

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 624

BY SENATOR HALL

[Introduced March 16, 2017; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §19-23-12b of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §29-22A-3 of said code; and to amend and reenact §29-22C-10 of
3 said code, all relating to decreasing the minimum number of live racing days that a horse
4 racing licensee must conduct in order to contract with any legal wagering entity in this
5 state or in any other governmental jurisdiction to receive telecasts and accept wagers
6 conducted by the legal wagering entity; allowing a license applicant to apply for fewer than
7 the minimum number of live racing dates in certain circumstances and to establish the
8 process to be used for determining such an application; allowing a racing licensee to
9 request that it be permitted to reduce the number of live racing days that it conducts after
10 its license has been granted if there are insufficient purse funds or other just cause;
11 establishing that a person authorized to act upon behalf of the group representing the
12 majority of owners and trainers at the requesting track or a person authorized to act upon
13 behalf of the majority of mutuel clerks at the requesting track has standing to file an
14 objection with the Racing Commission to a request from a racing licensee to reduce the
15 number of live racing days after its license has been granted; authorizing the Racing
16 Commission to promulgate rules to govern hearings that it holds to determine the required
17 number of live racing days under; reducing the number of live racing days which a racing
18 licensee shall not be approved by the racing commission unless it meets certain criteria;
19 and requiring a racing licensee to submit a current financial statement pertaining to its
20 racing operations and its purse fund account if it makes a request to conduct fewer live
21 racing days.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

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

1 (a) For the purposes of this section:

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

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

11 (b) A licensee conducting not less than two hundred twenty live racing dates for each
12 ~~horse or dog race meeting~~ and not less than one hundred seventy-five live racing dates for each
13 horse race meeting may, with the prior approval of the state racing commission, contract with any
14 legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts
15 and accept wagers on races conducted by the legal wagering entity: *Provided*, That at ~~these~~
16 ~~thoroughbred racetracks~~ the licensee, in applying for racing dates, shall apply for not less than
17 ~~two hundred ten live racing dates for each horse race meeting~~: *Provided*, however, That at those
18 ~~thoroughbred racetracks that have participated in the West Virginia thoroughbred development~~
19 ~~fund for a period of more than four consecutive calendar years prior to the thirty-first day of~~
20 ~~December, one thousand nine hundred ninety-two, the licensee may apply for not less than one~~
21 ~~hundred fifty-nine live racing dates during the calendar year of one thousand nine hundred ninety-~~
22 ~~seven~~ an applicant for a license may make a request to the racing commission to conduct fewer
23 live racing dates if the applicant concludes that this number of live racing dates cannot be attained.
24 If an applicant makes a request for fewer live racing dates, it shall state the reason therefor and
25 shall provide any information required by the racing commission to consider the request. If an

26 applicant's request for fewer live racing dates is accompanied by the written consent of a person
27 authorized to act on behalf of the group representing the majority of owners and trainers at the
28 requesting track and a person authorized to act upon behalf of the majority of mutuel clerks at the
29 requesting track, then the racing commission may consider and make a determination on the
30 request in a meeting noticed in accordance with section three, article nine-a, chapter six of this
31 code. If such consent from one or both parties does not accompany an applicant's request for
32 fewer live racing dates, then the commission shall, within seventy-two hours of the receipt of the
33 request, notify the licensee, the representative of the group representing the majority of the
34 owners and trainers at the requesting track and the representative of the majority of the mutuel
35 clerks at the requesting track that such request has been received and that if no objection to the
36 request is received within ten days of the notification the request shall be considered and a
37 determination made by the commission in a meeting noticed in accordance with section three,
38 article nine-a, chapter six of this code. If a timely objection is received from one or both parties,
39 then the commission shall, within thirty days of receipt of such objection, set a hearing on the
40 question of the number of racing days, which hearing shall be conducted at a convenient place in
41 the county in which the requesting racetrack is located. The commission shall hear from all parties
42 concerned and, based upon testimony and documentary evidence presented at the hearing, shall
43 determine the required number of live racing days. If, after a license has been granted, thereafter
44 for reasons beyond the licensee's control, related to adverse weather conditions, unforeseen
45 casualty occurrences, or a shortage of thoroughbred horses or greyhounds eligible to compete
46 for purses, insufficient purse funds, or other just cause, the licensee concludes that this the
47 number of racing days approved by the racing commission cannot be attained, the licensee may
48 file a request with the racing commission to reduce the authorized live racing days. Upon receipt
49 of the request the racing commission shall within seventy-two hours of the receipt of the request
50 notify the licensee and the representative of a group representing the majority of the owners and
51 trainers at the requesting track and the representative of the majority of the mutuel clerks at the

