

Senate Bill No. 206

(By Senator Plymale)

[Introduced January 8, 2014; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

**§29-22A-10. Accounting and reporting; commission to provide
communications protocol data; distribution of net**

1 **terminal income; remittance through electronic**
2 **transfer of funds; establishment of accounts and**
3 **nonpayment penalties; commission control of**
4 **accounting for net terminal income; settlement of**
5 **accounts; manual reporting and payment may be**
6 **required; request for reports; examination of**
7 **accounts and records.**

8 (a) The commission shall provide to manufacturers ~~or~~ and
9 applicants applying for a manufacturer's permit, the protocol
10 documentation data necessary to enable the ~~respective~~
11 ~~manufacturer's~~ manufacturers' video lottery terminals to
12 communicate with the commission's central computer for transmitting
13 auditing program information and for activation and disabling of
14 video lottery terminals.

15 (b) The gross terminal income of a licensed racetrack shall be
16 remitted to the commission through the electronic transfer of
17 funds. Licensed racetracks shall furnish to the commission all
18 information and bank authorizations required to facilitate the
19 timely transfer of moneys to the commission. Licensed racetracks
20 must provide the commission thirty days' advance notice of any
21 proposed account changes in order to assure the uninterrupted
22 electronic transfer of funds. From the gross terminal income

1 remitted by the licensee to the commission:

2 (1) The commission shall deduct an amount sufficient to
3 reimburse the commission for its actual costs and expenses incurred
4 in administering racetrack video lottery at the licensed racetrack.
5 ~~and~~ The resulting amount after the deduction is the net terminal
6 income. The amount deducted for administrative costs and expenses
7 of the commission may not exceed four percent of gross terminal
8 income. ~~Provided, That any~~ Amounts deducted by the commission for
9 its actual costs and expenses that ~~exceeds~~ exceed its actual costs
10 and expenses shall be deposited into the State Lottery Fund. For
11 the fiscal years ending June 30, 2011, through June 30, 2020, the
12 term "actual costs and expenses" may include transfers of up to \$10
13 million in surplus allocations for each fiscal year, as calculated
14 by the commission when it has closed its books for the fiscal year,
15 to the Licensed Racetrack Modernization Fund created by subdivision
16 (2), subsection (b) of this section. For all fiscal years
17 beginning on or after July 1, 2001, the commission shall not
18 receive an amount of gross terminal income in excess of the amount
19 of gross terminal income received during the fiscal year ending on
20 June 30, 2001, but four percent of any amount of gross terminal
21 income received in excess of the amount of gross terminal income
22 received during the fiscal year ending on June 30, 2001, shall be

1 deposited into the fund established in section eighteen-a, article
2 twenty-two of this chapter; and

3 (2) A Licensed Racetrack Modernization Fund is created within
4 the lottery fund. For all fiscal years beginning on or after July
5 1, 2011, and ending with the fiscal year beginning July 1, 2020,
6 the commission shall deposit such amounts as are available
7 according to subdivision (1), subsection (b) of this section into
8 a separate facility modernization account maintained within the
9 Licensed Racetrack Modernization Fund for each racetrack. Each
10 racetrack's share of each year's deposit shall be calculated in the
11 same ratio as each racetrack's apportioned contribution to the four
12 percent administrative costs and expenses allowance provided ~~for~~ in
13 subdivision (1), subsection (b) of this section for that year. For
14 each \$2 expended by a licensed racetrack for facility modernization
15 improvements at the racetrack, having a useful life of three or
16 more years and placed in service after July 1, 2011, the licensed
17 racetrack shall receive \$1 in recoupment from its facility
18 modernization account. If the licensed racetrack's facility
19 modernization account contains a balance in any fiscal year, the
20 unexpended balance from that fiscal year will be available for
21 matching for one additional fiscal year, after which time the
22 remaining unused balance carried forward ~~shall revert~~ reverts to

1 the lottery fund. For purposes of this section, the term "facility
2 modernization improvements" includes acquisitions of new and unused
3 video lottery terminals and related equipment. Video lottery
4 terminals financed through the recoupment provided in this
5 subdivision must be retained by the licensee in its West Virginia
6 licensed location for a period of not less than five years from the
7 date of initial installation.

