

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4702

**FISCAL
NOTE**

BY DELEGATE E. NELSON

[Introduced February 23, 2016; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §7-18-1 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §19-23-6, §19-23-7, §19-23-10, §19-23-12b, §19-23-12c, §19-23-13, §19-23-
3 13b and §19-23-13c of said code; to amend said code by adding thereto two new sections,
4 designated §19-23-10a and §19-23-13d; to amend and reenact §29-22-18a of said code;
5 to amend and reenact §29-22A-3, §29-22A-7, §29-22A-8, §29-22A-9, §29-22A-10, §29-
6 22A-10b, §29-22A-10c, §29-22A-11 and §29-22A-12; to amend said code by adding
7 thereto three new sections, designated §29-22A-10g, §29-22A-10h and §29-22A-20; to
8 amend and reenact §29-22C-7, §29-22C-8, §29-22C-10, §29-22C-27 and §29-22C-29 of
9 said code; to amend said code by adding thereto a new section, designated, §29-22C-
10 27b; and to amend and reenact §60-7-12 of said code, all relating to eliminating the hotel-
11 motel tax on complementary hotel rooms; transferring certain revenues derived from
12 racetrack video lottery, and racetrack table games to the state Excess Lottery Revenue
13 Fund; distributing certain revenues from the state Excess Lottery Revenue Fund to certain
14 distributees; defunding the West Virginia Greyhound Breeding Development Fund and
15 West Virginia Thoroughbred Development Fund and transferring money that would have
16 gone to those funds to the state Excess Lottery Revenue Fund for appropriation by the
17 Legislature; eliminating prohibition of smoking in certain gaming establishments; providing
18 for Racing Commission to approve number of racing days requested by racing
19 association; eliminating racing day requirement to maintain video lottery license;
20 eliminating prohibition of ATM's on casino floors; authorizing minors accompanied by an
21 adult to cross gaming floor to access food service areas; eliminating recall elections for
22 video lottery and racetrack table games and allowing video lottery licensees to serve
23 alcoholic beverages during hours of operation.

Be it enacted by the Legislature of West Virginia:

1 That §7-18-1 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §19-23-6, §19-23-7, §19-23-10; §19-23-12b, §19-23-12c, §19-23-13, §19-23-13b

3 and §19-23-13c of said code be amended and reenacted; that said code be amended by adding
 4 thereto two new sections, designated §19-23-10a and §19-23-13d; that §29-22-18a of said code
 5 be amended and reenacted; that §29-22A-3, §29-22A-7, §29-22A-8, §29-22A-9, §29-22A-10,
 6 §29-22A-10b, §29-22A-10c, §29-22A-11 and §29-22A-12 of said code be amended and
 7 reenacted; that said code be amended by adding thereto three new sections, designated §29-
 8 22A-10g, §29-22A-10h and §29-22A-20; that §29-22C-7, §29-22C-8, §29-22C-10, §29-22C-27,
 9 and §29-22C-29 of said code be amended and reenacted; that said code be amended by adding
 10 thereto a new section, designated §29-22C-27b; and that §60-7-12 of said Code be amended and
 11 reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-1. Hotel occupancy tax.

1 (a) *Authority to impose.* -- On and after July 1, 1985, any county or municipality may
 2 impose and collect a privilege tax upon the occupancy of hotel rooms located within its taxing
 3 jurisdiction. Such tax shall be imposed and collected as provided in this article.

4 (b) *Municipal tax.* -- A municipal hotel tax shall be imposed by ordinance enacted by the
 5 governing body of the municipality, in accordance with the provisions of article eleven, chapter
 6 eight of this code. Such tax shall be imposed uniformly throughout the municipality, and the tax
 7 shall apply to all hotels located within the corporate limits of the municipality, including hotels
 8 owned by the state or by any political subdivision of this state.

9 (c) *County tax.* -- A county hotel tax shall be imposed by order of the county commission
 10 duly entered of record. Such tax shall be imposed uniformly throughout the county: *Provided,* That
 11 no county commission may impose its tax on hotels located within the corporate limits of any
 12 municipality situated, in whole or in part, within the county: *Provided, however,* That the tax
 13 collected by a hotel owned by a municipality but located outside the corporate limits of such

14 municipality pursuant to this article shall be remitted to the municipality owning such hotel for
 15 expenditure pursuant to the provisions of section fourteen of this article. The tax shall apply to all
 16 hotels located outside the corporate limits of a municipality, including hotels owned by the state
 17 or any political subdivision of this state.