52 requesting track that such request has been received and that if no objection to the request is
53 received within ten days of the notification the request will be approved: *Provided, further*
54 *however*, That the commission shall give consideration to whether there existed available
55 unscheduled potential live racing dates following the adverse weather or casualty and prior to the
56 end of the race meeting which could be used as new live racing dates in order to maintain the full
57 live racing schedule previously approved by the racing commission. If an objection from a person
58 authorized to act on behalf of the group representing the majority of owners and trainers at the
59 requesting track and/or a person authorized to act upon behalf of the majority of mutuel clerks at
60 the requesting track is received by the commission within the time limits, the commission shall,
61 within thirty days of receipt of such objection, set a hearing on the question of reducing racing
62 days, which hearing shall be conducted at a convenient place in the county in which the requesting
63 racetrack is located. The commission shall hear from all parties concerned and, based upon
64 testimony and documentary evidence presented at the hearing, shall determine the required
65 number of live racing days. The commission is authorized to promulgate rules to govern hearings
66 held by it under this subdivision: ~~And~~ Provided further, That the commission shall not reduce the
67 number of live racing days below one hundred eighty-five days for a horse dog race meeting and
68 one hundred forty days for a horse race meeting unless the licensee requesting such reduction
69 has: (i) filed with the commission a current financial statement pertaining to its racing operations
70 and a financial statement for the purse fund established under the provisions of subdivision (1),
71 subsection (b), section nine of this article, which shall be subject to independent audit; and (ii)
72 met the burden of proving that just cause exists for such requested reduction in live racing days.
73 The telecasts may be received and wagers accepted at any location authorized by the provisions
74 of section twelve-a of this article. The contract must receive the approval of the representative of
75 the majority of the owners and trainers who hold permits required by section two of this article at
76 the receiving thoroughbred racetrack.

77 (c) The commission may allow the licensee to commingle its wagering pools with the

78 wagering pools of the host racing association. If the pools are commingled, the wagering at the
79 licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and
80 be electronically linked with the equipment at the sending racetrack. Subject to the approval of
81 the commission, the types of betting, licensee commissions and distribution of winnings on pari-
82 mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack.
83 Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with
84 the law or rules governing the sending racetrack and must be distributed in a manner agreed to
85 between the licensee and the sending racetrack. For the televised racing services it provides, the
86 host racing association shall receive a fee to be paid by the receiving licensee racetrack which
87 shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing
88 association.

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

92 (e)(1) From the licensee commissions authorized by subsection (c) of this section, the
93 licensee shall pay one-tenth of one percent of each commission into the general fund of the
94 county, in which the racetrack is located and at which the wagering occurred and there is imposed
95 and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool
96 exceeds \$100,000, the greater of either: (i) The total of the daily license tax and the pari-mutuel
97 pools tax required by section ten of this article; or (ii) a daily license tax of \$1,250. For each
98 televised racing day on which the total pari-mutuel pool is \$100,000 or less, the licensee shall pay
99 a daily license tax of \$500 plus an additional license tax of \$100 for each \$10,000, or part thereof,
100 that the pari-mutuel pool exceeds \$50,000, but does not exceed \$100,000. The calculation of the
101 total pari-mutuel pool for purposes of this subsection shall include only one-half of all wagers
102 placed at a licensed racetrack in this state on televised races conducted at another licensed
103 racetrack within this state. Payments of the tax imposed by this section are subject to the

104 requirements of subsection (e), section ten of this article.

