

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4484

FISCAL
NOTE

BY DELEGATES FRICH, SOBONYA, FOSTER, MARTIN,
KESSINGER, OVERINGTON, FAST, HOLLEN, DEEM, BUTLER
AND HIGGINBOTHAM

[Introduced February 9, 2018; Referred
to the Committee on Finance.]

1 A BILL to amend and reenact §19-23-3, §19-23-7, §19-23-10, §19-23-12b, §19-23-13, and §19-
2 23-13c of the Code of West Virginia, 1931, as amended; to amend said code by adding
3 thereto a new section, designated §19-23-10a; to amend and reenact §29-22-18a of said
4 code; to amend and reenact §29-22A-3, §29-22A-7, §29-22A-10, §29-22A-10b, §29-22A-
5 10d, §29-22A-10e, and §29-22A-12 of said code; and to amend and reenact §29-22C-3,
6 §29-22C-8, §29-22C-10, §29-22C-27, and §29-22C-27a of said code, all relating generally
7 to horse and dog racing lottery; modifying certain definitions; discontinuing the West
8 Virginia Racing Commission special account known as the West Virginia Greyhound
9 Breeding Development Fund for licensees outside of Ohio County; transferring some
10 moneys in the West Virginia Greyhound Breeding Development Fund to the State Excess
11 Lottery Revenue Fund for appropriation by the Legislature; requiring that upon transfer of
12 moneys from the West Virginia Greyhound Breeding Development Fund to the State
13 Excess Lottery Revenue Fund, a certain amount be withheld and deposited in the special
14 account known as the Administration, Promotion, Education, Capital Improvement and
15 Greyhound Adoption Programs to include Spaying and Neutering Account; requiring that
16 some moneys previously required to be directed to the West Virginia Greyhound Breeding
17 Development Fund be redirected to the State Excess Lottery Revenue Fund for
18 appropriation by the Legislature; requiring that all moneys previously required to be
19 directed into any fund or paid for the purpose of funding purses, awards or providing any
20 other funding for greyhound races be redirected to the State Excess Lottery Revenue
21 Fund for appropriation by the Legislature; eliminating the requirement that an applicant for
22 a dog racing license outside of Ohio County race a minimum number of dates to qualify
23 for such license; eliminating the requirement that an applicant for a dog racing license
24 outside of Ohio County race a minimum number of dates to contract to receive telecasts
25 and accept wagers; providing that a dog racetrack is required to hold a racing license to
26 conduct simulcast racing regardless of whether the racetrack continues to conduct live

27 dog racing; authorizing the West Virginia Racing Commission to promulgate rules,
 28 including emergency rules, regarding licensure of dog racetracks conducting only
 29 simulcast racing; eliminating the requirement that a video lottery licensee at a dog track
 30 must hold a racing license to renew a video lottery license or racetrack table games
 31 license; requiring the Lottery Commission to transfer a percentage of gross terminal
 32 revenue derived from racetrack video lottery at thoroughbred racetracks, and deducted
 33 for administrative costs and expenses, to the Racing Commission's General
 34 Administrative Account; eliminating the requirement that an applicant for a video lottery
 35 license or license renewal at a dog racetrack must provide evidence of the existence of
 36 an agreement regarding proceeds from video lottery terminals with certain parties;
 37 providing that a percentage of net terminal income originating at dog racetracks will be
 38 deposited in the State Excess Lottery Revenue Fund; providing that a percentage of net
 39 terminal income originating at thoroughbred racetracks will be deposited in the West
 40 Virginia Thoroughbred Development Fund; permitting a dog racetrack to continue to
 41 operate operational video lottery and racetrack table games in a location where live racing
 42 was previously conducted or in an alternate location within the county as approved by the
 43 Lottery Commission; eliminating the requirement that a racetrack table games licensee at
 44 a dog racetrack must race a minimum number of dates; and making certain exceptions for
 45 racetracks in Ohio County.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

PART V. LICENSE AND PERMIT PROCEDURES.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-3. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article:

2 (1) "Horse racing" means any type of horse racing, including, but not limited to,
3 thoroughbred racing and harness racing;

4 (2) "Thoroughbred racing" means flat or running type horse racing in which each horse
5 participating is a thoroughbred and mounted by a jockey;

6 (3) "Harness racing" means horse racing in which the horses participating are harnessed
7 to a sulky, carriage or other vehicle and does not include any form of horse racing in which the
8 horses are mounted by jockeys;

9 (4) "Horse race meeting" means the whole period of time for which a license is required
10 by the provisions of §19-23-1 of this code;

11 (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound
12 racing;

13 (6) "Purse" means any purse, stake or award for which a horse or dog race is run;

14 (7) "Racing association" or "person" means any individual, partnership, firm, association,
15 corporation or other entity or organization of whatever character or description;

16 (8) "Applicant" means any racing association making application for a license under the
17 provisions of this article or any person making application for a permit under the provisions of this
18 article or any person making application for a construction permit under the provisions of this
19 article;

20 (9) "License" means the license required by the provisions of §19-23-1 of this code or the
21 license required to conduct televised racing pursuant to §19-23-12b of this code;

22 (10) "Permit" means the permit required by the provisions of §19-23-2 of this code;

23 (11) "Construction permit" means the construction permit required by the provisions of
24 §19-23-18 of this code;

25 (12) "Licensee" means any racing association holding a license required by the provisions
26 of §19-23-1 of this code and issued under the provisions of this article;

27 (13) "Permit holder" means any person holding a permit required by the provisions of §19-

28 23-2 of this code and issued under the provisions of this article;

29 (14) "Construction permit holder" means any person holding a construction permit required
30 by the provisions of §19-23-18 of this code and issued under the provisions of this article;

31 (15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

32 (16) "Racing commission" means the West Virginia Racing Commission;

33 (17) "Stewards" means the steward or stewards representing the Racing Commission, the
34 steward or stewards representing a licensee and any other steward or stewards whose duty it is
35 to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the
36 Racing Commission which rules shall specify the number of stewards to be appointed, the method
37 and manner of their appointment and their powers, authority and duties;

38 (18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who
39 have contributed their wagers to one central agency, the odds to be reckoned in accordance to
40 the collective amounts wagered upon each contestant running in a horse or dog race upon which
41 the pool is made, but the total to be divided among the first three contestants on the basis of the
42 number of wagers on these;

43 (19) "Pari-mutuel clerk" means any employee of a licensed racing association who is
44 responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets,
45 verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

46 (20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in
47 such enterprise;

48 (21) "Legitimate breakage" is the percentage left over in the division of a pool;

49 (22) "To the dime" means that wagers shall be figured and paid to the dime;

50 (23) "Code" means the Code of West Virginia, 1931, as heretofore and hereinafter
51 amended;

52 (24) "Accredited thoroughbred horse" means a thoroughbred horse that is registered with
53 the West Virginia Thoroughbred Breeders Association and that is:

54 (A) Foaled in West Virginia; or

55 (B) Sired by an accredited West Virginia sire; or

56 (C) As a yearling, finished twelve consecutive months of verifiable residence in the state,
57 except for 30 days' grace:

58 (i) For the horse to be shipped to and from horse sales where the horse is officially entered
59 in the sales catalogue of a recognized thoroughbred sales company; or

60 (ii) For obtaining veterinary services, documented by veterinary reports;

61 (25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia,
62 stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders
63 Association;

64 (26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it
65 was born in West Virginia;

66 (27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time
67 it finished twelve consecutive months of verifiable residence in the state. During the period, the
68 raiser will be granted one month of grace for his or her horse to be shipped to and from
69 thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized
70 thoroughbred sales company. In the event the yearling was born in another state and transported
71 to this state, this definition does not apply after December 31, 2007, to any pari-mutuel racing
72 facility located in Jefferson County nor shall it apply after December 31, 2012, and thereafter to
73 any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out of
74 the state for sales, the raiser must notify the Racing Commission of his or her intentions;

75 (28) The "owner of an accredited West Virginia sire" is the owner of record at the time the
76 offspring is conceived;

77 (29) The "owner of an accredited West Virginia horse" means the owner at the time the
78 horse earned designated purses to qualify for restricted purse supplements provided in §19-23-
79 13b of this code;

80 (30) "Registered greyhound owner" means an owner of a greyhound that is registered with
81 the National Greyhound Association;

82 (31) "Fund" means the West Virginia Thoroughbred Development Fund established in
83 §19-23-13b of this code; and

84 (32) "Regular purse" means both regular purses and stakes purses.

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

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

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

10 (2) If the applicant be a partnership, firm or association, the full name and address of each
11 partner or member thereof, the name of the partnership, firm or association and its post office
12 address;

13 (3) If the applicant be a corporation, its name, the state of its incorporation, its post office
14 address, the full name and address of each officer and director thereof, and if a foreign
15 corporation, whether it is qualified to do business in this state;

16 (4) The dates, totaling not less than 200, such applicant intends to hold or conduct such
17 horse or dog race meeting (which may be on any day including Sundays): Provided, That effective
18 July 1, 2018, and thereafter, an applicant outside Ohio County is not required to race any minimum
19 number of dates in order to qualify for a license to hold a dog race meeting;

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

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

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

30 (b) Such application shall be verified by the oath or affirmation of the applicant for such
31 license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a
32 partner, member or officer thereof, as the case may be. When required by the Racing
33 Commission, an applicant for a license shall also furnish evidence satisfactory to the Racing
34 Commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials
35 and other expenses incident to the horse or dog race meeting for which a license is sought. In the
36 event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to
37 pay such expenses and fees, the Racing Commission may require bond or other adequate
38 security before the requested license is issued.

39 (c) Any person desiring to obtain a permit, as required by the provisions of §19-23-2 of
40 this code shall make application therefor on a form prescribed by the Racing Commission. The
41 application for any such permit shall be accompanied by the fee prescribed therefor by the Racing
42 Commission. Each applicant for a permit shall set forth in the application such information as the
43 Racing Commission shall reasonably require.

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION
OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

1 (a) Any racing association conducting thoroughbred racing at any horse racetrack in this
2 state shall pay each day upon which horse races are run a daily license tax of \$250. Any racing
3 association conducting harness racing at any horse racetrack in this state shall pay each day
4 upon which horse races are run a daily license tax of \$150. Any racing association conducting
5 dog races shall pay each day upon which dog races are run a daily license tax of \$150. In the
6 event thoroughbred racing, harness racing, dog racing or any combination of the foregoing are
7 conducted on the same day at the same racetrack by the same racing association, only one daily
8 license tax in the amount of \$250 shall be paid for that day. Any daily license tax shall not apply
9 to any local, county or state fair, horse show or agricultural or livestock exposition at which horse
10 racing is conducted for not more than six days.

11 (b) Any racing association licensed by the Racing Commission to conduct thoroughbred
12 racing and permitting and conducting pari-mutuel wagering under the provisions of this article
13 shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the Racing
14 Commission, from the commission deducted each day by the licensee from the pari-mutuel pools
15 on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools
16 conducted or made at any and every thoroughbred race meeting of the licensee licensed under
17 the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during
18 the months of January, February, March, October, November and December, shall be calculated
19 at four-tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each
20 day during all other months, shall be calculated at one and four-tenths percent of the pool:
21 *Provided*, That out of the amount realized from the three-tenths of one percent decrease in the
22 tax effective for fiscal year 1991 and thereafter, which decrease correspondingly increases the

23 amount of commission retained by the licensee, the licensee shall annually expend or dedicate:
24 (i) One half of the realized amount for capital improvements in its barn area at the track, subject
25 to the Racing Commission's prior approval of the plans for the improvements; and (ii) the
26 remaining one half of the realized amount for capital improvements as the licensee may determine
27 appropriate at the track. The term "capital improvement" shall be as defined by the Internal
28 Revenue Code: *Provided, however,* That any racing association operating a horse racetrack in
29 this state having an average daily pari-mutuel pool on horse racing of \$280,000 or less per day
30 for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel
31 pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the
32 horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-
33 mutuel pool not exceeding \$300,000 the daily pari-mutuel pool tax shall be \$1,000 plus the
34 otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if
35 any, in excess of \$300,000: *Provided further,* That upon the effective date of the reduction of the
36 daily pari-mutuel pool tax to \$1,000 from the former \$2,000, the association or licensee shall daily
37 deposit \$500 into the special fund for regular purses established by §19-23-9(b)(1) of this code:
38 *And provided further,* That if an association or licensee qualifying for the foregoing alternate tax
39 conducts more than one racing performance, each consisting of up to 13 races in a calendar day,
40 the association or licensee shall pay both the daily license tax imposed in subsection (a) of this
41 section and the alternate tax in this subsection for each performance: *And provided further,* That
42 a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund
43 established by §19-23-13b of this code: *And provided further,* That this exclusion shall not apply
44 to any thoroughbred racetrack at which the licensee has participated in the West Virginia
45 Thoroughbred Development Fund for more than four consecutive years prior to December 31,
46 1992.

47 (c) Any racing association licensed by the Racing Commission to conduct harness racing
48 and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in

49 addition to the daily license tax required under subsection (a) of this section, pay to the Racing
50 Commission, from the commission deducted each day by the licensee from the pari-mutuel pools
51 on harness racing, as a tax, three percent of the first \$100,000 wagered, or any part thereof; four
52 percent of the next \$150,000; and five and three-fourths percent of all over that amount wagered
53 each day in all pari-mutuel pools conducted or made at any and every harness race meeting of
54 the licensee licensed under the provisions of this article.