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

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

1 (2) Until July 1, 2005, fourteen percent of net terminal
2 income at a licensed racetrack shall be deposited in the special
3 fund established by the licensee and used for payment of regular
4 purses in addition to other amounts provided ~~for~~ in article
5 twenty-three, chapter nineteen of this code. On and after July 1,
6 2005, the rate shall be seven percent of net terminal income;

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

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

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

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

21 (B) Beginning July 1, 1999, and thereafter, any amount in
22 excess of the two percent received during the fiscal year 1999 by

1 a county in which a racetrack other than a racetrack described in
2 paragraph (A) of this proviso is located and where the racetrack
3 has been located in a municipality within the county since on or
4 before January 1, 1999, shall be divided, if applicable, as
5 follows:

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

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

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

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

18 (5) The West Virginia Thoroughbred Development Fund created
19 under section thirteen-b, article twenty-three, chapter nineteen of
20 this code and the West Virginia Greyhound Breeding Development Fund
21 created under section ten of said article shall receive an equal
22 share of a total of not less than one and one-half percent of the

1 net terminal income;

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

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

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

21 (B) Notwithstanding any provision of paragraph (A) of this
22 subdivision to the contrary, for each fiscal year beginning after

1 June 30, 2004, this three percent of net terminal income and the
2 three percent of net terminal income described in paragraph (B),
3 subdivision (8), subsection (a), section ten-b of this article
4 shall be distributed as provided in this paragraph as follows:

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

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

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

21 (iv) 0.6875 percent of the total amount of net terminal income
22 described in this section and in section ten-b of this article

1 shall be deposited into the Capitol Renovation and Improvement Fund
2 administered by the Department of Administration pursuant to
3 section six, article four, chapter five-a of this code; and

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

9 (9) (A) On and after July 1, 2005, seven percent of net
10 terminal income shall be deposited into the Workers' Compensation
11 Debt Reduction Fund created in section five, article two-d, chapter
12 twenty-three of this code. ~~Provided, That~~ In any fiscal year when
13 the amount of money generated by this subdivision totals \$11
14 million, all subsequent distributions under this subdivision shall
15 be deposited in the special fund established by the licensee and
16 used for the payment of regular purses in addition to the other
17 amounts provided in article twenty-three, chapter nineteen of this
18 code;

19 (B) The deposit of the seven percent of net terminal income
20 into the Worker's Compensation Debt Reduction Fund pursuant to this
21 subdivision shall expire and not be imposed with respect to these
22 funds and shall be deposited in the special fund established by the

1 licensee and used for payment of regular purses in addition to the
2 other amounts provided in article twenty-three, chapter nineteen of
3 this code, on and after the first day of the month following the
4 month in which the Governor certifies to the Legislature that: (I)
5 The revenue bonds issued pursuant to article two-d, chapter
6 twenty-three of this code, have been retired or payment of the debt
7 service provided for; and (ii) that an independent certified
8 actuary has determined that the unfunded liability of the old fund,
9 as defined in chapter twenty-three of this code, has been paid or
10 provided ~~for~~ in its entirety; and

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

13 (A) For the fiscal year beginning July 1, 2003, the Veterans
14 Memorial Program shall receive one percent of the net terminal
15 income until sufficient moneys have been received to complete the
16 veterans memorial on the grounds of the State Capitol Complex in
17 Charleston, West Virginia. The moneys shall be deposited in the
18 State Treasury in the Division of Culture and History Special Fund
19 created under section three, article one-I, chapter twenty-nine of
20 this code: *Provided*, That only after sufficient moneys have been
21 deposited in the fund to complete the veterans memorial and to pay
22 in full the annual bonded indebtedness on the veterans memorial,

