

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2901**

BY DELEGATES STORCH, NELSON, SKAFF, SPONAUGLE,  
FLUHARTY, GRAVES, MCGEEHAN, WESTFALL, ROWE,  
BARRETT AND HOUSEHOLDER

[Introduced February 7, 2019; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §29-22A-12 of the Code of West Virginia, 1931, as amended; and  
 2 to amend and reenact §29-22C-3 and §29-22C-8 of said code, all relating to allowing for  
 3 the establishment of a secondary location for racetrack video lottery terminals and  
 4 racetrack table games of licensed racetracks to an alternative location within the current  
 5 county of the licensed racetrack.

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

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

**§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.* of this code:  
21 *Provided*, That if the commission, before November 1, 1993, has authorized any racetrack to  
22 operate video lottery terminals and offer video lottery games in a location which would not conform  
23 to the requirements of this subdivision, the racetrack may continue to use video lottery terminals  
24 registered with and approved by the commission at that nonconforming location and to offer the  
25 games and any variations or composites of the games as may be approved by the commission.

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

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

34 (e) Notwithstanding anything in this chapter to the contrary, a licensed racetrack may  
35 establish a secondary location for its business, including authorized operational video lottery  
36 terminals, at any building owned or leased by the licensed racetrack within the county the licensed  
37 racetrack is located so long as the licensed racetrack receives approval from the commission.  
38 The total amount of locations a licensed racetrack may operate within a county is two locations:  
39 *Provided*, That if any licensed racetrack relocates operational video lottery terminals outside of a  
40 municipality, the municipality is entitled to receive the share of funds it received under §29-22A-  
41 10 and §29-22A-10b of this code up to the amount received in the fiscal year immediately  
42 preceding the relocation of the operational video lottery terminals and the excess of this amount  
43 shall be divided proportionally to the said municipality and the new municipality, if any, based on  
44 the revenues generated at each location: *Provided, however*, That the total amount of funds

45 transferred to the municipalities may not be in excess of the percentage provided under §29-22A-  
46 10 and §29-22A-10b of this code.

## **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 defined  
2 in this section, and any variation of those words or terms required by the context, have the  
3 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 rule making.

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 §29-22-6 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.* and §19-23-1 *et seq.* of this code.

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

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

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

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

75 at the licensed racetrack; or

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

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

79 (20) "Lottery" means the public gaming systems or games regulated, controlled, owned  
80 and operated by the state Lottery Commission in the manner provided by general law, as provided  
81 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.*  
82 of this code.

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

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

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

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

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

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

100 (27) "Racetrack table games license" means authorization granted under this article by

101 the commission to a racetrack that is already licensed under §29-22A-1 *et seq.* of this code to  
102 operate racetrack video lottery terminals and holds a valid racing license granted by the West  
103 Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code, which  
104 permits the racetrack as an agent of the commission for the limited purpose of operation of West  
105 Virginia Lottery table games in one or more designated gaming areas in one or more buildings  
106 owned or leased by the licensed racetrack on the grounds where live pari-mutuel racing is  
107 conducted by the licensee or any building owned or leased by the licensed racetrack within the  
108 county the licensed racetrack is located so long as the licensed racetrack receives approval from  
109 the commission.

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

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

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

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

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

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

127 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.

15           (c) *Location.* -- A racetrack table games license authorizes the operation of West Virginia  
16 Lottery table games on the grounds of the particular licensed facility identified in the racetrack  
17 video lottery license issued pursuant to §29-22A-1 *et seq.* of this code and the license to conduct  
18 horse or dog racing issued pursuant to §19-23-1 *et seq.* of this code.

19           (d) *Floor plan submission requirement.* -- Prior to commencing the operation of any table  
20 games in a designated gaming area, a racetrack table games licensee shall submit to the  
21 commission for its approval a detailed floor plan depicting the location of the designated gaming  
22 area in which table games gaming equipment will be located and its proposed arrangement of the  
23 table games gaming equipment. Any floor plan submission that satisfies the requirements of the  
24 rules promulgated by the commission shall be considered approved by the commission unless

25 the racetrack table games licensee is notified in writing to the contrary within one month of filing  
26 a detailed floor plan.