18 (d) The tax shall be imposed on the consumer and shall be collected by the hotel operator
 19 as part of the consideration paid for the occupancy of a hotel room: *Provided*, That the tax shall
 20 not be imposed on any consumer occupying a hotel room for thirty or more consecutive days or
 21 on complementary hotel rooms provided by a hotel operator to guests without charge.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

§19-23-6. Powers and authority of Racing Commission.

1 The Racing Commission has full jurisdiction over and shall supervise all horse race
 2 meetings, all dog race meetings and all persons involved in the holding or conducting of horse or
 3 dog race meetings and, in this regard, it has plenary power and authority:

4 (1) To investigate applicants and determine the eligibility of the applicants for a license or
 5 permit or construction permit under the provisions of this article;

6 (2) To fix, from time to time, the annual fee to be paid to the Racing Commission for any
 7 permit required under the provisions of section two of this article;

8 (3) To promulgate reasonable rules implementing and making effective the provisions of
 9 this article and the powers and authority conferred and the duties imposed upon the Racing
 10 Commission under the provisions of this article, including, but not limited to, reasonable rules
 11 under which all horse races, dog races, horse race meetings and dog race meetings shall be held
 12 and conducted, all of which reasonable rules shall be promulgated in accordance with the
 13 provisions of article three, chapter twenty-nine-a of this code except that the Racing Commission

14 shall promulgate separate rules, in accordance with article three, chapter twenty-nine-a,
15 pertaining to the kinds of legal combination wagers which may be placed in connection with the
16 pari-mutuel system of wagering authorized by this article;

17 (4) To register colors and assumed names and to fix, from time to time, the annual fee to
18 be paid to the Racing Commission for any such registration;

19 (5) To fix and regulate the minimum purse to be offered during any horse or dog race
20 meeting;

21 (6) To ~~fix~~ approve the number, if any, of live racing dates requested by a licensee for any
22 racing season and to fix a minimum and a maximum number, if any, of horse races or dog races
23 to be held on any respective racing day;

24 (7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places
25 of business of any licensee to determine whether the provisions of this article and its reasonable
26 rules are being complied with, and for this purpose, the Racing Commission, its executive director,
27 representatives and employees may visit, investigate and have free access to any such office,
28 horse racetrack, dog racetrack, kennel, facilities and other places of business;

29 (8) To investigate alleged violations of the provisions of this article, its reasonable rules,
30 orders and final decisions and to take appropriate disciplinary action against any licensee or
31 permit holder or construction permit holder for a violation or institute appropriate legal action for
32 enforcement or take disciplinary action and institute legal action;

33 (9) By reasonable rules, to authorize stewards, starters and other racing officials to impose
34 reasonable fines or other sanctions upon a person connected with or involved in any horse or dog
35 racing or any horse or dog race meeting and to authorize stewards to rule off the grounds of any
36 horse or dog racetrack any tout, bookmaker or other undesirable individual determined inimical
37 to the best interests of horse and dog racing or the pari-mutuel system of wagering in connection
38 therewith;

39 (10) To require at any time the removal of any racing official or racing employee of any

40 licensee for the violation of any provision of this article, any reasonable rule of the Racing
41 Commission or for any fraudulent practice;

42 (11) To acquire, establish, maintain and operate, or to provide by contract for the
43 maintenance and operation of, a testing laboratory and related facilities for the purpose of
44 conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in
45 any horse or dog race meeting and to purchase all equipment and supplies considered necessary
46 or desirable in connection with the acquisition, establishment, maintenance and operation of any
47 testing laboratory and related facilities and all such tests;

48 (12) To hold up, in any disputed horse or dog race, the payment of any purse pending a
49 final determination of the results thereof;

50 (13) To require each licensee to file an annual balance sheet and profit and loss statement
51 pertaining to the licensee's horse or dog racing activities in this state together with a list of each
52 licensee's stockholders or other persons having any beneficial interest in the horse or dog racing
53 activities of the licensee;

54 (14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for
55 the production of any books, records and other pertinent documents and to administer oaths and
56 affirmations to such witnesses, whenever, in the judgment of the Racing Commission, it is
57 necessary to do so for the effective discharge of its duties under the provisions of this article;

58 (15) To keep accurate and complete records of its proceedings and to certify the same as
59 may be appropriate;