105 (2) From the licensee commissions authorized by subsection (c) of this section, after
106 payments are made in accordance with the provisions of subdivision (1) of this subsection, the
107 licensee shall pay, for each televised racing day, one-fourth of one percent of the total pari-mutuel
108 pools for and on behalf of all employees of the licensed racing association by making a deposit
109 into a special fund to be established by the racing commission and to be used for payments into
110 the pension plan for all employees of the licensed racing association.

111 (3) From the licensee commissions authorized by subsection (c) of this section, after
112 payments are made in accordance with the provisions of subdivisions (1) and (2) of this
113 subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for
114 each televised racing day on or after July 1, 1997, an additional five and one-half percent of net
115 simulcast income into the West Virginia Thoroughbred Development Fund established by the
116 racing commission according to section thirteen-b of this article: *Provided*, That no licensee
117 qualifying for the alternate tax provisions of subsection (b), section ten of this article shall be
118 required to make the payments unless the licensee has participated in the West Virginia
119 Thoroughbred Development Fund for a period of more than four consecutive calendar years prior
120 to December 31, 1992. For the purposes of this section, the term "net simulcast income" means
121 the total commission deducted each day by the licensee from the pari-mutuel pools on simulcast
122 horse or dog races, less direct simulcast expenses, including, but not limited to, the cost of
123 simulcast signals, telecommunication costs and decoder costs.

124 (f) After deducting the tax and other payments required by subsection (e) of this section,
125 the amount required to be paid under the terms of the contract with the host racing association
126 and the cost of transmission, the horse racing association shall make a deposit equal to fifty
127 percent of the remainder into the purse fund established under the provisions of subdivision (1),
128 subsection (b), section nine of this article. After deducting the tax and other payments required
129 by subsection (e) of this section, dog racetracks shall pay an amount equal to two tenths of one

130 percent of the daily simulcast pari-mutuel pool to the “West Virginia Racing Commission Special
131 Account-West Virginia Greyhound Breeding Development Fund”.

132 (g) The provisions of the “Federal Interstate Horseracing Act of 1978”, also known as
133 Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in
134 determining the intent of this section.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-3. Definitions.

1 As used in this article:

2 (a) “Applicant” means any person applying for any video lottery license or permit.

3 (b) “Associated equipment” means any hardware located on a licensed racetrack’s
4 premises which is connected to the video lottery system for the purpose of performing
5 communication, validation or other functions, but not including the video lottery terminals or the
6 communication facilities of a regulated public utility.

7 (c) “Background investigation” means a security, criminal and credit investigation of a
8 person, as defined in this section, who has applied for a video lottery license or permit, or who
9 has been granted a video lottery license or permit.

10 (d) “Central computer,” “central control computer” or “central site system” means any
11 central site computer provided to and controlled by the commission to which video lottery
12 terminals communicate for purposes of information retrieval and terminal activation and to disable
13 programs.

14 (e) “Commission” or “State Lottery Commission” means the West Virginia Lottery
15 Commission created by article twenty-two of this chapter.

16 (f) “Control” means the authority to direct the management and policies of an applicant or
17 a license or permit holder.

18 (g) “Costs” means the expenses incurred by the commission in the testing and
19 examination of video lottery terminals and the performance of background investigations and

20 other related activities which are charged to and collected from applicants or license or permit
21 holders.

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

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

26 (j) "Display" means the visual presentation of video lottery game features on a video lottery
27 terminal in the form of video images, actual symbols or both.

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

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

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

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

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

46 (p) "Manufacturer" means any person holding a permit granted by the commission to
47 engage in the business of designing, building, constructing, assembling or manufacturing video
48 lottery terminals, the electronic computer components of the video lottery terminals, the random
49 number generator of the video lottery terminals, or the cabinet in which it is housed, and whose
50 product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia,
51 and who contracts directly with the licensee for the sale, lease or other assignment to a licensed
52 racetrack in West Virginia.

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

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

60 (s) "Own" means any beneficial or proprietary interest in any property or business of an
61 applicant or licensed racetrack.

62 (t) "Pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" means a facility
63 where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized
64 pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, That,
65 for the purposes of this article, "pari-mutuel racing facility," "licensed racetrack," "racetrack" or
66 "track" includes only a facility which was licensed prior to January 1, 1994, to hold horse or dog
67 race meetings, and which conducts not less than ~~two hundred twenty~~ the number of live racing
68 dates for each horse or dog race meeting specified in section twelve-b, article twenty-three,
69 chapter nineteen of this code or such other number of live racing dates as may be approved by
70 the Racing Commission in accordance with the provisions of section twelve-b, article twenty-
71 three, chapter nineteen of this code.