55 (d) Any racing association licensed by the Racing Commission to conduct dog racing and
56 permitting and conducting pari-mutuel wagering under the provisions of this article shall, in
57 addition to the daily license tax required under subsection (a) of this section, pay to the Racing
58 Commission, from the commission deducted each day by the licensee from the pari-mutuel pools
59 on dog racing, as a tax, four percent of the first \$50,000 or any part thereof of the pari-mutuel
60 pools, five percent of the next \$50,000 of the pari-mutuel pools, six percent of the next \$100,000
61 of the pari-mutuel pools, seven percent of the next \$150,000 of the pari-mutuel pools, and eight
62 percent of all over \$350,000 wagered each day: *Provided*, That the licensee shall deduct daily
63 from the pari-mutuel tax an amount equal to one-tenth of one percent of the daily pari-mutuel
64 pools in dog racing in fiscal year 1990; fifteen-hundredths of one percent in fiscal year 1991; two-
65 tenths of one percent in fiscal year 1992; one quarter of one percent in fiscal year 1993; and three-
66 tenths of one percent in fiscal year 1994 and every fiscal year thereafter. The amounts deducted
67 shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking
68 institution of its choice in a special account to be known as West Virginia Racing Commission-
69 Special Account-West Virginia Greyhound Breeding Development Fund: *Provided*, That effective
70 July 1, 2018, and thereafter, the amounts deducted and any other moneys required by this section
71 to be deposited in the West Virginia Greyhound Breeding Development Fund shall from licenses
72 outside Ohio County instead be deposited into the State Excess Lottery Revenue Fund pursuant
73 to §19-23-10a of this code: The purpose of the West Virginia Greyhound Breeding Development
74 Fund is to promote better breeding, training track facilities and racing of greyhounds in the state

75 through awards and purses to bona fide resident registered greyhound owners of accredited West
76 Virginia whelped greyhounds. In order to participate and be eligible to receive an award or purse
77 through the fund, the registered greyhound owner must have an appropriate license from the
78 Racing Commission to race in West Virginia. The registered greyhound dam at the time of
79 breeding must be wholly or solely owned or leased by a bona fide resident or residents of West
80 Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned by a
81 bona fide resident or residents of this state. To qualify as a bona fide resident of West Virginia, a
82 registered greyhound owner may not claim residency in any other state. A registered greyhound
83 owner must prove bona fide residency by providing to the commission personal income tax
84 returns filed in the State of West Virginia for the most recent tax year and the three previous tax
85 years, has real or personal property in this state on which the owner has paid real or personal
86 property taxes during the most recent tax year and the previous three tax years and an affidavit
87 stating that the owner claims no other state of residency. The Racing Commission shall maintain
88 a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing
89 Commission for purses for stake races, training track facilities, supplemental purse awards,
90 administration, promotion, education and greyhound adoption programs involving West Virginia
91 whelped dogs, owned by residents of this state under rules promulgated by the Racing
92 Commission. The Racing Commission shall pay out of the greyhound breeding development fund
93 to each of the licensed dog racing tracks the sum of \$75,000 for the fiscal year ending June 30,
94 1994. The licensee shall deposit the sum into the special fund for regular purses established
95 under the provisions of §19-23-9 of this code. The funds shall be expended solely for the purpose
96 of supplementing regular purses under rules promulgated by the Racing Commission.

97 Supplemental purse awards will be distributed as follows: Supplemental purses shall be
98 paid directly to the registered greyhound owner of an accredited greyhound.

99 The registered greyhound owner of accredited West Virginia whelped greyhounds that
100 earn points at any West Virginia meet will receive a bonus award calculated at the end of each

101 month as a percentage of the fund dedicated to the owners as purse supplements, which shall be
102 a minimum of 50 percent of the total moneys deposited into the West Virginia Greyhound Breeding
103 Development Fund monthly.

104 The total amount of the fund available for the owners' awards shall be distributed
105 according to the ratio of points earned by an accredited greyhound to the total amount earned in
106 races by all accredited West Virginia whelped greyhounds for that month as a percentage of the
107 funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall
108 be the same as approved by the Racing Commission to be effective April 1, 2007. The West
109 Virginia Greyhound Owners and Breeders Association shall submit a list of any additions or
110 deletions to the registry of accredited West Virginia whelped greyhounds on the first of each
111 month. The Racing Commission shall not require anyone to be a member of a particular
112 association in order to participate in the West Virginia Greyhound Breeding Development Fund.

113 The registered greyhound owner of an accredited West Virginia whelped greyhound shall
114 file a purse distribution form with the Racing Commission for a percentage of his or her dog's
115 earnings to be paid directly to the registered greyhound owner or owners of the greyhound.
116 Distribution shall be made on the 15th day of each month for the preceding month's achievements.

117 In no event shall points earned at a meet held at a track which did not make contributions
118 to the West Virginia Greyhound Breeding Development Fund out of the daily pool on the day the
119 meet was held qualify or count toward eligibility for supplemental purse awards.

120 Any balance in the purse supplement funds after all distributions have been made for the
121 year revert to the general account of the fund for distribution in the following year: *Provided*, That
122 not more than \$2 million from the balance in the purse supplemental fund shall be used for the
123 construction and maintenance of two dog training track facilities if such be approved by the Racing
124 Commission: *Provided, however*, That not more than \$1 million may be allocated for the
125 construction and maintenance of each training track: *Provided further*, That both training track
126 facilities must be located in West Virginia. The West Virginia Racing Commission shall be

127 authorized to promulgate rules governing dog training tracks: *And provided further*, That the
128 Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the
129 construction or maintenance, or both, of the training tracks; and (2) set standards to assure that
130 only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

131 In an effort to further promote the breeding of quality West Virginia whelped greyhounds,
132 a bonus purse supplement shall be established in the amount of \$50,000 per annum, to be paid
133 in equal quarterly installments of \$12,500 per quarter using the same method to calculate and
134 distribute these funds as the regular supplemental purse awards. This bonus purse supplement
135 is for three years only, commencing on July 1, 1993, and ending June 30, 1996. This money
136 would come from the current existing balance in the greyhound development fund.

137 Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia
138 whelped greyhounds: *Provided*, That each pari-mutuel track shall have one juvenile and one open
139 stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for
140 accredited West Virginia whelped greyhounds per race card: *Provided, however*, That sufficient
141 dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an
142 opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West
143 Virginia Racing Commission by July 1, each year shall establish and announce the minimum
144 number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West
145 Virginia dog tracks must have on their racing active list during the calendar year following such
146 action. The minimum number may vary from dog track to dog track. The minimum number shall
147 be established after consultation with the West Virginia Greyhound Owners and Breeders
148 Association and kennel owners and operators. Factors to be considered in establishing this
149 minimum number shall be the number of individually registered accredited West Virginia whelped
150 greyhounds whelped in the previous two years. The number of all greyhounds seeking
151 qualification at each West Virginia dog track, the ratio of active running greyhounds to housed
152 number of greyhounds at each West Virginia dog track, and the size and number of racing kennels

153 at each West Virginia dog track. Any greyhound racing kennel not having the minimum number
154 of accredited West Virginia whelped greyhounds determined by the West Virginia Racing
155 Commission on their active list shall only be permitted to race the maximum allowable number on
156 the active list less the number of accredited West Virginia whelped greyhounds below the
157 established minimum number. Consistent violations of this minimum requirement may be
158 reviewed by the Racing Commission and may constitute cause for denial or revocation of a
159 kennel's racing license. The Racing Commission shall oversee and approve racing schedules
160 and purse amounts.

161 Ten percent of the deposits into the Greyhound Breeding Development Fund beginning
162 July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission
163 and placed in a special revenue account hereby created in the State Treasury called the
164 Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs
165 to include Spaying and Neutering Account. The Racing Commission is authorized to expend the
166 moneys deposited in the Administration, Promotion, Education, Capital Improvement and
167 Greyhound Adoption Programs to include Spaying and Neutering Account at such times and in
168 such amounts as the commission determines to be necessary for purposes of administering and
169 promoting the greyhound development program: *Provided*, That beginning with fiscal year 1995
170 and in each fiscal year thereafter in which the commission anticipates spending any money from
171 the account, the commission shall submit to the executive department during the budget
172 preparation period prior to the Legislature convening before that fiscal year for inclusion in the
173 Executive Budget Document and Budget Bill, the recommended expenditures, as well as requests
174 of appropriations for the purpose of administration, promotion, education, capital improvement
175 and greyhound adoption programs to include spaying and neutering. The commission shall make
176 an annual report to the Legislature on the status of the Administration, Promotion, Education,
177 Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering
178 Account, including the previous year's expenditures and projected expenditures for the next year.

179 The Racing Commission, for the fiscal year 1994 only, may expend up to \$35,000 from
180 the West Virginia Greyhound Breeding Development Fund to accomplish the purposes of this
181 section without strictly following the requirements in the previous paragraph.

182 (e) All daily license and pari-mutuel pools tax payments required under the provisions of
183 this section shall be made to the Racing Commission or its agent after the last race of each day
184 of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from
185 all contributions to all pari-mutuel pools to each and every race of the day.

186 (f) Every association or licensee subject to the provisions of this article, including the
187 changed provisions of this section and §19-23-9 of this code, shall annually submit to the Racing
188 Commission and the Legislature financial statements, including a balance sheet, income
189 statement, statement of change in financial position and an audit of any electronic data system
190 used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing
191 standards, as certified by an experienced public accountant or a certified public accountant.

**§19-23-10a. West Virginia Greyhound Breeding Development Fund; transfer of current
funds and future deposits.**

1 (a) Notwithstanding any other provision of this code, effective July 1, 2018, the West
2 Virginia Greyhound Breeding Development Fund created in §19-23-10 of this code is limited to
3 racing in Ohio County. On or before July 1, 2018, all amounts remaining in the West Virginia
4 Greyhound Breeding Development Fund not set aside for Ohio County racing shall be transferred
5 to the State Excess Lottery Revenue Fund created in §29-22-18a of this code for appropriation
6 by the Legislature: *Provided*, That \$1 million shall be withheld by the Racing Commission and
7 placed in the special revenue account called the Administration, Promotion, Education, Capital
8 Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account
9 created in §19-23-10(d) of this code, to be allocated specifically to facilitate care for and adoption
10 of, or placement in, no-kill animal shelters of accredited West Virginia whelped greyhounds
11 actively running at each West Virginia dog track.

12 (b) Notwithstanding any other provision of this code, effective July 1, 2018, and thereafter,
13 all amounts required to be deposited into the West Virginia Greyhound Breeding Development
14 Fund prior to the enactment of this section shall, in lieu thereof, be deposited into the State Excess
15 Lottery Revenue Fund for appropriation by the Legislature: *Provided*, That net terminal lottery
16 income shall be distributed as provided in §29-22A-10(c)(5) of this code and, §29-22A-10b(a)(5)
17 of this code.

18 (c) Notwithstanding any other provision of this code, effective July 1, 2018, and thereafter,
19 all amounts required to be deposited into any fund or paid for the purpose of funding purses
20 outside of Ohio County, awards or providing any other funding for greyhound races shall, in lieu
21 thereof, be deposited into State Excess Lottery Fund for appropriation by the Legislature.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering 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 §19-23-2
7 of this code; 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) (1) A licensee conducting not less than 220 live racing dates for each horse or dog
12 race meeting may, with the prior approval of the State Racing Commission, contract with any legal
13 wagering entity in this state or in any other governmental jurisdiction to receive telecasts and
14 accept wagers on races conducted by the legal wagering entity: *Provided*, That effective July 1,
15 2018, and thereafter, a licensee outside of Ohio County that was licensed prior to January 1,

16 1994, to conduct dog racing is not required to conduct a minimum number of live racing dates to
17 contract with a legal wagering entity in this state or in any other governmental jurisdiction to
18 receive telecasts and accept wagers on dog and horse races: *Provided, however,* That at those
19 thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less than
20 210 live racing dates for each horse race meeting: *Provided, however further,* That at those
21 thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development
22 Fund for a period of more than four consecutive calendar years prior to December 31, 1992, the
23 licensee may apply for not less than 159 live racing dates during the calendar year 1997. If,
24 thereafter, for reasons beyond the licensee's control, related to adverse weather conditions,
25 unforeseen casualty occurrences or a shortage of thoroughbred horses eligible to compete for
26 purses, the licensee concludes that this number of racing days cannot be attained, the licensee
27 may file a request with the Racing Commission to reduce the authorized live racing days. Upon
28 receipt of the request the Racing Commission shall within seventy-two hours of the receipt of the
29 request notify the licensee and the representative of a majority of the owners and trainers at the
30 requesting track and the representative of the majority of the mutuel clerks at the requesting track
31 that such request has been received and that if no objection to the request is received within 10
32 days of the notification the request will be approved: *And provided further,* That the commission
33 shall give consideration to whether there existed available unscheduled potential live racing dates
34 following the adverse weather or casualty and prior to the end of the race meeting which could be
35 used as new live racing dates in order to maintain the full live racing schedule previously approved
36 by the Racing Commission. If an objection is received by the commission within the time limits,
37 the commission shall, within 30 days of receipt of such objection, set a hearing on the question of
38 reducing racing days, which hearing shall be conducted at a convenient place in the county in
39 which the requesting racetrack is located. The commission shall hear from all parties concerned
40 and, based upon testimony and documentary evidence presented at the hearing, shall determine
41 the required number of live racing days: *And provided further,* That the commission shall not

42 reduce the number of live racing days below 185 days for a horse race meeting unless the
43 licensee requesting such reduction has: (i) Filed with the commission a current financial
44 statement, which shall be subject to independent audit; and (ii) met the burden of proving that just
45 cause exists for such requested reduction in live racing days. The telecasts may be received and
46 wagers accepted at any location authorized by the provisions of §19-23-12a of this code. The
47 contract must receive the approval of the representative of the majority of the owners and trainers
48 who hold permits required by §19-23-2 of this code at the receiving thoroughbred racetrack.

49 (2) A facility that was licensed prior to January 1, 1994, to conduct dog racing is required
50 to hold a racing license to receive telecasts and accept wagers on dog and horse races,
51 regardless of whether the facility continues to conduct live dog racing.

52 (3) The commission shall have authority to promulgate rules, including emergency rules,
53 in accordance with §29A-3-1 et seq. of this code, as it deems necessary to implement and
54 efficiently administer the requirement of subdivision (2) of this subsection: *Provided, That the rules*
55 are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at live
56 racetracks.

57 (c) The commission may allow the licensee to commingle its wagering pools with the
58 wagering pools of the host racing association. If the pools are commingled, the wagering at the
59 licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and
60 be electronically linked with the equipment at the sending racetrack. Subject to the approval of
61 the commission, the types of betting, licensee commissions and distribution of winnings on pari-
62 mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack.
63 Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with
64 the law or rules governing the sending racetrack and must be distributed in a manner agreed to
65 between the licensee and the sending racetrack. For the televised racing services it provides, the
66 host racing association shall receive a fee to be paid by the receiving licensee racetrack which
67 shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing

68 association.

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

72 (e) (1) From the licensee commissions authorized by subsection (c) of this section, the
73 licensee shall pay one tenth of one percent of each commission into the general fund of ~~the~~
74 ~~county, in which the racetrack is located~~ Ohio County and at which the wagering occurred and
75 there is imposed and the licensee shall pay, for each televised racing day on which the total pari-
76 mutuel pool exceeds \$100,000, the greater of either: (i) The total of the daily license tax and the
77 pari-mutuel pools tax required by §19-23-10 of this code; or (ii) a daily license tax of \$1,250. For
78 each televised racing day on which the total pari-mutuel pool is \$100,000 or less, the licensee
79 shall pay a daily license tax of \$500 plus an additional license tax of \$100 for each \$10,000, or
80 part thereof, that the pari-mutuel pool exceeds \$50,000, but does not exceed \$100,000. The
81 calculation of the total pari-mutuel pool for purposes of this subsection shall include only one half
82 of all wagers placed at a licensed racetrack in ~~this state~~ Ohio County on televised races conducted
83 at another licensed racetrack within this state. Payments of the tax imposed by this section are
84 subject to the requirements of §10-23-10(e) of this code.