60 (16) To take any other action that may be reasonable or appropriate to effectuate the
61 provisions of this article and its reasonable rules;

62 (17) To provide breeders' awards, purse supplements and moneys for capital
63 improvements at racetracks in compliance with section thirteen-b of this article; and

64 (18) To mediate on site, upon request of a party, all disputes existing between the
65 racetrack licensees located in this state and representatives of a majority of the horse owners and

66 trainers licensed at the track which threaten to disrupt any scheduled racing event or events. The
67 Racing Commission shall, upon the request of a party, mediate on site all disputes existing
68 between racetrack licensees and representatives of pari-mutuel clerks which threaten to disrupt
69 any scheduled racing event or events. When a request for mediation is made, the commission
70 shall designate from among its members one person to act as mediator in each dispute that
71 arises. Each opposing party involved in any dispute shall negotiate in good faith with the goal of
72 reaching a fair and mutual resolution. The mediator may issue recommendations designed to
73 assist each side toward reaching a fair compromise. No owner or operator or any horse owner or
74 trainer or any pari-mutuel clerk licensed at the track is required to abide by any recommendation
75 made by any mediator acting pursuant to this subsection.

76 The Racing Commission shall not interfere in the internal business or internal affairs of
77 any licensee.

PART V. LICENSE AND PERMIT PROCEDURES

§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. Any racing association,
6 which was licensed prior to January 1, 1994, to hold horse or dog race meetings, desiring to
7 conduct simulcast racing without conducting horse or dog racing, shall file a separate application
8 to conduct simulcast racing. The Racing Commission shall prescribe blank forms to be used in
9 making such application. Such application shall be filed on or before a day to be fixed by the
10 Racing Commission and shall disclose, but not be limited to, the following:

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

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

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

18 (4) The dates, ~~totaling not less than two hundred~~ if any, such applicant intends to hold or
19 conduct such horse or dog race meeting and the dates, if any, such applicant intends to conduct
20 simulcast racing (which may be on any day including Sundays);

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

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

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

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

38 pay such expenses and fees, the Racing Commission may require bond or other adequate
39 security before the requested license is issued.

40 (c) Any person desiring to obtain a permit, as required by the provisions of section two of
41 this article, shall make application therefor on a form prescribed by the Racing Commission. The
42 application for any such permit shall be accompanied by the fee prescribed therefor by the Racing
43 Commission. Each applicant for a permit shall set forth in the application such information as the
44 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 subdivision (1), subsection
38 (b), section nine of this article: *And provided further*, That if an association or licensee qualifying
39 for the foregoing alternate tax conducts more than one racing performance, each consisting of up
40 to thirteen races in a calendar day, the association or licensee shall pay both the daily license tax
41 imposed in subsection (a) of this section and the alternate tax in this subsection for each

42 performance: *And provided further*, That a licensee qualifying for the foregoing alternate tax is
43 excluded from participation in the fund established by section thirteen-b of this article: *And*
44 *provided further*, That this exclusion shall not apply to any thoroughbred racetrack at which the
45 licensee has participated in the West Virginia Thoroughbred Development Fund for more than
46 four consecutive years prior to December 31, 1992.(c) Any racing association licensed by the
47 Racing Commission to conduct harness racing and permitting and conducting pari-mutuel
48 wagering under the provisions of this article shall, in addition to the daily license tax required
49 under subsection (a) of this section, pay to the Racing Commission, from the commission
50 deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three
51 percent of the first \$100,000 wagered, or any part thereof; four percent of the next \$150,000; and
52 five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools
53 conducted or made at any and every harness race meeting of the licensee licensed under the
54 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". The purpose of the fund
70 is to promote better breeding, training track facilities and racing of greyhounds in the state through
71 awards and purses to bona fide resident registered greyhound owners of accredited West Virginia
72 whelped greyhounds. In order to participate and be eligible to receive an award or purse through
73 the fund, the registered greyhound owner must have an appropriate license from the Racing
74 Commission to race in West Virginia. The registered greyhound dam at the time of breeding must
75 be wholly or solely owned or leased by a bona fide resident or residents of West Virginia. The
76 accredited West Virginia whelped greyhound must be wholly or solely owned by a bona fide
77 resident or residents of this state. To qualify as a bona fide resident of West Virginia, a registered
78 greyhound owner may not claim residency in any other state. A registered greyhound owner must
79 prove bona fide residency by providing to the commission personal income tax returns filed in the
80 State of West Virginia for the most recent tax year and the three previous tax years, has real or
81 personal property in this state on which the owner has paid real or personal property taxes during
82 the most recent tax year and the previous three tax years and an affidavit stating that the owner
83 claims no other state of residency. The Racing Commission shall maintain a registry for West
84 Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses
85 for stake races, training track facilities, supplemental purse awards, administration, promotion,
86 education and greyhound adoption programs involving West Virginia whelped dogs, owned by
87 residents of this state under rules promulgated by the Racing Commission. The Racing
88 Commission shall pay out of the greyhound breeding development fund to each of the licensed
89 dog racing tracks the sum of \$75,000 for the fiscal year ending June 30, 1994. The licensee shall
90 deposit the sum into the special fund for regular purses established under the provisions of section
91 nine of this article. The funds shall be expended solely for the purpose of supplementing regular
92 purses under rules promulgated by the Racing Commission.