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

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

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

78 (x) "Service technician" means a person, employed by a licensed racetrack, who holds a
79 permit issued by the commission and who performs service, maintenance and repair on licensed
80 video lottery terminals in this state.

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

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

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

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

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

95 (5) Allows a player at any time to simultaneously clear all game play credits and print a
96 redemption ticket entitling the player to receive the cash value of the free plays cleared from the
97 video lottery terminal; and

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

100 (aa) "Video lottery" means a lottery which allows a game to be played utilizing an electronic
101 computer and an interactive computer terminal device, equipped with a video screen and keys, a
102 keyboard or other equipment allowing input by an individual player, into which the player inserts
103 coins, currency, vouchers or tokens as consideration in order for play to be available, and through
104 which terminal device the player may receive free games, coins, tokens or credit that can be
105 redeemed for cash, annuitized payments over time, a noncash prize or nothing, as may be
106 determined wholly or predominantly by chance. "Video lottery" does not include a lottery game
107 which merely utilizes an electronic computer and a video screen to operate a lottery game and
108 communicate the results of the game, such as the game "Travel," and which does not utilize an
109 interactive electronic terminal device allowing input by an individual player.

110 (bb) "Video lottery terminal" means a commission-approved interactive electronic terminal
111 device which is connected with the commission's central computer system, and which is used for
112 the purpose of playing video lottery games authorized by the commission. A video lottery terminal
113 may simulate the play of one or more video lottery games.

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

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

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

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

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

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

8 (3) Hold the commission and this state harmless from and defend and pay for the defense
9 of any and all claims which may be asserted against a racetrack licensee, the commission, the
10 state or employees thereof, arising from the licensee's actions or omission while acting as an
11 agent of the commission by operation of West Virginia Lottery table games pursuant to this article;

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

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

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

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

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

30 (9) Conduct no less than ~~two hundred twenty~~ the number of live racing dates for each
31 horse or dog race meeting specified in twelve-b, article twenty-three, chapter nineteen of this code
32 or such other number of live racing dates as may be approved by the racing commission in
33 accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this

34 code, and otherwise keep in good standing, all licenses and permits granted by the racing
35 commission pursuant to section six, article twenty-three, chapter nineteen of this code, and any
36 rules promulgated thereunder.

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

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

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

43 (3) Ensure that West Virginia Lottery table games are within the sight and control of
44 designated employees of the licensed racetrack with West Virginia Lottery table games and under
45 continuous observation by security equipment in conformity with specifications and requirements
46 of the commission;

47 (4) Ensure that West Virginia Lottery table games are placed and remain placed in the
48 specific locations within designated gaming areas at the licensed racetrack which have been
49 approved by the commission. West Virginia Lottery table games at a licensed racetrack shall only
50 be relocated in accordance with the rules of the commission;

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

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

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

NOTE: The purpose of this bill is to decrease the minimum number of live racing days that a horse racing licensee must conduct in order to contract with any legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers

conducted by the legal wagering entity; to allow a license applicant to apply for fewer than the minimum number of live racing dates in certain circumstances and to establish the process to be used for determining such an application; to allow a racing licensee to request that it be permitted to reduce the number of live racing days that it conducts after its license has been granted if there are insufficient purse funds or other just cause; to establish that a person authorized to act upon behalf of the group representing the majority of owners and trainers at the requesting track or a person authorized to act upon behalf of the majority of mutuel clerks at the requesting track has standing to file an objection with the racing commission to a request from a racing licensee to reduce the number of live racing days after its license has been granted; to authorize the racing commission to promulgate rules to govern hearings that it holds to determine the required number of live racing days under this code section; to reduce the number of live racing days below which a racing licensee shall not be approved by the racing commission unless it meets certain criteria; and, to require a racing licensee to submit a current financial statement pertaining to its racing operations and its purse fund account if it makes a request to conduct fewer live racing days.

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