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

91 (3) From the licensee commissions authorized by subsection (c) of this section, after
92 payments are made in accordance with the provisions of subdivisions (1) and (2) of this
93 subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for

94 each televised racing day on or after July 1, 1997, an additional five and one-half percent of net
95 simulcast income into the West Virginia Thoroughbred Development Fund established by the
96 Racing Commission according to §19-23-13b of this code: *Provided*, That no licensee qualifying
97 for the alternate tax provisions of §19-23-10(b) shall be required to make the payments unless
98 the licensee has participated in the West Virginia Thoroughbred Development Fund for a period
99 of more than four consecutive calendar years prior to December 31, 1992. For the purposes of
100 this section, the term “net simulcast income” means the total commission deducted each day by
101 the licensee from the pari-mutuel pools on simulcast horse or dog races, less direct simulcast
102 expenses, including, but not limited to, the cost of simulcast signals, telecommunication costs and
103 decoder costs.

104 (f) After deducting the tax and other payments required by subsection (e) of this section,
105 the amount required to be paid under the terms of the contract with the host racing association
106 and the cost of transmission, the horse racing association shall make a deposit equal to 50
107 percent of the remainder into the purse fund established under the provisions of §19-23-9(b)(1)
108 of this code. After deducting the tax and other payments required by subsection (e) of this section,
109 dog racetracks shall pay an amount equal to two-tenths of one percent of the daily simulcast pari-
110 mutuel pool to the West Virginia Racing Commission Special Account-West Virginia Greyhound
111 Breeding Development Fund: *Provided*, That effective July 1, 2018, and thereafter, the amount
112 required to be paid to the West Virginia Greyhound Breeding Development Fund outside Ohio
113 County by this subsection shall instead be paid to the state Excess Lottery Revenue Fund
114 pursuant to §19-23-10a of this code.

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

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS; IRREDEEMABLE TICKETS; AWARDS.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.

1 (a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-
2 mutuel tickets, if not claimed within 90 days after the close of a horse or dog race meeting or the
3 televised racing day, as the case may be, in connection with which the tickets were issued, shall
4 be turned over by the licensee to the Racing Commission within 15 days after the expiration of
5 the 90-day period, and the licensee shall give any information required by the Racing Commission
6 concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the
7 Racing Commission in a banking institution of its choice in a special account to be known as West
8 Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets. Notice of the
9 amount, date and place of each deposit shall be given by the Racing Commission, in writing, to
10 the State Treasurer. The Racing Commission shall then cause to be published a notice to the
11 holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their
12 unredeemed tickets for payment at the principal office of the Racing Commission within 90 days
13 from the date of the publication of the notice. The notice shall be published within 15 days
14 following the receipt of the outstanding and unredeemed pari-mutuel ticket moneys by the
15 commission from the licensee as a Class I legal advertisement in compliance with the provisions
16 of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county in
17 which the horse or dog race meeting was held and the county in which the televised racing day
18 wagering was conducted in this state.

19 (b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for
20 payment within 90 days from the date of the publication of the notice are thereafter irredeemable,
21 and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the

22 property of the Racing Commission and shall be expended as provided in subsections (c) and (d)
23 of this section. The Racing Commission shall maintain separate accounts for each licensee and
24 shall record in each separate account the moneys turned over by the licensee and the amount
25 expended at the licensee's track for the purposes set forth in this subsection.

26 (c) In the fiscal year beginning on July 1, 2010, the Racing Commission shall keep
27 separate the unredeemed pari-mutuel tickets received from each of the two licensee horse
28 racetracks.

29 (1) The unredeemed pari-mutuel tickets attributable to each licensee horse racetrack
30 together with funds distributed pursuant to §29-22-18a of this code shall be used for claims
31 received pursuant to this subsection by the Racing Commission each calendar quarter: *Provided,*
32 That the first distribution after the effective date of amendments to this section made during the
33 2010 regular legislative session shall not occur until February 2011 and then each calendar
34 quarter thereafter. Any claims made pursuant to this subsection must be submitted to the Racing
35 Commission no later than 15 days after the race where the funds are awarded. The funds in the
36 two special accounts - unredeemed pari-mutuel tickets shall be distributed based on claims
37 received from each horse racetrack as follows:

38 (A) To the owner of the winning horse in any horse race at a horse race meeting held or
39 conducted by any licensee: *Provided,* That the owner of the horse is at the time of the horse race
40 a bona fide resident of this state, a sum equal to 10 percent of the purse won by the horse at that
41 race: *Provided, however,* That in the event there are more than 10 races in any performance, the
42 award to the resident owner of the winning horse will be that fractional share of the purse with a
43 numerator of one and a denominator representing the number of races on the day of the
44 performance. The commission may require proof that the owner was, at the time of the race, a
45 bona fide resident of this state. Upon proof by the owner that he or she filed a personal income
46 tax return in this state for the previous two years and that he or she owned real or personal
47 property in this state and paid taxes in this state on real or personal property for the previous two

48 years, he or she shall be presumed to be a bona fide resident of this state; and

49 (B) To the breeder (that is the owner of the mare) of the winning horse in any horse race
50 at a horse race meeting held or conducted by any licensee: *Provided*, That the mare foaled in this
51 state, a sum equal to 10 percent of the purse won by the horse: *Provided, however*, That in the
52 event there are more than 10 races in any performance, the award to the breeder will be that
53 fractional share of the purse with a numerator of one and a denominator representing the number
54 of races on the day of the performance; and

55 (C) To the owner of the stallion which sired the winning horse in any horse race at a horse
56 race meeting held or conducted by any licensee: *Provided*, That the mare which foaled the
57 winning horse was served by a stallion standing and registered in this state, a sum equal to 10
58 percent of the purse won by the horse: *Provided, however*, That in the event there are more than
59 10 races in any performance, the award to the owner of the stallion will be percentage of the purse
60 based upon the fractional share represented by the number of races on the day of the
61 performance.

62 (2) If in any calendar quarter insufficient funds are available in each licensee horse
63 racetrack's special account - unredeemed pari-mutuel tickets administered by the Racing
64 Commission for payments pursuant to subdivision (1), payments shall be made on a pro rata
65 basis pursuant to paragraphs (A), (B) and (C), subdivision (1) of this subsection of the claims
66 submitted from races won at each horse racetrack. Once payments on each claim are made,
67 whether in full or on a pro rata basis, no further obligation for payment is created by this
68 subdivision. Claims received after the deadline are not valid.

69 (3) If after paying any claims pursuant to this subsection and funds remain in the accounts,
70 those funds shall carry over to the next calendar quarter. If in any quarter the surplus in either
71 account reaches a balance of \$1 million, then that surplus balance shall be placed in to the regular
72 purse fund of that licensee horse racetrack whose unredeemed pari-mutuel account achieves the
73 surplus.

74 (d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be
75 combined into a single balance and distributed quarterly to the West Virginia Racing Commission
76 special account - West Virginia Greyhound Breeding Development Fund: Provided, That effective
77 July 1, 2018, and thereafter, the balance shall instead be distributed to the state Excess Lottery
78 Revenue Fund pursuant to §19-23-10a of this code. The deposit made pursuant to this subsection
79 does not create a continuing obligation of payment except to the extent that there are unredeemed
80 pari-mutuel tickets from the licensee dog racetracks.

81 (e) The amendments to this section made during the 2010 regular legislative session shall
82 become effective July 1, 2010.

83 (f) The Racing Commission shall satisfy obligations of the prior enactment of this section
84 for all claims received on purses won on or before June 30, 2010. Claimants must submit all
85 claims on or before July 15, 2010, for verification by the Racing Commission. Claims received
86 after July 15, 2010, are not valid.

87 (1) A transfer of \$2.5 million from the State Excess Lottery Revenue Fund available on the
88 last day of the fiscal year which began July 1, 2009, shall be made to the nonappropriated fund
89 with the State Treasurer known as the Unredeemed Pari-Mutuel Tickets Fund. The Racing
90 Commission shall also transfer to the account with the State Treasurer moneys from the Racing
91 Commission Special Account - Unredeemed Pari-Mutuel Tickets for deposits received in each of
92 those accounts that have been credited with unredeemed pari-mutuel tickets for races completed
93 at any licensee racetrack as of June 30, 2010, and any other moneys appropriated by the
94 Legislature. Unredeemed pari-mutuel tickets for races completed after June 30, 2010 must remain
95 in the special accounts - unredeemed pari-mutuel tickets to satisfy future payments pursuant to
96 this section.

97 (2) The Racing Commission is authorized to pay claims received for races completed on
98 or before June 30, 2010, without regard to date of deposit or date of claim. Claims shall be paid
99 in date order, with the oldest claims being paid first, until all claims have been satisfied. All

100 payments made pursuant to this subsection for claims received on purses won on or before June
101 30, 2010, shall extinguish any further obligation by the state with respect to those claims.

102 (g) The commission shall submit to the Legislative Auditor a quarterly report and
103 accounting of the income and expenditures in the special account created by this section known
104 as the West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets.

105 (h) Nothing contained in this article shall prohibit one person from qualifying for all or more
106 than one of the aforesaid awards or for awards under §19-23-13b of this code.

107 (i) The cost of publication of the notice provided for in this section shall be paid from the
108 funds in the hands of the State Treasurer collected from the pari-mutuel pools' tax provided for in
109 §19-23-10 of this code, when not otherwise provided in the budget; but no such costs shall be
110 paid unless an itemized account thereof, under oath, be first filed with the State Auditor.

111 (j) The Racing Commission is authorized to promulgate emergency rules, prior to
112 September 1, 2010, to incorporate the revisions to this article enacted during the 2010 regular
113 legislative session.

PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION FEES AND FINES.

§19-23-13c. Expenditure of racetrack video lottery distribution.

1 (a) Funds received by the Racing Commission pursuant §29-22A-10(c)(6) of this code,
2 and §29-22A-10b(a)(5) of this code after the effective date of this section together with the balance
3 in the bank account previously established by the commission to receive those funds shall be
4 deposited in a banking institution of its choice in a special account to be known as West Virginia
5 Racing Commission Racetrack Video Lottery Account. Notice of the amount, date and place of
6 each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

7 (b) Funds in this account shall be allocated and expended as follows:

8 (1) For each fiscal year, the first \$800,000 deposited in the separate account plus the
9 amount then remaining of the June 30, 1997, balance in the separate account previously
10 established for the West Virginia breeders classic under §19-23-13 of this code, shall be used by

11 the commission for promotional activities, advertising, administrative costs and purses for the
12 West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses
13 qualifying under the West Virginia breeders program for each stake race, based solely on the
14 horses' sex, age and earnings.

15 (2) For each fiscal year, the next \$200,000 deposited into the separate account shall be
16 used by the commission for promotional activities and purses for open stake races for a race
17 event to be known as the West Virginia Derby to be held at a thoroughbred racetrack which does
18 not participate in the West Virginia Breeders Classic.

19 (3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this
20 subsection have been deposited into separate bank accounts for use in connection with the West
21 Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the commission shall
22 return to each racetrack all additional amounts deposited which originate during that fiscal year
23 from each respective racetrack pursuant to §29-22A-10(c)(6) of this code, which returned excess
24 funds shall be used as follows:

25 (A) For each dog racetrack, one half of the returned excess funds shall be used for capital
26 improvements at the racetrack and one half of the returned excess funds shall be deposited into
27 the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding
28 Development Fund: Provided, That effective July 1, 2018, and thereafter, the funds required by
29 this paragraph to be deposited in the West Virginia Racing Commission Special Account - West
30 Virginia Greyhound Breeding Development Fund shall instead be deposited into the state Excess
31 Lottery Revenue Fund pursuant to §19-23-10a of this code.

32 (B) At those thoroughbred racetracks that have participated in the West Virginia
33 Thoroughbred Development Fund for a period of more than four consecutive calendar years prior
34 to December 31, 1992, one half of the returned excess funds shall be used for capital
35 improvements at the licensee's racetrack and one half of the returned excess funds shall be
36 equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia

37 Thoroughbred Development Fund.

38 (C) At those thoroughbred horse racetracks which do not participate in the West Virginia
39 Breeders Classic, one half of the returned excess funds shall be used for capital improvements
40 at the licensee's racetrack and one half of the returned excess funds shall be used for purses for
41 the open stakes race event known as the West Virginia Derby.

42 (c) All expenditures that are funded under this section must be approved in writing by the
43 West Virginia Racing Commission before the funds are expended for any of the purposes
44 authorized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Revenue Fund.

1 (a) The State Lottery Fund in the State Treasury which is designated and known as the
2 State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the
3 fund and all interest earned from investment of the fund and any gifts, grants or contributions
4 received by the fund. All revenues received under the provisions of §29-22A-10b and §29-22A-
5 10c of this code and under §29-22B-1 *et seq.* of this code except the amounts due the commission
6 under §29-22B-1408(a)(1) of this code shall be deposited in the State Treasury and placed into
7 the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided
8 in this section for the purposes stated in this section and shall not be treated by the State Auditor
9 and the State Treasurer as part of the general revenue of the state.

10 (b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) \$65 million
11 into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State
12 Treasury to be known as the General Purpose Account to be expended pursuant to appropriation
13 of the Legislature; (2) \$10 million into the Education Improvement Fund for appropriation by the
14 Legislature to the PROMISE Scholarship Fund created in §18-7-7 of this code; (3) \$19 million into

15 the Economic Development Project Fund created in subsection (e) of this section for the issuance
16 of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$20
17 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the
18 issuance of revenue bonds; (5) \$40 million into the West Virginia Infrastructure Fund created in
19 §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million
20 into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the
21 State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1, 2003,
22 the commission shall deposit: (1) \$65 million into the General Purpose Account to be expended
23 pursuant to appropriation of the Legislature; (2) \$17 million into the Education Improvement Fund
24 for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of
25 this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e)
26 of this section for the issuance of revenue bonds and to be spent in accordance with the provisions
27 of said subsection; (4) \$20 million into the School Building Debt Service Fund created in §18-9D-
28 6 of this code for the issuance of revenue bonds; (5) \$40 million into the West Virginia
29 Infrastructure Fund created in §31-15A-6.of this code to be spent in accordance with the
30 provisions of §31-15A-1 *et seq.*; (6) \$10 million into the Higher Education Improvement Fund for
31 Higher Education; and (7) \$7 million into the state Park Improvement Fund for Park
32 Improvements.