93 Supplemental purse awards will be distributed as follows: Supplemental purses shall be

94 paid directly to the registered greyhound owner of an accredited greyhound.

95 The registered greyhound owner of accredited West Virginia whelped greyhounds that
96 earn points at any West Virginia meet will receive a bonus award calculated at the end of each
97 month as a percentage of the fund dedicated to the owners as purse supplements, which shall be
98 a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound
99 Breeding Development Fund monthly.

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

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

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

117 Any balance in the purse supplement funds after all distributions have been made for the
118 year revert to the general account of the fund for distribution in the following year: *Provided*, That
119 not more than \$2 million from the balance in the purse supplemental fund shall be used for the

120 construction and maintenance of two dog training track facilities if such be approved by the Racing
121 Commission: *Provided, however,* That not more than \$1 million may be allocated for the
122 construction and maintenance of each training track: *Provided further,* That both training track
123 facilities must be located in West Virginia. The West Virginia Racing Commission shall be
124 authorized to promulgate rules governing dog training tracks: *And provided further,* That the
125 Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the
126 construction or maintenance, or both, of the training tracks; and (2) set standards to assure that
127 only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

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

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

146 minimum number shall be the number of individually registered accredited West Virginia whelped
147 greyhounds whelped in the previous two years. The number of all greyhounds seeking
148 qualification at each West Virginia dog track, the ratio of active running greyhounds to housed
149 number of greyhounds at each West Virginia dog track, and the size and number of racing kennels
150 at each West Virginia dog track. Any greyhound racing kennel not having the minimum number
151 of accredited West Virginia whelped greyhounds determined by the West Virginia Racing
152 Commission on their active list shall only be permitted to race the maximum allowable number on
153 the active list less the number of accredited West Virginia whelped greyhounds below the
154 established minimum number. Consistent violations of this minimum requirement may be
155 reviewed by the Racing Commission and may constitute cause for denial or revocation of a
156 kennel's racing license. The Racing Commission shall oversee and approve racing schedules and
157 purse amounts.

158 Ten percent of the deposits into the Greyhound Breeding Development Fund beginning
159 July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission
160 and placed in a special revenue account hereby created in the State Treasury called the
161 "administration, promotion, education, capital improvement and greyhound adoption programs to
162 include spaying and neutering account". The Racing Commission is authorized to expend the
163 moneys deposited in the administration, promotion, education, capital improvement and
164 greyhound adoption programs to include spaying and neutering account at such times and in such
165 amounts as the commission determines to be necessary for purposes of administering and
166 promoting the greyhound development program: *Provided*, That beginning with fiscal year 1995
167 and in each fiscal year thereafter in which the commission anticipates spending any money from
168 the account, the commission shall submit to the executive department during the budget
169 preparation period prior to the Legislature convening before that fiscal year for inclusion in the
170 executive budget document and budget bill, the recommended expenditures, as well as requests
171 of appropriations for the purpose of administration, promotion, education, capital improvement

172 and greyhound adoption programs to include spaying and neutering. The commission shall make
173 an annual report to the Legislature on the status of the administration, promotion, education,
174 capital improvement and greyhound adoption programs to include spaying and neutering account,
175 including the previous year's expenditures and projected expenditures for the next year.

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

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

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

189 (g) The provisions of this section relating to the West Virginia Greyhound Breeding
190 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
191 and amended by the provisions of section ten-a and section thirteen-d of this article as enacted
192 during the 2016 legislative session.