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

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

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

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

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

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

48 (1) The provisions of this article and of §29-22A-1 *et seq.* of this code shall be interpreted  
49 to allow West Virginia Lottery table games and racetrack video lottery operations under those  
50 articles to be harmoniously conducted in the same designated gaming area.

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

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

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

59 (1) An initial racetrack table games license fee of \$1,500,000 shall be paid to the  
60 commission at the time of issuance of the racetrack table games license, regardless of the number  
61 of months remaining in the license year for which it is issued. All licenses expire at the end of the  
62 day on June 30 each year.

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

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

67 (B) Pays to the commission the annual license renewal fee of \$2,500,000 required by this  
68 section at the time it files its application for renewal of its license under §29-22A-1 *et seq.* of this  
69 code; and

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

73 (3) *Annual license surcharge for failure to construct hotel on premises.* -- It is the intent of  
74 the Legislature that each racetrack for which a racetrack table games license has been issued be  
75 or become a destination tourism resort facility. To that end, it is important that each racetrack for  
76 which a racetrack table games license has been issued operate a hotel with significant amenities.

77 Therefore, in addition to all other taxes and fees required by the provisions of this article, there is  
78 hereby imposed, upon each racetrack for which a racetrack table games license has been issued  
79 an annual license surcharge, payable to the commission in the amount of \$2,500,000 if that  
80 racetrack does not operate a hotel on its racing property that contains at least one hundred fifty  
81 guest rooms with significant amenities within three years of the passage of the local option  
82 election in its county authorizing table games at the racetrack, provided the time for completion  
83 of the hotel shall be extended by the same number of days as the completion of the hotel is  
84 delayed by a force majeure events or conditions beyond the reasonable control of the racetrack  
85 licensee. The surcharge shall be paid upon each renewal of its racetrack table games license  
86 made after the expiration of the three year period, and may be extended by the above force  
87 majeure events or conditions, until the racetrack opens a qualifying hotel.

88 (4) If the licensee fails to apply to renew its license under §19-23-1 *et seq.* and §29-22A-  
89 1 *et seq.* of this code until after the license expires, the commission shall renew its license under  
90 this article at the time it renews its license under §29-22A-1 *et seq.* of this code provided the  
91 licensee has paid the annual license fee required by this section and during the preceding license  
92 year the licensee complied with all provisions of this article, all rules adopted by the commission  
93 and all final orders of the commission applicable to the licensee.

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

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

102 (1) In the amount determined by the commission to be adequate to protect the state

103 against nonpayment by the licensee of amounts due the state under this article;

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

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

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

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

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

121 (m) Notwithstanding anything in this chapter to the contrary, a licensed racetrack may  
122 establish a secondary location for its business, including authorized racetrack table games, at any  
123 building owned or leased by the licensed racetrack within the county the licensed racetrack is  
124 located so long as such licensed racetrack receives approval from the commission. The total  
125 amount of locations a licensed racetrack may operate within a county is two locations: *Provided,*  
126 that if any licensed racetrack relocates racetrack table games outside of a municipality, said  
127 municipality shall be entitled to receive the share of funds it received under §29-22C-27 of this  
128 code up to the amount received in the fiscal year immediately preceding the relocation of the

- 129 racetrack table games and the excess of this amount shall be divided proportionally to said  
130 municipality and the new municipality, if any, based on the revenues generated at each location:  
131 *Provided, however, That the total amount of funds transferred to the municipalities may not be in*  
132 excess of the percentage provided for under §29-22C-27 of this code.

NOTE: The purpose of this bill is to allow a licensed racetrack to establish a secondary location for racetrack video lottery terminals and racetrack table games at a location within the county as approved by the lottery commission.

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