33 (c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the
34 fiscal year ending June 30, 2009, the commission shall deposit: (1) \$65 million into the General
35 Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$27 million into
36 the Education Improvement Fund for appropriation by the Legislature to the PROMISE
37 Scholarship Fund created in §18C-7-7 of this code; (3) \$19 million into the Economic
38 Development Project Fund created in subsection (e) of this section for the issuance of revenue
39 bonds and to be spent in accordance with the provisions of said subsection; (4) \$19 million into
40 the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of

41 revenue bonds: *Provided*, That for the fiscal year beginning July 1, 2008, and subsequent fiscal
42 years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this
43 subsection and instead \$19 million shall be deposited into the Excess Lottery School Building
44 Debt Service Fund; (5) \$40 million into the West Virginia Infrastructure Fund created in §31-15A-
45 9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the
46 Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the State Park
47 Improvement Fund for Park Improvements. No portion of the distributions made as provided in
48 this subsection and subsection (b) of this section, except distributions made in connection with
49 bonds issued under subsection (e) of this section, may be used to pay debt service on bonded
50 indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment
51 of debt service on the bonds through statutory enactment or the adoption of a concurrent
52 resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption
53 of a resolution that expressly authorizes issuance of the bonds and payment of debt service on
54 the bonds with funds distributed under this subsection and subsection (b) of this section, except
55 distributions made in connection with bonds issued under subsection (d) of this section, the
56 distributions may be used only to fund capital improvements that are not financed by bonds and
57 only pursuant to appropriation of the Legislature.

58 (d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission
59 shall deposit: (1) \$65 million into the General Purpose Account to be expended pursuant to
60 appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund for
61 appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this
62 code; (3) \$19 million into the Economic Development Project Fund created in subsection (e) of
63 this section for the issuance of revenue bonds and to be spent in accordance with the provisions
64 of said subsection; (4) \$19 million into the Excess Lottery School Building Debt Service Fund
65 created in §18-9D-6 of this code; (5) \$40 million into the West Virginia Infrastructure Fund created
66 in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10

67 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into
68 the State Park Improvement Fund for Park Improvements. No portion of the distributions made
69 as provided in this subsection and subsection (b) of this section, except distributions made in
70 connection with bonds issued under subsection (e) of this section, may be used to pay debt
71 service on bonded indebtedness until after the Legislature expressly authorizes issuance of the
72 bonds and payment of debt service on the bonds through statutory enactment or the adoption of
73 a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment
74 or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt
75 service on the bonds with funds distributed under this subsection and subsection (b) of this
76 section, except distributions made in connection with bonds issued under subsection (e) of this
77 section, the distributions may be used only to fund capital improvements that are not financed by
78 bonds and only pursuant to appropriation of the Legislature.

79 (e) The Legislature finds and declares that in order to attract new business, commerce
80 and industry to this state, to retain existing business and industry providing the citizens of this
81 state with economic security and to advance the business prosperity of this state and the
82 economic welfare of the citizens of this state, it is necessary to provide public financial support for
83 constructing, equipping, improving and maintaining economic development projects, capital
84 improvement projects and infrastructure which promote economic development in this state.

85 (1) The West Virginia Economic Development Authority created and provided for in §31-
86 15-1 *et seq.* of this code shall, by resolution, in accordance with the provisions of this article and
87 §31-15-1 *et seq.* of this code, and upon direction of the Governor, issue revenue bonds of the
88 Economic Development Authority in no more than two series to pay for all or a portion of the cost
89 of constructing, equipping, improving or maintaining projects under this section or to refund the
90 bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which
91 are secured by State Excess Lottery Revenue Fund proceeds shall mature at a time or times not
92 exceeding 30 years from their respective dates. The principal of and the interest and redemption

93 premium, if any, on the bonds shall be payable solely from the special fund provided in this section
94 for the payment.

95 (2) The special revenue fund named the Economic Development Project Fund into which
96 shall be deposited the amounts to be deposited in the fund as specified in subsections (b), (c)
97 and (d) of this section is continued. The Economic Development Project Fund shall consist of all
98 such moneys, all appropriations to the fund, all interest earned from investment of the fund and
99 any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be
100 pledged to the repayment of the principal, interest and redemption premium, if any, on any
101 revenue bonds or refunding revenue bonds authorized by this section, including any and all
102 commercially customary and reasonable costs and expenses which may be incurred in
103 connection with the issuance, refunding, redemption or defeasance of the bonds. The West
104 Virginia Economic Development Authority may further provide in the resolution and in the trust
105 agreement for priorities on the revenues paid into the Economic Development Project Fund that
106 are necessary for the protection of the prior rights of the holders of bonds issued at different times
107 under the provisions of this section. The bonds issued pursuant to this subsection shall be
108 separate from all other bonds which may be or have been issued, from time to time, under the
109 provisions of this article.

110 (3) After the West Virginia Economic Development Authority has issued bonds authorized
111 by this section and after the requirements of all funds have been satisfied, including any coverage
112 and reserve funds established in connection with the bonds issued pursuant to this subsection,
113 any balance remaining in the Economic Development Project Fund may be used for the
114 redemption of any of the outstanding bonds issued under this subsection which, by their terms,
115 are then redeemable or for the purchase of the outstanding bonds at the market price, but not to
116 exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be
117 immediately canceled and shall not again be issued.

118 (4) Bonds issued under this subsection shall state on their face that the bonds do not

119 constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges
120 thereon cannot become an obligation of the State of West Virginia; and that the bondholders'
121 remedies are limited in all respects to the Special Revenue Fund established in this subsection
122 for the liquidation of the bonds.

123 (5) The West Virginia Economic Development Authority shall expend the bond proceeds
124 from the revenue bond issues authorized and directed by this section for projects certified under
125 the provision of this subsection: *Provided*, That the bond proceeds shall be expended in
126 accordance with the requirements and provisions of §21-5A-1 *et seq.* of this code and either §5-
127 22-1 *et seq.* of this code or §5-22A-1 *et seq.* of this code, as the case may be: *Provided, however*,
128 That if the bond proceeds are expended pursuant to §5-22A-1 *et seq.* of this code and if the
129 Design-Build Board created under said that article determines that the execution of a design-build
130 contract in connection with a project is appropriate pursuant to the criteria set forth in said article
131 and that a competitive bidding process was used in selecting the design builder and awarding the
132 contract, the determination shall be conclusive for all purposes and shall be considered to satisfy
133 all the requirements of said article.

134 (6) For the purpose of certifying the projects that will receive funds from the bond
135 proceeds, a committee is hereby established and comprised of the Governor, or his or her
136 designee, the Secretary of the Department of Revenue, the Executive Director of the West
137 Virginia Development Office and six persons appointed by the Governor: *Provided*, That at least
138 one citizen member must be from each of the state's three congressional districts. The committee
139 shall meet as often as necessary and make certifications from bond proceeds in accordance with
140 this subsection. The committee shall meet within 30 days of the effective date of this section.

141 (7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled
142 with the committee. Within 10 days from the effective date of this section as amended in the year
143 2003, the lead applicant shall file with the committee any amendments to the original application
144 that may be necessary to properly reflect changes in facts and circumstances since the

145 application was originally filed with the committee.

146 (8) When determining whether or not to certify a project, the committee shall take into
147 consideration the following:

148 (A) The ability of the project to leverage other sources of funding;

149 (B) Whether funding for the amount requested in the grant application is or reasonably
150 should be available from commercial sources;

151 (C) The ability of the project to create or retain jobs, considering the number of jobs, the
152 type of jobs, whether benefits are or will be paid, the type of benefits involved and the
153 compensation reasonably anticipated to be paid persons filling new jobs or the compensation
154 currently paid to persons whose jobs would be retained;

155 (D) Whether the project will promote economic development in the region and the type of
156 economic development that will be promoted;

157 (E) The type of capital investments to be made with bond proceeds and the useful life of
158 the capital investments; and

159 (F) Whether the project is in the best interest of the public.

160 (9) A grant may not be awarded to an individual or other private person or entity. Grants
161 may be awarded only to an agency, instrumentality or political subdivision of this state or to an
162 agency or instrumentality of a political subdivision of this state. The project of an individual or
163 private person or entity may be certified to receive a low-interest loan paid from bond proceeds.
164 The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid
165 and the period of the repayment, shall be determined by the Economic Development Authority
166 after considering all applicable facts and circumstances.

167 (10) Prior to making each certification, the committee shall conduct at least one public
168 hearing, which may be held outside of Kanawha County. Notice of the time, place, date and
169 purpose of the hearing shall be published in at least one newspaper in each of the three
170 congressional districts at least 14 days prior to the date of the public hearing.

171 (11) The committee may not certify a project unless the committee finds that the project is
172 in the public interest and the grant will be used for a public purpose. For purposes of this
173 subsection, projects in the public interest and for a public purpose include, but are not limited to:

174 (A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;

175 (B) Health clinics and other health facilities;

176 (C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping
177 facilities and transmission lines;

178 (D) State-of-the-art telecommunications infrastructure;

179 (E) Biotechnical incubators, development centers and facilities;

180 (F) Industrial parks, including construction of roads, sewer, water, lighting and other
181 facilities;

182 (G) Improvements at state parks, such as construction, expansion or extensive renovation
183 of lodges, cabins, conference facilities and restaurants;

184 (H) Railroad bridges, switches and track extension or spurs on public or private land
185 necessary to retain existing businesses or attract new businesses;

186 (I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails,
187 picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and
188 baseball, football and soccer fields;

189 (J) State-owned buildings that are registered on the National Register of Historic Places;

190 (K) Retail facilities, including related service, parking and transportation facilities,
191 appropriate lighting, landscaping and security systems to revitalize decaying downtown areas;
192 and

193 (L) Other facilities that promote or enhance economic development, educational
194 opportunities or tourism opportunities thereby promoting the general welfare of this state and its
195 residents.

196 (12) Prior to the issuance of bonds under this subsection, the committee shall certify to

197 the Economic Development Authority a list of those certified projects that will receive funds from
198 the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other
199 than by legislative enactment.

200 (13) If any proceeds from sale of bonds remain after paying costs and making grants and
201 loans as provided in this subsection, the surplus may be deposited in an account in the State
202 Treasury known as the Economic Development Project Bridge Loan Fund administered by the
203 Economic Development Authority created in §31-15-1 *et seq.* of this code. Expenditures from the
204 fund are not authorized from collections but are to be made only in accordance with appropriation
205 by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon
206 fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Loan repayment amounts, including
207 the portion attributable to interest, shall be paid into the fund created in this subdivision.

208 (f) If the commission receives revenues in an amount that is not sufficient to fully comply
209 with the requirements of subsections (b), (c), (d) and (i) of this section, the commission shall first
210 make the distribution to the Economic Development Project Fund; second, make the distribution
211 or distributions to the other funds from which debt service is to be paid; third, make the distribution
212 to the Education Improvement Fund for appropriation by the Legislature to the PROMISE
213 Scholarship Fund; and fourth, make the distribution to the General Purpose Account: *Provided,*
214 That subject to the provisions of this subsection, to the extent the revenues are not pledged in
215 support of revenue bonds which are or may be issued, from time to time, under this section, the
216 revenues shall be distributed on a pro rata basis.

217 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections
218 (b), (c), (d) and (i) of this section and after transferring to the State Lottery Fund created under
219 §29-22-18 of this code an amount equal to any transfer from the State Lottery Fund to the Excess
220 Lottery Fund pursuant to §29-22-18(f) of this code, deposit 50 percent of the amount by which
221 annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds \$225 million
222 in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation

223 by the Legislature.

224 (h) When bonds are issued for projects under subsection (d) (e) of this section or for the
225 School Building Authority, infrastructure, higher education or park improvement purposes
226 described in this section that are secured by profits from lotteries deposited in the State Excess
227 Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development
228 Project Fund an amount equal to one-tenth of the projected annual principal, interest and
229 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the
230 Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued
231 under this section for the School Building Authority, infrastructure, higher education and park
232 improvements an amount equal to one-tenth of the projected annual principal, interest and
233 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the
234 Lottery Director. In the event there are insufficient funds available in any month to transfer the
235 amounts required pursuant to this subsection, the deficiency shall be added to the amount
236 transferred in the next succeeding month in which revenues are available to transfer the
237 deficiency.

238 (i) Prior to the distributions provided in subsection (d) of this section, the Lottery
239 Commission shall deposit into the General Revenue Fund amounts necessary to provide
240 reimbursement for the refundable credit allowable under §11-21-21 of this code.

241 (j)(1) The Legislature considers the following as priorities in the expenditure of any surplus
242 revenue funds:

243 (A) Providing salary and/or increment increases for professional educators and public
244 employees;

245 (B) Providing adequate funding for the Public Employees Insurance Agency; and

246 (C) Providing funding to help address the shortage of qualified teachers and substitutes in
247 areas of need, both in number of teachers and in subject matter areas.

248 (2) The provisions of this subsection may not be construed by any court to require any

249 appropriation or any specific appropriation or level of funding for the purposes set forth in this
250 subsection.

251 (k) The Legislature further directs the Governor to focus resources on the creation of a
252 prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription
253 drug services to senior citizens; by investigating the establishment of purchasing agreements with
254 other entities to reduce costs; by providing discount prices or rebate programs for seniors; by
255 coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free
256 drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient
257 and cost-effective program possible for the senior citizens of this state; and by working closely
258 with the state's congressional delegation to ensure that a national program is implemented. The
259 Legislature further directs that the Governor report his or her progress back to the Joint Committee
260 on Government and Finance on an annual basis until a comprehensive program has been fully
261 implemented.

262 (l) After all of the expenditures in subsections (a) through (i) of this section have been
263 satisfied in any fiscal year, the next \$2 million shall be distributed as follows:

264 (1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year
265 thereafter, 46 percent shall be placed in the general purse fund of a thoroughbred racetrack
266 licensee that did not participate in the Thoroughbred Development Fund for at least four
267 consecutive calendar years prior to December 31, 1992, for payment of regular purses;

268 (2) Forty-three and one-half percent shall be distributed to the Racing Commission special
269 account - unredeemed pari-mutual tickets established on behalf of a thoroughbred racetrack
270 licensee that did participate in the Thoroughbred Development Fund for at least four consecutive
271 calendar years prior to December 31, 1992;

272 (3) Five and one-half percent shall be distributed to the Racing Commission special
273 account - unredeemed pari-mutuel tickets established on behalf of a thoroughbred racetrack
274 licensee that did not participate in the Thoroughbred Development Fund for at least four

275 consecutive calendar years prior to December 31, 1992; and

276 (4) Five percent shall be distributed to the West Virginia Racing Commission special
277 account Greyhound Breeding Development Fund: Provided, That effective July 1, 2017, and
278 thereafter, the amount required by this subdivision to be distributed to the West Virginia
279 Greyhound Breeding Development Fund shall remain in the State Excess Lottery Fund.