**§19-23-10a. Transfer of present and future moneys required to be deposited in West
Virginia Greyhound Breeding Development Fund.**

1 Notwithstanding any provision of this code to the contrary, effective July 1, 2016, any
2 money in the "West Virginia Racing Commission-Special Account-West Virginia Greyhound
3 Breeding Development Fund" created in section ten of this article shall be transferred by the

4 Racing Commission to the State Excess Lottery Revenue Fund created in section eighteen-a,
 5 article twenty-two, chapter twenty-nine of this code. Effective as of July 1, 2016, any money
 6 directed to be deposited into the Greyhound Breeding Development Fund under code sections
 7 ten, twelve-b, twelve-c, thirteen, thirteen-b and thirteen-c of article twenty-three, chapter nineteen
 8 of this code; section eighteen-a, article twenty-two, chapter twenty-nine of this code; sections ten
 9 and ten-b, article twenty-two-a, chapter twenty-nine of this code; and section twenty-seven, article
 10 twenty-two-c, chapter twenty-nine of this code shall instead be deposited into the Excess Lottery
 11 Revenue 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 section two
 7 of this article; and

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

11 (b) A licensee ~~conducting not less than two hundred twenty live racing dates for each~~
 12 ~~horse or dog race meeting~~ may, with the prior approval of the State Racing Commission, contract
 13 with any legal wagering entity in this state or in any other governmental jurisdiction to receive
 14 telecasts and accept wagers on races conducted by the legal wagering entity *Provided, That at*
 15 ~~those thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less~~
 16 ~~than two hundred ten live racing dates for each horse race meeting: *Provided, however, That at*~~
 17 ~~those thoroughbred racetracks that have participated in the West Virginia thoroughbred~~

18 ~~development fund for a period of more than four consecutive calendar years prior to December~~
19 ~~31, 1992, the licensee may apply for not less than one hundred fifty-nine live racing dates during~~
20 ~~the calendar year 1997. If, thereafter, for reasons beyond the licensee's control, related to adverse~~
21 ~~weather conditions, unforeseen casualty occurrences or a shortage of thoroughbred horses~~
22 ~~eligible to compete for purses, the licensee concludes that this number of racing days cannot be~~
23 ~~attained, the licensee may file a request with the Racing Commission to reduce the authorized~~
24 ~~live racing days. Upon receipt of the request the Racing Commission shall within seventy-two~~
25 ~~hours of the receipt of the request notify the licensee and the representative of a majority of the~~
26 ~~owners and trainers at the requesting track and the representative of the majority of the mutual~~
27 ~~clerks at the requesting track that such request has been received and that if no objection to the~~
28 ~~request is received within ten days of the notification the request will be approved: *Provided*~~
29 ~~*further,* That the commission shall give consideration to whether there existed available~~
30 ~~unscheduled potential live racing dates following the adverse weather or casualty and prior to the~~
31 ~~end of the race meeting which could be used as new live racing dates in order to maintain the full~~
32 ~~live racing schedule previously approved by the Racing Commission. If an objection is received~~
33 ~~by the commission within the time limits, the commission shall, within thirty days of receipt of such~~
34 ~~objection, set a hearing on the question of reducing racing days, which hearing shall be conducted~~
35 ~~at a convenient place in the county in which the requesting racetrack is located. The commission~~
36 ~~shall hear from all parties concerned and, based upon testimony and documentary evidence~~
37 ~~presented at the hearing, shall determine the required number of live racing days: *And provided*~~
38 ~~*further,* That the commission shall not reduce the number of live racing days below one hundred~~
39 ~~eighty-five days for a horse race meeting unless the licensee requesting such reduction has: (i)~~
40 ~~Filed with the commission a current financial statement, which shall be subject to independent~~
41 ~~audit; and (ii) met the burden of proving that just cause exists for such requested reduction in live~~
42 ~~racing days The telecasts may be received and wagers accepted at any location authorized by~~
43 ~~the provisions of section twelve-a of this article. The contract must receive the approval of the~~

44 ~~representative of the majority of the owners and trainers who hold permits required by section two~~
45 ~~of this article at the receiving thoroughbred racetrack~~

46 (c) The commission may allow the licensee to commingle its wagering pools with the
47 wagering pools of the host racing association. If the pools are commingled, the wagering at the
48 licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and
49 be electronically linked with the equipment at the sending racetrack. Subject to the approval of
50 the commission, the types of betting, licensee commissions and distribution of winnings on pari-
51 mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack.
52 Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with
53 the law or rules governing the sending racetrack and must be distributed in a manner agreed to
54 between the licensee and the sending racetrack. For the televised racing services it provides, the
55 host racing association shall receive a fee to be paid by the receiving licensee racetrack which
56 shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing
57 association.

