 ~~2020~~ 2014, the commission shall deposit such amounts as are available according to subdivision  
30 (1), subsection (b) of this section into a separate facility modernization account maintained within  
31 the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each  
32 year's deposit shall be calculated in the same ratio as each racetrack's apportioned contribution to  
33 the four percent administrative costs and expenses allowance provided for in subdivision (1),  
34 subsection (b) of this section for that year. For each two dollars expended by a licensed racetrack  
35 for facility modernization improvements at the racetrack, having a useful life of three or more years  
36 and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from  
37 its facility modernization account. If the licensed racetrack's facility modernization account  
38 contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available  
39 for matching for one additional fiscal year, after which time, the remaining unused balance carried  
40 forward shall revert to the lottery fund. For purposes of this section, the term "facility  
41 modernization improvements" includes acquisitions of new and unused video lottery terminals and  
42 related equipment. Video lottery terminals financed through the recoupment provided in this

43 subdivision must be retained by the licensee in its West Virginia licensed location for a period of  
44 not less than five years from the date of initial installation.

45 (3) Beginning July 1, 2016, the Racetrack Modernization Fund is hereby closed, and any  
46 remaining balance shall be transferred by the Lottery Commission to the State Road Fund. For  
47 fiscal year beginning July 1, 2015, the Lottery Commission shall transfer up to \$9 million from any  
48 surplus allocation as calculated by the commission from those amounts deducted for actual costs  
49 and expenses incurred pursuant to subdivision (1) of subsection (b) in this section that would  
50 otherwise be deposited into the Racetrack Modernization Fund.

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

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

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

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

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

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

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

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

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

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

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

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

88 (5) The West Virginia Thoroughbred Development Fund created under section thirteen-b,  
89 article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding  
90 Development Fund created under section ten of said article shall receive an equal share of a total

91 of not less than one and one-half percent of the net terminal income;

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

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

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

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

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

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



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

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

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

126 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited  
127 into the Workers' Compensation Debt Reduction Fund created in section five, article two-d, chapter  
128 twenty-three of this code: *Provided*, That in any fiscal year when the amount of money generated  
129 by this subdivision totals \$11 million, all subsequent distributions under this subdivision shall be  
130 deposited in the special fund established by the licensee and used for the payment of regular  
131 purses in addition to the other amounts provided in article twenty-three, chapter nineteen of this  
132 code;

133 (B) The deposit of the seven percent of net terminal income into the Worker's  
134 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed  
135 with respect to these funds and shall be deposited in the special fund established by the licensee  
136 and used for payment of regular purses in addition to the other amounts provided in article  
137 twenty-three, chapter nineteen of this code, on and after the first day of the month following the  
138 month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued

139 pursuant to article two-d, chapter twenty-three of this code, have been retired or payment of the  
140 debt service provided for; and (ii) that an independent certified actuary has determined that the  
141 unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or  
142 provided for in its entirety; and

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

144 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive  
145 one percent of the net terminal income until sufficient moneys have been received to complete the  
146 veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The  
147 moneys shall be deposited in the State Treasury in the Division of Culture and History special fund  
148 created under section three, article one-i, chapter twenty-nine of this code: *Provided*, That only  
149 after sufficient moneys have been deposited in the fund to complete the veterans memorial and to  
150 pay in full the annual bonded indebtedness on the veterans memorial, not more than \$20,000 of  
151 the one percent of net terminal income provided in this subdivision shall be deposited into a special  
152 revenue fund in the State Treasury, to be known as the "John F. 'Jack' Bennett Fund". The  
153 moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the  
154 placement of markers for the graves of veterans in perpetual cemeteries in this state. The  
155 Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of article  
156 three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent,  
157 determine the ability of the surviving spouse to pay for the placement of the marker and setting  
158 forth the standards to be used to determine the priority in which the veterans grave markers will  
159 be placed in the event that there are not sufficient funds to complete the placement of veterans  
160 grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the  
161 veterans memorial, \$100,000 of the one percent of net terminal income provided in this subdivision  
162 shall be deposited in the special fund in the Division of Culture and History created under section

163 three, article one-i, chapter twenty-nine of this code and be expended by the Division of Culture  
164 and History to establish a West Virginia veterans memorial archives within the Cultural Center to  
165 serve as a repository for the documents and records pertaining to the veterans memorial, to restore  
166 and maintain the monuments and memorial on the capitol grounds: *Provided, however,* That  
167 \$500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a  
168 special fund of the Department of Administration, created under section five, article four, chapter  
169 five-a of this code, to be used for construction and maintenance of a parking garage on the state  
170 Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited  
171 in equal amounts in the Capitol Dome and Improvements Fund created under section two, article  
172 four, chapter five-a of this code and Cultural Facilities and Capitol Resources Matching Grant  
173 Program Fund created under section three, article one of this chapter.

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

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

179 (ii) The remainder of the one percent of net terminal income and all of the one percent of  
180 net terminal income described in paragraph (B), subdivision (9), subsection (a), section ten-b of  
181 this article shall be distributed as follows: The net terminal income shall be deposited in equal  
182 amounts into the Capitol Dome and Capitol Improvements Fund created under section two, article  
183 four, chapter five-a of this code and the Cultural Facilities and Capitol Resources Matching Grant  
184 Program Fund created under section three, article one, chapter twenty-nine of this code until a  
185 total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant  
186 Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol

187 Improvements Fund.

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

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

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

211 resolved in favor of the commission.

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

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

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

**§29-22A-10d. Changes in distribution of net terminal income; distributions from excess  
lottery fund.**

1 (a) Notwithstanding any provision of subsection (b), section ten of this article to the  
2 contrary, for the fiscal year beginning July 1, 2014, ~~and each fiscal year thereafter,~~ the commission  
3 may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack  
4 Modernization Fund.

5 (b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary,  
6 for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except  
7 those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c),  
8 section ten of this article, shall be reduced by one hundred percent. Payments shall not be made  
9 pursuant to section ten of this article, other than those excepted by this subsection, and are made  
10 in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery  
11 Revenue Fund.

12 (c) The total amount of reductions resulting from subsection (b) of this section shall be paid  
13 into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-two of  
14 this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter,  
15 distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this  
16 article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid  
17 into the State Excess Lottery Revenue Fund.

18 (d) Notwithstanding any other provision of this code to the contrary, for the fiscal year  
19 beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess  
20 Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance  
21 with appropriations.

22 (e) Prior to payment of any appropriation made pursuant to this section, debt service  
23 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the  
24 provisions of sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and  
25 in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

26 (f) Notwithstanding any other provision of this code to the contrary, after payment of debt  
27 service from the State Excess Lottery Revenue Fund, all other distributions required by section  
28 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this

29 section shall be paid on a pro rata basis.

30 (g) Notwithstanding the provisions of paragraph (B), subdivision (9), subsection (c), section  
31 ten of this article, upon certification of the Governor to the Legislature that an independent actuary  
32 has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of  
33 this code, has been paid or provided for in its entirety, the transfers made to the Workers'  
34 Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c),  
35 section ten of this article shall expire and those funds shall remain in the State Excess Lottery  
36 Revenue Fund subject to appropriation.

NOTE: The purpose of this bill is to transfer funds remaining in the Racetrack Modernization Fund to the State Road Fund and closing the Racetrack Modernization Fund.

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