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 §29-22-1 *et seq.*

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 §19-23-1 *et seq.* of this code permitting the racetrack
43 to operate video lottery terminals authorized by the commission: Provided, That effective July 1,
44 2018 and thereafter, "license" or "video lottery license" also means authorization granted pursuant
45 to said article to a racetrack which was licensed to conduct greyhound racing meetings prior to

46 January 1, 1994.

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

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

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

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

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

65 (t) "Pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" means a facility
66 where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized
67 pursuant to the provisions of §19-23-1 *et seq.* of this code: *Provided*, That for the purposes of this
68 article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a
69 facility which was licensed prior to January 1, 1994, to hold horse or dog race meetings, and which
70 conducts not less than 220 live racing dates for each horse or dog race meeting or such other
71 number of live racing dates as may be approved by the Racing Commission in accordance with

72 the provisions of §19-23-12b of this code: Provided, however, That effective July 1, 2018, and
73 thereafter, “pari-mutuel racing facility,” “licensed racetrack”, “racetrack”, “racing association” or
74 “track” also includes any facility that was licensed to hold dog race meetings prior to January 1,
75 1994, regardless of whether the facility conducts live racing.

76 (u) “Permit” means authorization granted by the commission to a person to function as
77 either a video lottery manufacturer, service technician or validation manager.

78 (v) “Person” means any natural person, corporation, association, partnership, limited
79 partnership, or other entity, regardless of its form, structure or nature.

80 (w) “Player” means a person who plays a video lottery game on a video lottery terminal at
81 a racetrack licensed by the commission to conduct video lottery games.

82 (x) “Service technician” means a person, employed by a licensed racetrack, who holds a
83 permit issued by the commission and who performs service, maintenance and repair on licensed
84 video lottery terminals in this state.

85 (y) “Video lottery game” means a commission approved, owned and controlled
86 electronically simulated game of chance which is displayed on a video lottery terminal and which:

87 (1) Is connected to the commission’s central control computer by an online or dialup
88 communication system;

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

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

97 (4) Is based upon computer-generated random selection of winning combinations based

98 totally or predominantly on chance;

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

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

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

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

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

**§29-22A-7. License and permit qualifications; individual qualifications; applicant required
to furnish information; waiver of liability; oath or affirmation; duty to provide
accurate and material information.**

1 (a) No video lottery license or permit may be granted unless the commission has
2 determined that the applicant satisfies all of the following qualifications:

3 (1) An applicant for a video lottery license must hold a valid racing license granted by the
4 West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code: Provided,
5 That effective July 1, 2018, and thereafter, an applicant that held a valid dog racing license prior
6 to January 1, 1994, is not required to hold a valid racing license in order to renew a video lottery
7 license.

8 (2) An applicant must be a person of good character and integrity.

9 (3) An applicant must be a person whose background, including criminal record, reputation
10 and associations, does not pose a threat to the security and integrity of the lottery or to the public
11 interest of the state. All new applicants for licenses and permits issued by the commission shall
12 furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of
13 the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be
14 furnished by all persons required to be named in the application and shall be accompanied by a
15 signed authorization for the release of information by the Criminal Investigation Bureau and the
16 Federal Bureau of Investigation. The commission may require any applicant seeking the renewal
17 of a license or permit to furnish fingerprints for a national criminal records check by the Criminal
18 Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. A
19 person who has been convicted of any violation of §29-22-1 *et seq.* of this code or of this article
20 or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible for any
21 license or permit. The commission shall revoke the license or permit of any person who is
22 convicted of any such crime after a license or permit is granted.

23 (4) An applicant must be a person who demonstrates the business ability and experience
24 necessary to establish, operate and maintain the business for which a video lottery license or
25 permit application is made.

26 (5) An applicant must be a person who has secured adequate financing for the business
27 for which a video lottery license or permit application is made. The commission shall determine
28 whether financing is from a source which meets the qualifications of this section and is adequate

29 to support the successful performance of the duties and responsibilities of the licensed racetrack
30 or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing
31 arrangements for the purchase, lease or other acquisition of video lottery terminals and
32 associated equipment in the degree of detail requested by the commission. A licensed racetrack
33 shall request commission approval of any change in financing or lease arrangements at least 30
34 days before the effective date of the change.

35 (6) A horse racetrack applying for a video lottery license or a license renewal must present
36 to the commission evidence of the existence of an agreement, regarding the proceeds from video
37 lottery terminals, between the applicant and the representative of a majority of the horse owners
38 and trainers, the representative of a majority of the pari-mutuel clerks for horse racing
39 associations and the representative of a majority of the horse breeders ~~or the representative of a~~
40 ~~majority of the kennel owners~~ for the applicable racetrack who hold permits required by §19-23-2
41 of this code.

42 (7) A racetrack applying for a video lottery license or a license renewal must file with the
43 commission a copy of any current or proposed agreement between the applicant and any
44 manufacturer for the sale, lease or other assignment to the racetrack of video lottery terminals,
45 the electronic computer components of the terminals, the random number generator of the
46 terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is
47 a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

48 (b) No video lottery license or permit may be granted to an applicant until the commission
49 determines that each person who has control of the applicant meets all applicable qualifications
50 of subsection (a) of this section. The following persons are considered to have control of an
51 applicant:

52 (1) Each person associated with a corporate applicant, including any corporate holding
53 company, parent company or subsidiary company of the applicant, but not including a bank or
54 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary

55 course of business, who has the ability to control the activities of the corporate applicant or elect
56 a majority of the board of directors of that corporation.

57 (2) Each person associated with a noncorporate applicant who directly or indirectly holds
58 any beneficial or proprietary interest in the applicant or who the commission determines to have
59 the ability to control the applicant.

60 (3) Key personnel of an applicant, including any executive, employee or agent, having the
61 power to exercise significant influence over decisions concerning any part of the applicant's
62 business operation.

63 (c) Applicants must furnish all information, including financial data and documents,
64 certifications, consents, waivers, individual history forms and other materials requested by the
65 commission for purposes of determining qualifications for a license or permit. No video lottery
66 license or permit may be granted to an applicant who fails to provide information and
67 documentation requested by the commission. The burden of proving qualification for any video
68 lottery license or permit is on the applicant.

69 (d) Each applicant bears all risks of adverse public notice, embarrassment, criticism,
70 damages or financial loss which may result from any disclosure or publication of any material or
71 information obtained by the commission pursuant to action on an application. The applicant shall,
72 as a part of its application, expressly waive any and all claims against the commission, the State
73 of West Virginia and the employees of either for damages as a result of any background
74 investigation, disclosure or publication relating to an application for a video lottery license or
75 permit.

76 (e) All application, registration and disclosure forms and other documents submitted to the
77 commission by or on behalf of the applicant for purposes of determining qualification for a video
78 lottery license or permit shall be sworn to or affirmed before an officer qualified to administer
79 oaths.

80 (f) An applicant who knowingly fails to reveal any fact material to qualification or who

81 knowingly submits false or misleading material information is ineligible for a video lottery license
82 or permit.

§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
4 for transmitting auditing program information and for activation and disabling of video lottery
5 terminals.

6 (b) The gross terminal income of a licensed racetrack shall be remitted to the commission
7 through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all
8 information and bank authorizations required to facilitate the timely transfer of moneys to the
9 commission. Licensed racetracks must provide the commission 30 days' advance notice of any
10 proposed account changes in order to assure the uninterrupted electronic transfer of funds. From
11 the gross terminal income remitted by the licensee to the commission:

12 (1) The commission shall deduct an amount sufficient to reimburse the commission for its
13 actual costs and expenses incurred in administering racetrack video lottery at the licensed
14 racetrack and the resulting amount after the deduction is the net terminal income. The amount
15 deducted for administrative costs and expenses of the commission may not exceed four percent
16 of gross terminal income: Provided, That the commission shall transfer 15 percent of the amount
17 deducted, generated from racetrack video lottery at licensed thoroughbred racetracks, to the West
18 Virginia Racing Commission's General Administrative Account created in §19-23-11 of this code:

19 *Provided, however,* That any amounts deducted by the commission for its actual costs and
20 expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery
21 Fund. For the fiscal years ending June 30, 2011, through June 30, 2020, the term “actual costs
22 and expenses” may include transfers of up to \$10 million in surplus allocations for each fiscal
23 year, as calculated by the commission when it has closed its books for the fiscal year, to the
24 Licensed Racetrack Modernization Fund created by subdivision (2), subsection (b) of this section.
25 For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount
26 of gross terminal income in excess of the amount of gross terminal income received during the
27 fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income
28 received in excess of the amount of gross terminal income received during the fiscal year ending
29 on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

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

45 terminals and related equipment. Video lottery terminals financed through the recoupment
46 provided in this subdivision must be retained by the licensee in its West Virginia licensed location
47 for a period of not less than five years from the date of initial installation.

48 (c) The amount resulting after the deductions required by subsection (b) of this section
49 constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal
50 years beginning on or after July 1, 2001, any amount of net terminal income received in excess
51 of the amount of net terminal income received during the fiscal year ending on June 30, 2001,
52 shall be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu
53 of all lottery agent commissions and is considered to cover all costs and expenses required to be
54 expended by the licensed racetrack in connection with video lottery operations. The division shall
55 be made as follows:

56 (1) The commission shall receive 30 percent of net terminal income, which shall be paid
57 into the State Lottery Fund as provided in §29-22A-10a of this code;

58 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be
59 deposited in the special fund established by the licensee, and used for payment of regular purses
60 in addition to other amounts provided in §19-23-1 *et seq.* of this code, on and after July 1, 2005,
61 the rate shall be seven percent of net terminal income;

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

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

68 (i) The county shall receive 50 percent of the excess amount; and

69 (ii) The municipalities of the county shall receive 50 percent of the excess amount, said
70 50 percent to be divided among the municipalities on a per capita basis as determined by the

71 most recent decennial United States census of population; and

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

77 (i) The county shall receive 50 percent of the excess amount; and

78 (ii) The municipality shall receive 50 percent of the excess amount; and

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

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

85 (5)(A) The West Virginia Thoroughbred Development Fund created under section §19-23-
86 13b of this code and the West Virginia Greyhound Breeding Development Fund created under
87 §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half
88 percent of the net terminal income. Effective July 1, 2018, the requirements of this paragraph are
89 discontinued.

90 (B) Effective July 1, 2018, and thereafter, the West Virginia Thoroughbred Development
91 Fund, created under §19-23-13b of this code, shall receive one and one-half percent of the net
92 terminal income originating at licensed thoroughbred racetracks.

93 (C) Effective July 1, 2018 and thereafter, the State Excess Lottery Revenue Fund, created
94 under §29-22-18a of this code, shall receive one and one-half percent of the net terminal income
95 originating at licensed dog racetracks;

96 (6) The West Virginia Racing Commission shall receive one percent of the net terminal

97 income which shall be deposited and used as provided in §19-23-13c of this code;

98 (7) A licensee shall receive 46.5 percent of net terminal income;

99 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive
100 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,
101 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three
102 percent of the net terminal income described in this section and §29-22A-10b of this code into the
103 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of
104 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the
105 Department of Administration pursuant to §5A-4-6 of this code and \$5 million into the Tax
106 Reduction and Federal Funding Increased Compliance Fund; and

107 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for
108 each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the
109 three percent of net terminal income described in §29-22A-10b (a) (8) (B) of this code shall be
110 distributed as provided in this paragraph as follows:

111 (i) 1.375 percent of the total amount of net terminal income described in this section and
112 in §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created under
113 §5B-2-12 of this code;

114 (ii) 0.375 percent of the total amount of net terminal income described in this section and
115 in §29-22-10b of this code shall be deposited into the Development Office Promotion Fund
116 created under §5B-2-3b of this code;

117 (iii) 0.5 percent of the total amount of net terminal income described in this section and in
118 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created under
119 §18B-1B-10 of this code;

120 (iv) 0.6875 percent of the total amount of net terminal income described in this section and
121 in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement
122 Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

123 (v) 0.0625 percent of the total amount of net terminal income described in this section and
124 in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage
125 Fund administered by the Department of Administration pursuant to §5A-4-5a 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 §23-2D-5 of this code: *Provided,*
128 That in any fiscal year when the amount of money generated by this subdivision totals \$11 million,
129 all subsequent distributions under this subdivision shall be deposited in the special fund
130 established by the licensee and used for the payment of regular purses in addition to the other
131 amounts provided in §19-23-1 *et seq.* of this code;

132 (B) The deposit of the seven percent of net terminal income into the Worker's
133 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed
134 with respect to these funds and shall be deposited in the special fund established by the licensee
135 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*
136 *seq.* of this code, on and after the first day of the month following the month in which the Governor
137 certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this
138 code, have been retired or payment of the debt service provided for; and (ii) that an independent
139 certified actuary has determined that the unfunded liability of the old fund, as defined in chapter
140 23 of this code, has been paid or provided for in its entirety; and

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

142 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
143 one percent of the net terminal income until sufficient moneys have been received to complete
144 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.
145 The moneys shall be deposited in the State Treasury in the Division of Culture and History special
146 fund created under §29-11-3 of this code: *Provided,* That only after sufficient moneys have been
147 deposited in the fund to complete the veterans memorial and to pay in full the annual bonded
148 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal

149 income provided in this subdivision shall be deposited into a special revenue fund in the State
150 Treasury, to be known as the John F. "Jack" Bennett Fund. The moneys in this fund shall be
151 expended by the Division of Veterans Affairs to provide for the placement of markers for the
152 graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall
153 promulgate legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code specifying
154 the manner in which the funds are spent, determine the ability of the surviving spouse to pay for
155 the placement of the marker and setting forth the standards to be used to determine the priority
156 in which the veterans grave markers will be placed in the event that there are not sufficient funds
157 to complete the placement of veterans grave markers in any one year, or at all. Upon payment in
158 full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net
159 terminal income provided in this subdivision shall be deposited in the special fund in the Division
160 of Culture and History created under §29-11-3 of this code and be expended by the Division of
161 Culture and History to establish a West Virginia Veterans Memorial Archives within the Cultural
162 Center to serve as a repository for the documents and records pertaining to the veterans
163 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided,*
164 *however,* That \$500,000 of the one percent of net terminal income shall be deposited in the State
165 Treasury in a special fund of the Department of Administration, created under §5A-4-5 of this
166 code, to be used for construction and maintenance of a parking garage on the State Capitol
167 Complex; and the remainder of the one percent of net terminal income shall be deposited in equal
168 amounts in the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and
169 Cultural Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3
170 of this code

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

172 (i) Five hundred thousand dollars of the one percent of net terminal income shall be
173 deposited in the State Treasury in a special fund of the Department of Administration, created
174 under §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on

175 the State Capitol Complex; and

176 (ii) The remainder of the one percent of net terminal income and all of the one percent of
177 net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows:

178 The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol
179 Improvements Fund created §5A-4-2 of this code and the Cultural Facilities and Capitol
180 Resources Matching Grant Program Fund created under §29-1-3 of this code until a total of
181 \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant
182 Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol
183 Improvements Fund.