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

61 (e) (1) From the licensee commissions authorized by subsection (c) of this section, the
62 licensee shall pay one tenth of one percent of each commission into the general fund of the
63 county, in which the racetrack is located and at which the wagering occurred and there is imposed
64 and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool
65 exceeds \$100,000, the greater of either: (i) The total of the daily license tax and the pari-mutuel
66 pools tax required by section ten of this article; or (ii) a daily license tax of \$1,250. For each
67 televised racing day on which the total pari-mutuel pool is \$100,000, the licensee shall pay a daily
68 license tax of \$500 plus an additional license tax of \$100 for each \$10,000, or part thereof, that
69 the pari-mutuel pool exceeds \$50,000, but does not exceed \$100,000. The calculation of the total

70 pari-mutuel pool for purposes of this subsection shall include only one half of all wagers placed
71 at a licensed racetrack in this state on televised races conducted at another licensed racetrack
72 within this state. Payments of the tax imposed by this section are subject to the requirements of
73 subsection (e), section ten of this article.

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

80 (3) From the licensee commissions authorized by subsection (c) of this section, after
81 payments are made in accordance with the provisions of subdivisions (1) and (2) of this
82 subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for
83 each televised racing day on or after July 1, 1997, an additional five and one-half percent of net
84 simulcast income into the West Virginia thoroughbred development fund established by the
85 Racing Commission according to section thirteen-b of this article: *Provided*, That no licensee
86 qualifying for the alternate tax provisions of subsection (b), section ten of this article shall be
87 required to make the payments unless the licensee has participated in the West Virginia
88 thoroughbred development fund for a period of more than four consecutive calendar years prior
89 to December 31, 1992. For the purposes of this section, the term "net simulcast income" means
90 the total commission deducted each day by the licensee from the pari-mutuel pools on simulcast
91 horse or dog races, less direct simulcast expenses, including, but not limited to, the cost of
92 simulcast signals, telecommunication costs and decoder costs.

93 (f) After deducting the tax and other payments required by subsection (e) of this section,
94 the amount required to be paid under the terms of the contract with the host racing association
95 and the cost of transmission, the horse racing association shall make a deposit equal to fifty

96 percent of the remainder into the purse fund established under the provisions of subdivision (1),
97 subsection (b), section nine of this article. After deducting the tax and other payments required
98 by subsection (e) of this section, dog racetracks shall pay an amount equal to two tenths of one
99 percent of the daily simulcast pari-mutuel pool to the "West Virginia Racing Commission Special
100 Account-West Virginia Greyhound Breeding Development Fund".

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

104 (h) The provisions of this section relating to the West Virginia Greyhound Breeding
105 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
106 and amended by the provisions of section ten-a and section thirteen-d of this article as enacted
107 during the 2016 legislative session.

§19-23-12c. Interstate simulcasts by licensed racetracks.

1 (a) Any licensed racing association may be authorized by the commission to transmit
2 broadcasts of races conducted at its racetrack to legal wagering entities located outside this state,
3 which legal wagering entities located outside this state shall not be subject to the provisions of
4 subsection (e), section twelve-b of this article: *Provided*, That as consideration for the televised
5 racing services it provides, the host racing association shall receive a signal transmission fee to
6 be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the
7 receiving legal wagering entity and the host racing association. All broadcasts of horse races shall
8 be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978,"
9 also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

10 (b) One percent of the total signal transmission fee provided in subsection (a) of this
11 section shall be paid into a special fund to be established by the Racing Commission for and on
12 behalf of all employees of the licensed racing association to be used for payments into the pension
13 plan for all employees of the licensed racing association, and any thoroughbred horse racetrack