1 not more than \$20,000 of the one percent of net terminal income
2 provided in this subdivision shall be deposited into a special
3 revenue fund in the State Treasury, to be known as the "John F.
4 'Jack' Bennett Fund". The moneys in this fund shall be expended by
5 the Division of Veterans Affairs to provide for the placement of
6 markers for the graves of veterans in perpetual cemeteries in this
7 state. The Division of Veterans Affairs shall promulgate
8 legislative rules pursuant to ~~the provisions of~~ article three,
9 chapter twenty-nine-a of this code specifying the manner in which
10 the funds are spent, determine the ability of the surviving spouse
11 to pay for the placement of the marker and setting forth the
12 standards to be used to determine the priority in which the
13 veterans grave markers will be placed in the event that there are
14 not sufficient funds to complete the placement of veterans grave
15 markers in any one year or at all. Upon payment in full of the
16 bonded indebtedness on the veterans memorial, \$100,000 of the one
17 percent of net terminal income provided in this subdivision shall
18 be deposited in the special fund in the Division of Culture and
19 History created under section three, article one-I, chapter
20 twenty-nine of this code and be expended by the Division of Culture
21 and History to establish a West Virginia veterans memorial archives
22 within the Cultural Center to serve as a repository for the

1 documents and records pertaining to the veterans memorial, to
2 restore and maintain the monuments and memorial on the Capitol
3 grounds: *Provided, however,* That \$500,000 of the one percent of net
4 terminal income shall be deposited in the State Treasury in a
5 special fund of the Department of Administration, created under
6 section five, article four, chapter five-a of this code, to be used
7 for construction and maintenance of a parking garage on the State
8 Capitol Complex; and the remainder of the one percent of net
9 terminal income shall be deposited in equal amounts in the Capitol
10 Dome and Improvements Fund created under section two, article four,
11 chapter five-a of this code and Cultural Facilities and Capitol
12 Resources Matching Grant Program Fund created under section three,
13 article one of this chapter.

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

15 (I) Five hundred thousand dollars of the one percent of net
16 terminal income shall be deposited in the State Treasury in a
17 special fund of the Department of Administration, created under
18 section five, article four, chapter five-a of this code, to be used
19 for construction and maintenance of a parking garage on the State
20 Capitol Complex; and

21 (ii) The remainder of the one percent of net terminal income
22 and all of the one percent of net terminal income described in

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

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

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

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

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

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

20 (I) The commission has the right to examine all accounts, bank
21 accounts, financial statements and records in a licensed
22 racetrack's possession, under its control or in which it has an

1 interest and the licensed racetrack shall authorize all third
2 parties in possession or in control of the accounts or records to
3 allow examination of any of those accounts or records by the
4 commission.

5 **§29-22A-10b. Distribution of excess net terminal income.**

6 (a) For all years beginning on or after July 1, 2001, any
7 amount of net terminal income generated annually by a licensed
8 racetrack in excess of the amount of net terminal income generated
9 by that licensed racetrack during the fiscal year ending on June
10 30, 2001, shall be divided as follows:

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

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

21 (3) The county where the video lottery terminals are located
22 shall receive two percent of the net terminal income *Provided,*

1 That:

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

8 (I) The county shall receive fifty percent of the excess
9 amount; and

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

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

22 (I) The county shall receive fifty percent of the excess

1 amount; and

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

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

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

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

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

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

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

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

22 (B) The deposit of the four percent of net terminal income

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

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

20 (B) Notwithstanding any provision of paragraph (A) of this
21 subdivision to the contrary, for each fiscal year beginning after
22 June 30, 2004, this one percent of net terminal income shall be

1 distributed pursuant to ~~the provisions of~~ subparagraph (ii),
2 paragraph (B), ~~subdivision (9)~~, subdivision (10), subsection ©,
3 section ten of this article.

4 (b) The commission may establish orderly and effective
5 procedures for the collection and distribution of funds under this
6 section in accordance with ~~the provisions of~~ this section and
7 section ten of this article.

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

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