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

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

200 (f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the

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

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

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

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

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

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

5 (1) The commission shall receive 41 percent of net terminal income, which the commission
6 shall deposit in the State Excess Lottery Revenue Fund created in §29-22-18a of this chapter;

7 (2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be
8 deposited in the special fund established by the licensee and used for payment of regular purses
9 in addition to other amounts provided in §19-23-1 *et seq.* of this code; on and after July 1, 2005,
10 the rate shall be four percent of net terminal income;

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

13 (A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this
14 code is in excess of the two percent received during fiscal year 1999 by a county in which a
15 racetrack is located that has participated in the West Virginia Thoroughbred Development Fund
16 since on or before January 1, 1999, shall be divided as follows:

17 (i) The county shall receive 50 percent of the excess amount; and

18 (ii) The municipalities of the county shall receive 50 percent of the excess amount, the 50
19 percent to be divided among the municipalities on a per capita basis as determined by the most
20 recent decennial United States census of population; and

21 (B) Any amount by which the total amount under this section and §29-22A-10(c)(3) is in
22 excess of the two percent received during fiscal year 1999 by a county in which a racetrack other
23 than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has
24 been located in a municipality within the county since on or before January 1, 1999, shall be
25 divided, if applicable, as follows:

26 (i) The county shall receive 50 percent of the excess amount; and

27 (ii) The municipality shall receive 50 percent of the excess amount; and

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

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

34 (5)(A) The West Virginia Thoroughbred Development Fund created under §19-23-13b of
35 this code and the West Virginia Greyhound Breeding Development Fund created under §19-23-
36 10 of this code shall receive an equal share of a total of not less than one and one-half percent of
37 the net terminal income. Effective July 1, 2018, the requirements of this paragraph are
38 discontinued.

39 (B) Effective July 1, 2018, and thereafter, the West Virginia Thoroughbred Development
40 Fund, created under §19-23-13b of this code, shall receive one and one-half percent of the net
41 terminal income originating at licensed thoroughbred racetracks.

42 (C) Effective July 1, 2018, and thereafter, the State Excess Lottery Revenue Fund, created
43 under §29-2-18a of this code, shall receive one and one-half percent of the net terminal income
44 originating at licensed dog racetracks;

45 (6) The West Virginia Racing Commission shall receive one percent of the net terminal
46 income which shall be deposited and used as provided §19-23-13c of this code;

47 (7) A licensee shall receive 42 percent of net terminal income;

48 (8) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three
49 percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30,
50 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of
51 §29-22A-10(c)(8)(B) of this code;

52 (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited

53 into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*,
54 That in any fiscal year when the amount of money generated by this subdivision together with the
55 total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals \$11 million, all
56 subsequent distributions under this subdivision during that fiscal year shall be deposited in the
57 special fund established by the licensee and used for payment of regular purses in addition to
58 other amounts provided in §19-23-1 *et seq.* of this code;

59 (B) The deposit of the four percent of net terminal income into the Worker's Compensation
60 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to
61 these funds, which shall be deposited in the special fund established by the licensee and used
62 for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this
63 code on and after the first day of the month following the month in which the Governor certifies to
64 the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have
65 been retired or payment of the debt service is provided for; and (ii) that an independent certified
66 actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-
67 three of this code, has been paid or provided in its entirety; and

68 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in
69 the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and Cultural
70 Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3 of this
71 code; and

72 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for
73 each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be
74 distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

75 (b) The commission may establish orderly and effective procedures for the collection and
76 distribution of funds under this section in accordance with the provisions of this section and §29-
77 22A-10 of this code.

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

lottery fund.

1 (a) Notwithstanding any provision of §29-22A-10(b) of this code to the contrary, for the
2 fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer
3 up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

4 (b) Notwithstanding any provision of §29-22A-10(c) of this code to the contrary, for the
5 fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those
6 distributions to be made pursuant to subdivisions §29-22A-10(c)(1), §29-22A-10(c)(2), §29-22A-
7 10(c)(3), §29-22A-10(c)(4), §29-22A-10(c)(5), and §29-22A-10(c)(7) of this code, shall be
8 reduced by 100 percent. For the fiscal year beginning after June 30, 2018, and each fiscal year
9 thereafter, the distribution to the special fund established by the licensee and used for payment
10 of regular purses, pursuant to §29-22A-10(c)(2) of this code, only includes amounts to be
11 distributed to each thoroughbred racetrack video lottery licensee for the payment of regular
12 racetrack purses. Payments shall not be made pursuant to §29-22A-10 of this code, other than
13 those excepted by this subsection, and are made in lieu thereof in an amount to be determined
14 by appropriation from the State Excess Lottery Revenue Fund.

15 (c) The total amount of reductions resulting from subsection (b) of this section shall be
16 paid into the State Excess Lottery Revenue Fund, created by section §29-22-18a of this code.
17 For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
18 pursuant to §29-22A-10(c)(2) and §29-22A-10(c)(5) of this code shall be reduced by 10 percent,
19 and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue
20 Fund.

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

25 (e) Prior to payment of any appropriation made pursuant to this section, debt service

26 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
27 provisions of §29-22-18a, §29-22-18d and §29-22-18e of this code and in the priority as defined
28 by §29-22-18f(c) of this code.

29 (f) Notwithstanding any other provision of this code to the contrary, after payment of debt
30 service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-
31 18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro
32 rata basis.

33 (g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
34 provisions of §29-22A-10(c)(9)(B) of this code, upon certification of the Governor to the
35 Legislature that an independent actuary has determined that the unfunded liability of the Old
36 Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety,
37 the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-
38 10(c)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery
39 Revenue Fund subject to appropriation.

40 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
41 of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, if the budget
42 shortfall, as determined by the State Budget Office as of December 1, 2015, is greater than \$100
43 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from
44 net terminal income imposed under this article, for any period commencing after February 29,
45 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds
46 otherwise mandated in this article, §23-2D-1 *et seq.* of this code or in any other provision of this
47 code.

48 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
49 §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, the Governor
50 may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal
51 income imposed under this article, for any period commencing after June 30, 2016, and ending

52 before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated
53 in this article, in §23-2D-1 *et seq.* of this code or in any other provision of this code, until
54 certification of the Governor to the Legislature that an independent actuary has determined that
55 the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or
56 provided for in its entirety.

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

1 (a) Notwithstanding any provision of §29-22A-10b(a) of this code to the contrary, for the
2 fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those
3 distributions to be made pursuant §29-22A-10b(a)(1), §29-22A-10b(a)(2), §29-22A-10b(a)(3),
4 §29-22A-10b(a)(4), §29-22A-10b(a)(5), and §29-22A-10b(a)(7) of this code, shall be reduced by
5 100 percent. For fiscal year beginning after June 30, 2018, and each fiscal year thereafter, the
6 distribution to the special fund established by the licensee and used for payment of regular purses,
7 pursuant to subdivision (2) of said subsection, only includes amounts to be distributed to each
8 thoroughbred racetrack video lottery licensee for the payment of regular racetrack purses.
9 Payments shall not be made pursuant to §29-22A-10b of this code, other than those excepted by
10 this subsection, and are made in lieu thereof in an amount to be determined by appropriation from
11 the State Excess Lottery Revenue Fund.

12 (b) The total amount of reductions resulting from subsection (a) of this section shall be
13 paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this code. For the
14 fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
15 pursuant to §29-22A-10b-(a)(2) and §29-22A-10b-(a)(5) of this code shall be reduced by 10
16 percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery
17 Revenue Fund.

18 (c) 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 (d) 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 §29-22-18a, §29-22-18d and §29-22-18e of this code-and in the priority as defined
25 by §29-22-18f(c) of this code.

26 (e) 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 §29-22-
28 18a and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

29 (f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
30 provisions of §29-22A-10b(a)(9)(B) of this code, upon certification of the Governor to the
31 Legislature that an independent actuary has determined that the unfunded liability of the Old
32 Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety,
33 the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-
34 10b(a)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery
35 Revenue Fund subject to appropriation.

36 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
37 of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, if the
38 budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater
39 than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues
40 derived from net terminal income imposed under this article, for any period commencing after
41 February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to
42 the funds otherwise mandated in this article, §23-2D-1 *et seq.* of this code or in any other provision
43 of this code.

44 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
45 §29-22A-10b(a)(9)(B) of this code_or any other provision of this code to the contrary, the Governor

46 may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal
47 income imposed under this article, for any period commencing after June 30, ~~2016~~ 2017, and
48 ending before July 1, ~~2017~~ 2018, to the General Revenue Fund, instead of to the funds otherwise
49 mandated in this article, in §23-2D-1 *et seq.* of this code or in any other provision of this code,
50 until certification of the Governor to the Legislature that an independent actuary has determined
51 that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or
52 provided for in its entirety.

§29-22A-12. Number and location of video lottery terminals security.

1 (a) A racetrack which has been licensed to conduct video lottery games has the right to
2 install and operate up to 400 video lottery terminals at a licensed racetrack. A licensed racetrack
3 may apply to the commission for authorization to install and operate more than 400 video lottery
4 terminals. If the commission determines that the installation of additional machines is in the best
5 interest of the licensed racetrack, the Lottery Commission and the citizens of this state, the
6 commission may grant permission to install and operate additional machines.

7 (b) All video lottery terminals in licensed racetracks shall be physically located as follows:

8 (1) The video lottery location shall be continuously monitored through the use of a closed-
9 circuit television system capable of recording activity for a continuous 24-hour period. All video
10 tapes shall be retained for a period of at least 30 days;

11 (2) Access to video lottery terminal locations shall be restricted to persons legally entitled
12 by age to play video lottery games;

13 (3) The licensed racetrack shall submit for commission approval a floor plan of the area
14 or areas where video lottery terminals are to be operated showing terminal locations and security
15 camera mount locations;

16 (4) No video lottery terminal may be relocated without prior approval from the commission;
17 and

18 (5) Operational video lottery terminals may only be located in the building or structure in

19 which the grandstand area of the racetrack is located and in the area of the building or structure
20 where pari-mutuel wagering is permitted under the provisions of §19-23-1 *et seq.*: *Provided*, That
21 if the commission, before November 1, 1993, has authorized any racetrack to operate video lottery
22 terminals and offer video lottery games in a location which would not conform to the requirements
23 of this subdivision, the racetrack may continue to use video lottery terminals registered with and
24 approved by the commission at that nonconforming location and to offer the games and any
25 variations or composites of the games as may be approved by the commission: *Provided*,
26 *however*, That a racetrack that held a valid dog racing license prior to January 1, 1994, and that
27 no longer conducts live racing, may continue to operate operational video lottery terminals in the
28 building or structure in which the grandstand area of the racetrack was located and in the area of
29 the building or structure where pari-mutuel wagering was permitted between January 1, 1994,
30 and June 30, 2018, or in an alternate building or structure approved by the commission within the
31 county of such racetrack: *Provided further*, That nothing in this subdivision permits a racetrack to
32 operate operational video lottery terminals or offer video lottery games in more than one location.

33 (c) A licensee shall allow video lottery games to be played only on days when live racing
34 is being conducted at the racetrack and/or on televised racing days: *Provided*, That this restriction
35 shall not apply to any racetrack authorized by the commissioner prior to November 1, 1993, to
36 operate video lottery terminals and conduct video lottery games.

37 (d) Security personnel shall be present during all hours of operation at each video lottery
38 terminal location. Each license holder shall employ the number of security personnel the
39 commission determines is necessary to provide for safe and approved operation of the video
40 lottery facilities and the safety and well-being of the players.

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

§29-22C-3. Definitions.

1 (a) *Applicability of definitions.* — For the purposes of this article, the words or terms
2 defined in this section, and any variation of those words or terms required by the context, have

3 the meanings ascribed to them in this section. These definitions are applicable unless a different
4 meaning clearly appears from the context in which the word or term is used.

5 (b) *Terms defined.* —

6 (1) “Adjusted gross receipts” means gross receipts from West Virginia Lottery table games
7 less winnings paid to patrons wagering on the racetrack’s table games.

8 (2) “Applicant” means any person who on his or her own behalf, or on behalf of another,
9 has applied for permission to engage in any act or activity that is regulated under the provision of
10 this article for which a license is required by this article or rule of the commission.

11 (3) “Application” means any written request for permission to engage in any act or activity
12 that is regulated under the provisions of this article submitted in the form prescribed by the
13 commission.

14 (4) “Background investigation” means a security, criminal and credit investigation of an
15 applicant who has applied for the issuance or renewal of a license pursuant to this article, or a
16 licensee who holds a current license.

17 (5) “Commission” or “State Lottery Commission” means the West Virginia Lottery
18 Commission created by §29-22-1 *et seq.* of this code.

19 (6) “Complimentary” means a service or item provided at no cost or at a reduced price.

20 (7) “Compensation” means any money, thing of value, or financial benefit conferred or
21 received by a person in return for services rendered, or to be rendered, whether by that person
22 or another.

23 (8) “Contested case” means a proceeding before the commission, or a hearing examiner
24 designated by the commission to hear the contested case, in which the legal rights, duties,
25 interests or privileges of specific persons are required by law or constitutional right to be
26 determined after a commission hearing, but does not include cases in which the commission
27 issues a license, permit or certificate after an examination to test the knowledge or ability of the
28 applicant where the controversy concerns whether the examination was fair or whether the

29 applicant passed the examination and does not include rulemaking.

30 (9) "Control" means the authority directly or indirectly to direct the management and
31 policies of an applicant for a license issued under this article or the holder of a license issued
32 under this article.

33 (10) "Designated gaming area" means one or more specific floor areas of a licensed
34 racetrack within which the commission has authorized operation of racetrack video lottery
35 terminals or table games, or the operation of both racetrack video lottery terminals and West
36 Virginia Lottery table games.

37 (11) "Director" means the Director of the West Virginia State Lottery Commission
38 appointed pursuant to §23-22-6 of this code.

39 (12) "Disciplinary action" is an action by the commission suspending or revoking a license,
40 fining, excluding, reprimanding or otherwise penalizing a person for violating this article or rules
41 promulgated by the commission.

42 (13) "Financial interest" or "financially interested" means any interest in investments,
43 awarding of contracts, grants, loans, purchases, leases, sales or similar matters under
44 consideration for consummation by the commission. A member, employee or agent of the
45 commission will be considered to have a financial interest in a matter under consideration if any
46 of the following circumstances exist:

47 (A) He or she owns one percent or more of any class of outstanding securities that are
48 issued by a party to the matter under consideration by the commission; or

49 (B) He or she is employed by an independent contractor for a party to the matter under
50 consideration or consummated by the commission.

51 (14) "Gaming equipment" means gaming tables, cards, dice, chips, shufflers, drop boxes
52 or any other mechanical, electronic or other device, mechanism or equipment or related supplies
53 used or consumed in the operation of any West Virginia Lottery table game at a licensed
54 racetrack.

55 (15) "Gross receipts" means the total of all sums including valid or invalid checks, currency,
56 tokens, coupons (excluding match play coupons), vouchers or instruments of monetary value
57 whether collected or uncollected, received by a racetrack with table games from table gaming
58 operations at a race track, including all entry fees assessed for tournaments or other contests.

59 (16) "Indirect ownership" means an interest a person owns in an entity or in property solely
60 as a result of application of constructive ownership rules without regard to any direct ownership
61 interest (or other beneficial interest) in the entity or property. "Indirect ownership" shall be
62 determined under the same rules applicable to determining whether a gain or loss between
63 related parties is recognized for federal income tax purposes.

64 (17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility
65 licensed under both §29-22A-1 *et seq.* of this code and §19-23-1 *et seq.* of this code: Provided,
66 That effective July 1, 2018, and thereafter, "licensed racetrack" or "racing association" includes a
67 facility which was licensed prior to January 1, 1994, to hold dog race meetings and which is
68 licensed under §29-22A-1 *et seq.* of this code.

69 (18) "License" means any license applied for or issued by the commission under this
70 article, including, but not limited to:

71 (A) A license to act as agent of the commission in operating West Virginia Lottery table
72 games at a licensed racetrack;

73 (B) A license to supply a racetrack licensed under this article to operate table games with
74 table gaming equipment or services necessary for the operation of table games;

75 (C) A license to be employed at a racetrack licensed under this article to operate West
76 Virginia Lottery table games when the employee works in a designated gaming area that has
77 table games or performs duties in furtherance of or associated with the operation of table games
78 at the licensed racetrack; or

79 (D) A license to provide management services under a contract to a racetrack licensed
80 under this article to operate table games.

81 (19) "Licensee" means any person who is licensed under any provision of this article.

82 (20) "Lottery" means the public gaming systems or games regulated, controlled, owned
83 and operated by the State Lottery Commission in the manner provided by general law, as provided
84 in this article and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.* and §29-25-1 *et seq.*
85 of this code.

86 (21) "Member" means a commission member appointed to the West Virginia Lottery
87 Commission under §29-22-1 *et seq.* of this code.

88 (22) "National criminal history background check system" means the criminal history
89 record system maintained by the Federal Bureau of Investigation based on fingerprint
90 identification or any other method of positive identification.

91 (23) "Own" means any beneficial or proprietary interest in any real or personal property,
92 including intellectual property, and also includes, but is not limited to, any direct or indirect
93 beneficial or proprietary interest in any business of an applicant or licensee.

94 (24) "Person" means any natural person, and any corporation, association, partnership,
95 limited liability company, limited liability partnership, trust or other entity, regardless of its form,
96 structure or nature other than a government agency or instrumentality.

97 (25) "Player" or "Patron" means a person who plays a racetrack video lottery game or a
98 West Virginia Lottery table game at a racetrack licensed under this article to have table games.

99 (26) "Player's account" means a financial record established by a licensed racetrack for
100 an individual racetrack patron to which the racetrack may credit winnings and other amounts due
101 to the racetrack patron and from which the patron may withdraw moneys due to the patron for
102 purchase of tokens, chips or electronic media or other purposes.

103 (27) "Racetrack table games license" means authorization granted under this article by
104 the commission to a racetrack that is already licensed under §29-22A -1 *et seq.* of this code to
105 operate racetrack video lottery terminals and holds a valid horse racing license or held a valid dog
106 racing license prior to January 1, 1994, granted by the West Virginia Racing Commission pursuant

107 to the provision of §19-23-1 *et seq.* of this code, which permits the racetrack as an agent of the
108 commission for the limited purpose of operation of West Virginia Lottery table games in one or
109 more designated gaming areas in one or more buildings owned by the licensed racetrack on the
110 grounds where live pari-mutuel racing is conducted by the licensee, or in the case of a licensee
111 that held a valid dog racing license prior to January 1, 1994, and that no longer conducts live
112 racing, on the grounds where live pari-mutuel racing was conducted between January 1, 1994,
113 and June 30, 2018, or in an alternate location approved by the commission within the county of
114 such racetrack: *Provided*, That nothing in this subdivision permits a racetrack to offer West
115 Virginia lottery table games in more than one location.

116 (28) "Racetrack Table Games Fund" means the special fund in the State Treasury created
117 in §29-22C-27 of this code.

118 (29) "Significant influence" means the capacity of a person to affect substantially (but not
119 control) either, or both, of the financial and operating policies of another person.

120 (30) "Supplier" means a person who the commission has identified under legislative rules
121 of the commission as requiring a license to provide a racetrack table games licensee with goods
122 or services to be used in connection with operation of table games.

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

124 (32) "West Virginia Lottery table game" means any game played with cards, dice or any
125 mechanical, electromechanical or electronic device or machine for money, credit or any
126 representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette,
127 wheel of fortune or any variation of these games similar in design or operation and expressly
128 authorized by rule of the commission, including multiplayer electronic table games, machines and
129 devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets,
130 pull tabs or similar games.

131 (33) "Winnings" means the total cash value of all property or sums including currency,
132 tokens, or instruments of monetary value paid to players as a direct result of wagers placed on

133 West Virginia Lottery table games.

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

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

5 (b) *Grant of license.* — Upon the passage of a local option election in a county in
6 accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant
7 a West Virginia Lottery table games license, and a license for the right to conduct West Virginia
8 Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee
9 to conduct West Virginia table games at the licensed pari-mutuel racetrack identified on the local
10 option election ballot, provided that racetrack holds a valid racetrack video lottery license issued
11 by the commission pursuant to §29-22A-1 *et seq.* of this code and a valid racing license granted
12 by the West Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code
13 and has otherwise met the requirements for licensure under the provisions of this article and the
14 rules of the commission: Provided, That effective July 1, 2018, and thereafter, a racetrack outside
15 of Ohio County that held a valid dog racing license prior to January 1, 1994, is not required to
16 hold a current racing license.

17 (c) *Location.* — A racetrack table games license authorizes the operation of West Virginia
18 Lottery table games on the grounds of the particular licensed facility identified in the racetrack
19 video lottery license issued pursuant to §19-22A-1 *et seq.* of this code and the license to conduct
20 horse or dog racing issued pursuant to §19-23-1 *et seq.* of this code.

21 (d) *Floor plan submission requirement.* — Prior to commencing the operation of any table
22 games in a designated gaming area, a racetrack table games licensee shall submit to the
23 commission for its approval a detailed floor plan depicting the location of the designated gaming
24 area in which table games gaming equipment will be located and its proposed arrangement of the

25 table games gaming equipment. Any floor plan submission that satisfies the requirements of the
26 rules promulgated by the commission shall be considered approved by the commission unless
27 the racetrack table games licensee is notified in writing to the contrary within one month of filing
28 a detailed floor plan.

29 (e) *Management service contracts.* —

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

35 (2) *Material change.* — The licensed racetrack table games licensee shall submit any
36 material change in a management service contract previously approved by the commission to the
37 commission for its approval or rejection before the material change may take effect.

38 (3) *Prohibition on assignment or transfer.* — A management services contract may not be
39 assigned or transferred to a third party.

40 (4) *Other commission approvals and licenses.* — The duties and responsibilities of a
41 management services provider under a management services contract may not be assigned,
42 delegated, subcontracted or transferred to a third party to perform without the prior approval of
43 the commission. Third parties must be licensed under this article before providing service. The
44 commission may by rule clarify application of this subdivision and provide exceptions to its
45 application. The commission shall license and require the display of West Virginia Lottery game
46 logos on appropriate game surfaces and other gaming items and locations as the commission
47 considers appropriate.

48 (f) *Coordination of licensed activities.* — In order to coordinate various licensed activities
49 within racetrack facilities, the following provisions apply to licensed racetrack facilities:

50 (1) The provisions of this article and §29-22A-1 *et seq.* of this code shall be interpreted to

51 allow West Virginia Lottery table games and racetrack video lottery operations under those
52 articles to be harmoniously conducted in the same designated gaming area.

53 (2) On the effective date of this article, the provisions of §29-22C-23 of this code apply to
54 all video lottery games conducted within a racetrack facility, notwithstanding any inconsistent
55 provisions contained in §29-22A-1 *et seq.* of this code to the contrary.

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

60 (g) *Fees, expiration date and renewal.* —

61 (1) An initial racetrack table games license fee of \$1.5 million shall be paid to the
62 commission at the time of issuance of the racetrack table games license, regardless of the number
63 of months remaining in the license year for which it is issued. All licenses expire at the end of the
64 day on June 30 each year.

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

67 (A) Successfully renews its racetrack video lottery license under §29-22A-1 *et seq.* of this
68 code before July 1;

69 (B) Pays to the commission the annual license renewal fee of \$2.5 million required by this
70 section at the time it files its application for renewal of its license §29-22A-1 *et seq.* of this code;
71 and

72 (C) During the current license year, the licensee complied with all provisions of this article,
73 all rules adopted by the commission and all final orders of the commission applicable to the
74 licensee.

75 (3) *Annual license surcharge for failure to construct hotel on premises.* — It is the intent
76 of the Legislature that each racetrack for which a racetrack table games license has been issued

77 be or become a destination tourism resort facility. To that end, it is important that each racetrack
78 for which a racetrack table games license has been issued operate a hotel with significant
79 amenities. Therefore, in addition to all other taxes and fees required by the provisions of this
80 article, there is hereby imposed, upon each racetrack for which a racetrack table games license
81 has been issued an annual license surcharge, payable to the commission in the amount of \$2.5
82 million if that racetrack does not operate a hotel on its racing property that contains at least 150
83 guest rooms with significant amenities within three years of the passage of the local option
84 election in its county authorizing table games at the racetrack, provided the time for completion
85 of the hotel shall be extended by the same number of days as the completion of the hotel is
86 delayed by a force majeure events or conditions beyond the reasonable control of the racetrack
87 licensee. The surcharge shall be paid upon each renewal of its racetrack table games license
88 made after the expiration of the three-year period, and may be extended by the above force
89 majeure events or conditions, until the racetrack opens a qualifying hotel.

90 (4) If the licensee fails to apply to renew its license under §19-23-1 et seq. of this code
91 and §29-22A-1 et seq. of this code until after the license expires, the commission shall renew its
92 license under this article at the time it renews its license under a §29-22A-1 et seq. of this code
93 provided the licensee has paid the annual license fee required by this section and during the
94 preceding license year the licensee complied with all provisions of this article, all rules adopted
95 by the commission and all final orders of the commission applicable to the licensee.

96 (h) *Facility qualifications.* — A racetrack table games licensee shall demonstrate that the
97 racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in
98 accordance with applicable federal and state laws; (2) be licensed in accordance with this article,
99 and all other applicable federal, state and local laws; and (3) meet any other qualifications
100 specified in rules adopted by the commission.

101 (i) *Surety bond.* — A racetrack table games licensee shall execute a surety bond to be
102 given to the state to guarantee the licensee faithfully makes all payments in accordance with the

103 provisions of this article and rules promulgated by the commission. The surety bond shall be:

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

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

107 (3) With a surety approved by the commission who is licensed to write surety insurance in
108 this state. The bond shall remain in effect during the term of the license and may not be canceled
109 by a surety on less than 30 days' notice in writing to the commission. The total and aggregate
110 liability of the surety on the bond is limited to the amount specified in the bond.

111 (j) *Authorization.* — A racetrack table games license authorizes the licensee act as an
112 agent of the commission in operating an unlimited amount of West Virginia Lottery table games
113 while the license is active, subject to subsection (d) of this section. A racetrack table games
114 license is not transferable or assignable and cannot be sold or pledged as collateral.

115 (k) *Audits.* — When applying for a license and annually thereafter prior to license renewal,
116 a racetrack table games licensee shall submit to the commission an annual audit, by a certified
117 public accountant, of the financial transactions and condition of the licensee's total operations.
118 The audit shall be made in accordance with generally accepted accounting principles and
119 applicable federal and state laws.

120 (l) *Commission office space.* — A racetrack table games licensee shall provide to the
121 commission, at no cost to the commission, suitable office space at the racetrack facility for the
122 commission to perform the duties required of it by this article and the rules of the commission.

§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 220 live racing dates for each horse or dog race meeting or such
31 other number of live racing dates as may be approved by the Racing Commission in accordance

32 with the provisions of §19-23-12b_of this code, and otherwise keep in good standing, all licenses
33 and permits granted by the Racing Commission pursuant to §19-23-6_of this code, and any rules
34 promulgated thereunder: Provided, That effective July 1, 2018, and thereafter, a racetrack that
35 held a valid dog racing license outside of Ohio County prior to January 1, 1994, is not required to
36 race any minimum number of dates.

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.

§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based

Service Fund; State Debt Reduction Fund; distribution of funds.

1 (a) (1) The special fund in the State Treasury known as the West Virginia Lottery
2 Racetrack Table Games Fund is continued and all tax collected under this article shall be
3 deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table
4 Games Fund. The fund shall be an interest-bearing account with all interest or other return earned
5 on the money of the fund credited to and deposited in the fund.

6 (2) Notwithstanding any provision of this article to the contrary, all racetrack table games
7 license fees received by the commission pursuant to §29-22C-8 of this code shall be deposited
8 into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the
9 fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature
10 solely for the purpose of enabling the aged and disabled citizens of this state to maintain their
11 residency in the community-based setting through the provision of home and community-based
12 services.

13 (b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to
14 subsection (a) of this section, the commission shall:

15 (1) Retain an amount for the administrative expenses of the commission as determined
16 by the commission in accordance with subsection (e) of this section;

17 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred
18 racetracks with West Virginia Lottery table games to the special funds established by each
19 thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the
20 amount being divided on a pro rata basis between the special funds of each thoroughbred
21 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts
22 from all greyhound racetracks with West Virginia Lottery table games to the special funds
23 established by each greyhound racetrack table games licensees for the payment of regular
24 racetrack purses, the amount being divided equally between the special funds of each greyhound
25 racetrack table games licensee: Provided, That effective July 1, 2018, and thereafter, the amount

26 required by this subdivision to be transferred to the special funds established by each greyhound
27 racetrack table games licensee for the payment of regular racetrack purses other than those
28 located in Ohio County, shall instead be transferred to the state Excess Lottery Fund pursuant to
29 §19-23-10a of this code;

30 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
31 West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the
32 West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code. The
33 total amount transferred under this subdivision shall be divided pro rata among the development
34 funds for each racetrack table games licensee based on relative adjusted receipts from each
35 racetrack: Provided, That effective July 1, 2018, and thereafter, the amount required by this
36 subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall
37 instead be transferred to the State Excess Lottery Revenue Fund. The amounts transferred to
38 these funds may not be used for the benefit of any person or activity other than at or associated
39 with a racetrack table games licensee;

40 (4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to
41 the county commissions of the counties where racetracks with West Virginia Lottery table games
42 are located. County commissions may pledge this money to make payments on lottery revenue
43 bonds issued pursuant to §13-2H-1 *et seq.* of this code. The one percent transferred under this
44 subdivision shall be divided pro rata among the counties with a racetrack with West Virginia
45 Lottery table games based on relative adjusted gross receipts from each county's racetrack:
46 *Provided, That the county board of education of a growth county, as that term is defined in §7-20-*
47 *3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located*
48 *that has participated in the West Virginia Thoroughbred Development Fund since on or before*
49 *January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this*
50 *subdivision for the purpose of public projects, as defined in §13-2H-2 of this code or to make*
51 *payments on lottery revenue bonds issued to finance public projects;*

52 (5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
53 governing bodies of municipalities within counties where racetracks with West Virginia Lottery
54 table games are located. Municipalities may pledge the money to make payments on lottery
55 revenue bonds issued pursuant to §13-2H-1 et seq. of this code. This money shall be allocated
56 as follows:

57 (A) One half of the amounts transferred under this subdivision shall be allocated to the
58 municipalities within each county having a racetrack table games licensee, based on relative
59 adjusted gross receipts from West Virginia Lottery table games from those racetracks and the
60 total amount allocated to the municipalities within a county shall be divided pro rata among the
61 municipalities based on each municipality's population determined at the most recent United
62 States decennial census of population: *Provided, That:* (i) For each allocation, when a municipality
63 is physically located in two or more counties, only that portion of its population residing in the
64 county where the authorized table games are located shall be considered; (ii) a single municipality
65 in a county where West Virginia Lottery racetrack table games are played may not receive a total
66 share under this paragraph that is in excess of seventy-five percent of the total distribution under
67 this paragraph for the county in which the municipality is located; and (iii) a municipality receiving
68 moneys under this paragraph may not receive an amount which is less than that received by a
69 municipality under provisions of subdivision (4), subsection (d) of this section; and

70 (B) One half of the amounts transferred under this subdivision shall be allocated pro rata
71 to the municipalities within all the counties, having a racetrack table games licensee based on
72 each municipality's population determined at the most recent United States decennial census of
73 population: *Provided, That:* (i) A municipality which received funds above its pro rata share
74 pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this
75 paragraph; (ii) for each allocation, when a municipality is physically located in two or more
76 counties, only that portion of its population residing in the county where the authorized table
77 games are located shall be considered; and (iii) a single municipality in a county where West

78 Virginia Lottery racetrack games are played may not receive a total share under this paragraph
79 that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided,*
80 *however,* That the county board of education of a growth county, as that term is defined in §7-20-
81 3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located
82 that has participated in the West Virginia Thoroughbred Development Fund since on or before
83 January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this
84 subdivision for the purpose of public projects, as defined in §13-2H-2 of this code, or to make
85 payments on lottery revenue bonds issued to finance the public projects;

86 (6) Transfer one-half of one percent of the adjusted gross receipts to the governing bodies
87 of municipalities in which a racetrack table games licensee is located. The municipalities shall
88 each receive an equal share of the total amount allocated under this subdivision: *Provided,* That
89 distribution under this subdivision may not be made to any municipality which did not have a
90 licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided,*
91 *however,* That if no racetrack table games licensee is located within a municipality, a transfer may
92 not be made under this subdivision. The municipality may pledge this money to make payments
93 on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code; and

94 (7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the
95 Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

96 (c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer
97 West Virginia Lottery racetrack table games under this article, subsection (b) of this section shall
98 be superseded and replaced by this subsection for distribution of the balances in the fund
99 established by subsection (a) of this section. From the gross amounts deposited into the fund, the
100 commission shall:

101 (1) Retain an amount for the administrative expenses of the commission as determined
102 by the commission in accordance with subsection(e) of this section;

103 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred

104 racetracks with West Virginia Lottery table games to the special funds established by each
105 thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the
106 amount being divided on a pro rata basis between the special funds of each thoroughbred
107 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts
108 from all greyhound racetracks with West Virginia Lottery table games to the special funds
109 established by each greyhound racetrack table games licensee for the payment of regular
110 racetrack purses, the amount being divided equally between the special funds of each greyhound
111 racetrack table games licensee: Provided, That effective July 1, 2018, and thereafter, the amount
112 required by this subdivision to be transferred to the special funds established by each greyhound
113 racetrack table games licensees for the payment of regular racetrack purses shall instead be
114 transferred to the state Excess Lottery Fund pursuant to §19-23-10a of this code;

115 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
116 West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the
117 West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code:
118 Provided, That effective July 1, 2018, and thereafter, the amount required by this subdivision to
119 be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be
120 transferred to the state Excess Lottery Revenue Fund pursuant to §19-23-10a of this code. The
121 total amount transferred under this subdivision shall be divided pro rata among the development
122 funds for each racetrack table games licensee based on relative adjusted receipts from each
123 racetrack. The amounts transferred to these funds may not be used for the benefit of any person
124 or activity other than at or associated with a racetrack table games licensee;

125 (4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
126 county commissions of the counties where racetracks with West Virginia Lottery table games are
127 located. The money transferred under this subdivision shall be divided pro rata among the
128 counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross
129 receipts from each county's racetrack: *Provided, That the county board of education of a growth*

130 county, as that term is defined in §7-20-3 of this code, which has enacted the Local Powers Act,
131 and in which a racetrack is located that has participated in the West Virginia Thoroughbred
132 Development Fund since on or before January 1, 1991, shall receive one half of that county's
133 share of adjusted gross receipts as provided in this subdivision for the purpose of capital
134 improvements;

135 (5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to
136 the governing bodies of municipalities within counties where racetracks with West Virginia Lottery
137 table games are located, which shall be allocated as follows:

138 (A) One half of the money transferred by this subdivision shall be allocated to the
139 municipalities within each county, other than a county described in paragraph (C) of this
140 subdivision, having a racetrack table games licensee based on relative adjusted gross receipts
141 from West Virginia Lottery table games from those racetracks and the total amount allocated to
142 the municipalities within a county shall be divided pro rata among the municipalities based on
143 each municipality's population determined at the most recent United States decennial census of
144 population: *Provided, That:* (i) For each allocation, when a municipality is physically located in two
145 or more counties, only that portion of its population residing in the county where the authorized
146 table games are located shall be considered; (ii) a single municipality in a county where West
147 Virginia Lottery racetrack table games are played may not receive a total share under this
148 paragraph that is in excess of seventy-five percent of the total distribution under this paragraph
149 for the county in which the municipality is located; and (iii) a municipality receiving moneys under
150 this paragraph may not receive an amount which is less than that received by a municipality under
151 provisions of subdivision (4), subsection (d) of this section.

152 (B) One half of the money transferred under this subdivision shall be allocated pro rata to
153 the municipalities within all the counties, other than a county described in paragraph (C) of this
154 subdivision, having a racetrack table games licensee based on each municipality's population
155 determined at the most recent United States decennial census of population: *Provided, That:* (i)

156 A municipality which received funds above its pro rata share pursuant to subparagraph (iii),
157 paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each
158 allocation, when a municipality is physically located in two or more counties, only that portion of
159 its population residing in the county where the authorized table games are located shall be
160 considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games
161 are played may not receive a total share under this paragraph that is in excess of twenty-five
162 percent of the total transfers under this paragraph.

163 (C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a
164 racetrack is located in a growth county, as that term is defined in §7-20-3 of this code, which has
165 enacted the Local Powers Act, and in which county a racetrack is located that has participated in
166 the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the
167 county board of education shall receive two thirds of the share of adjusted gross receipts from
168 West Virginia Lottery table games from the racetrack in the county as provided in this subdivision
169 and the municipalities within the county shall share the remaining one third of the total amount
170 allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata
171 among the municipalities based on each municipality's population determined at the most recent
172 United States decennial census of population. All money transferred under this paragraph shall
173 be used by the county board of education and by the municipalities for ~~the purpose of~~ capital
174 improvements;

175 (6) Transfer one-half of one percent of the adjusted gross receipts to the governing bodies
176 of municipalities in which a racetrack table games licensee is located. The municipalities shall
177 each receive an equal share of the total amount allocated under this subdivision: *Provided*, That
178 distribution under this subdivision may not be made to any municipality that did not have a
179 licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided*,
180 *however*, That if no racetrack table games licensee is located within a municipality, a transfer may
181 not be made under this subdivision; and

182 (7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the
183 Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

184 (d) From the net amounts in the Racetrack Table Games Fund, the commission shall:

185 (1) Transfer 76 percent to the State Debt Reduction Fund which is hereby continued in
186 the State Treasury. Moneys of the fund shall be expended solely for ~~the purpose of~~ accelerating
187 the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall
188 be expended or transferred only upon appropriation of the Legislature;

189 (2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from
190 the individual licensed racetracks for and on behalf of all employees of each licensed racing
191 association, into a special fund to be established by the Racing Commission to be used for
192 payment into the pension plan for all employees of each licensed racing association;

193 (3) Transfer 10 percent, to be divided and paid in equal shares, to each county commission
194 in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this
195 section: *Provided*, That funds transferred to county commissions under this subdivision shall be
196 used only to pay regional jail expenses and the costs of infrastructure improvements and other
197 capital improvements: *Provided, however*, That up to 50 percent of these funds may be pledged
198 to make payments on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code;
199 and

200 (4) Transfer 10 percent, to be divided and paid in equal shares, to the governing bodies
201 of each municipality in the state that is not eligible to receive a distribution under subdivisions (5)
202 and (6), subsection (b) of this section: *Provided*, That funds transferred to municipalities under
203 this subdivision shall be used only to pay for debt reduction in municipal police and fire pension
204 funds and the costs of infrastructure improvements and other capital improvements: *Provided*,
205 *however*, That up to 50 percent of these funds may be pledged to make payments on lottery
206 revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code.

207 (e) All expenses of the commission incurred in the administration and enforcement of this

208 article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-
209 enforcement agencies for services performed at the request of the commission pursuant to this
210 article. The commission's expenses associated with a particular racetrack with authorized table
211 games under this article may not exceed three percent of the total annual adjusted gross receipts
212 received from that licensee's operation of table games under this article, including, but not limited
213 to, all license fees or other amounts attributable to the licensee's operation of table games under
214 this article, except as provided in subdivision (2), subsection (a) of this section. However, for the
215 fiscal year following the licensing of every licensed racetrack to offer West Virginia Lottery
216 racetrack table games under this article and for the fiscal year thereafter, the commission's
217 expenses associated with a particular racetrack with authorized table games under this article
218 may not exceed four percent of the total annual adjusted gross receipts received from that
219 licensee's operation of table games under this article, including, but not limited to, all license fees
220 or other amounts attributable to the licensee's operation of table games under this article, except
221 as provided in subdivision (2), subsection (a) of this section. These expenses shall either be
222 allocated to the racetrack with West Virginia Lottery table games for which the expense is
223 incurred, if practicable, or be treated as general expenses related to all racetrack table games
224 facilities and be allocated pro rata among the racetrack table games facilities based on the ratio
225 that annual adjusted gross receipts from operation of table games at each racetrack with West
226 Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table
227 games at all racetracks with West Virginia Lottery table games during the fiscal year of the state.
228 From this allowance, the commission shall transfer at least \$100,000 but not more than \$500,000
229 into the Compulsive Gambling Treatment Fund created in §29-22A-19 of this code.

**§29-22C-27a. Changes in distribution of adjusted gross receipts; distributions from excess
lottery fund.**

1 (a) Notwithstanding any provision of §29-22C-27 of this code to the contrary, for the fiscal
2 year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to

3 subdivision (1), subsection (d) of that section shall be reduced by 100 percent. For fiscal year
4 beginning after June 30, 2018, and each fiscal year thereafter, the distribution to the special fund
5 established by the licensee, and used for payment of regular purses, pursuant to §29-22C-
6 27(c)(2) of this code only includes amounts to be distributed to each thoroughbred racetrack table
7 games licensee and greyhound racing facilities in Ohio County for the payment of regular
8 racetrack purses.

9 (b) The total amount of reductions resulting from subsection (a) of this section shall be
10 paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this chapter. For the
11 fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
12 pursuant to §29-22C-27(c)(2) and §22C-27(c)(3) of this code shall be reduced by 10 percent, and
13 the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue
14 Fund.

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

19 (d) Prior to payment of any appropriation made pursuant to this section, debt service
20 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
21 provisions of §29-22-18a, §29-22-18d and §29-22-18e of this code and in the priority as defined
22 by §29-22-18f(c) of this code.

23 (e) Notwithstanding any other provision of this code to the contrary, after payment of debt
24 service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-
25 18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro
26 rata basis.

NOTE: The purpose of this bill is to discontinue the West Virginia Racing Commission

special account known as the West Virginia Greyhound Breeding Development Fund for certain racetracks; to transfer some moneys in the West Virginia Greyhound Breeding Development Fund to the state Excess Lottery Revenue Fund for appropriation by the Legislature; to require that some moneys previously required to be directed to the West Virginia Greyhound Breeding Development Fund be redirected to the state Excess Lottery Revenue Fund for appropriation by the Legislature; requiring that upon transfer of moneys from the West Virginia Greyhound Breeding Development Fund to the state Excess Lottery Revenue Fund, a certain amount be withheld and deposited in the special account known as the “administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account;” to require that all moneys previously required to be directed into any fund or paid for the purpose of funding purses, awards or provide any other funding for greyhound races be redirected to the state Excess Lottery Revenue Fund for appropriation by the Legislature; to eliminate the requirement that an applicant for a dog racing license race a minimum number of dates to qualify for such license; to eliminate the requirement that an applicant for a dog racing license race a minimum number of dates to or to contract to receive telecasts and accept wagers; to eliminate the requirement that a video lottery licensee at a dog track must hold a racing license to renew a video lottery license or racetrack table games license; to eliminate the requirement, for a video lottery licensee at a dog track, that operational video lottery must be located in the same building or structure as a racetrack and area where pari-mutuel wagering is permitted; to eliminate the requirement that an applicant for a video lottery license or license renewal at a dog track must provide evidence of the existence of an agreement regarding proceeds from lottery terminals with certain parties; to eliminate the requirement that an applicant for a racetrack table games license at a dog track must race a certain number of days to qualify for such license; to eliminate the requirement that a video lottery licensee at a dog track must hold a racing license to conduct simulcast racing; and making certain exceptions for racetracks in Ohio County.

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