14 which has participated in the West Virginia Thoroughbred Development Fund for a period of more
15 than four consecutive calendar years prior to December 31, 1992, shall pay seven and one-half
16 percent of the signal transmission fee into the West Virginia Thoroughbred Development Fund
17 established by the Racing Commission according to section thirteen-b of this article. After
18 deducting: (i) The amounts required to be placed into the pension plan for all employees of the
19 licensed racing association under this section; (ii) the amounts, if any, required to be paid into the
20 West Virginia thoroughbred development fund under this section; and (iii) the direct costs
21 necessary to send a live audio and visual signal of horse races or dog races from any racetrack
22 licensed under the provisions of section one of this article to any legal wagering entities outside
23 this state for the purpose of pari-mutuel wagering, which direct costs shall include the cost of
24 satellite equipment necessary to transmit the signal, a satellite operator and the satellite time
25 necessary to broadcast the signal and the cost of telecommunication and facsimile services
26 needed to communicate necessary information to all legal wagering entities for the purpose of
27 pari-mutuel wagering, thoroughbred horseracing associations shall make a deposit equal to fifty
28 percent of the remainder into the purse fund established under the provisions of subdivision (1),
29 subsection (b), section nine of this article: *Provided*, That the funds deposited in the purse fund
30 pursuant to this section may be used for the payment of regular purses or, upon agreement
31 between the horse racing association and the representative of the majority of owners and trainers
32 at a particular thoroughbred racetrack, may be used for capital improvements supporting
33 simulcast operations.

34 (c) Effective July 1, 2016, any money required by this section to be deposited into a
35 special fund established by the Racing Commission for and on behalf of all employees of the
36 licensed racing association, shall instead be deposited into the Excess Lottery Revenue Fund for
37 appropriation by the Legislature.

38 (d) The provisions of this section relating to the West Virginia Thoroughbred Development
39 Fund are hereby altered and amended by the provisions of section thirteen-d of this article as

40 enacted during the 2016 legislative session.

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 ninety days after the close of a horse or dog race meeting or
3 the televised racing day, as the case may be, in connection with which the tickets were issued,
4 shall be turned over by the licensee to the Racing Commission within fifteen days after the
5 expiration of the ninety-day period, and the licensee shall give any information required by the
6 Racing Commission concerning the outstanding and unredeemed tickets. The moneys shall be
7 deposited by the Racing Commission in a banking institution of its choice in a special account to
8 be known as "West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel
9 Tickets." Notice of the amount, date and place of each deposit shall be given by the Racing
10 Commission, in writing, to the State Treasurer. The Racing Commission shall then cause to be
11 published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying
12 them to present their unredeemed tickets for payment at the principal office of the Racing
13 Commission within ninety days from the date of the publication of the notice. The notice shall be
14 published within fifteen days following the receipt of the outstanding and unredeemed pari-mutuel
15 ticket moneys by the commission from the licensee as a Class I legal advertisement in compliance
16 with the provisions of article three, chapter fifty-nine of this code, and the publication area for the
17 publication shall be the county in which the horse or dog race meeting was held and the county
18 in which the televised racing day wagering was conducted in this state.

19 (b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for
20 payment within ninety days from the date of the publication of the notice are thereafter

21 irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall
22 become the property of the Racing Commission and shall be expended as provided in
23 subsections (c) and (d) of this section. The Racing Commission shall maintain separate accounts
24 for each licensee and shall record in each separate account the moneys turned over by the
25 licensee and the amount expended at the licensee's track for the purposes set forth in this
26 subsection.

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

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

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

47 tax return in this state for the previous two years and that he or she owned real or personal
48 property in this state and paid taxes in this state on real or personal property for the previous two
49 years, he or she shall be presumed to be a bona fide resident of this state; and

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

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

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

70 (3) If after paying any claims pursuant to this subsection and funds remain in the accounts,
71 those funds shall carry over to the next calendar quarter. If in any quarter the surplus in either
72 account reaches a balance of \$1 million, then that surplus balance shall be placed in to the regular

73 purse fund of that licensee horse racetrack whose unredeemed pari-mutuel account achieves the
74 surplus.

75 (d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be
76 combined into a single balance and distributed quarterly to the West Virginia Racing Commission
77 special account - West Virginia Greyhound Breeding Development Fund. The deposit made
78 pursuant to this subsection does not create a continuing obligation of payment except to the extent
79 that there are unredeemed pari-mutuel tickets from the licensee dog racetracks.

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

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

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

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

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

101 (g) The commission shall submit to the Legislative Auditor a quarterly report and
102 accounting of the income and expenditures in the special account created by this section known
103 as the West Virginia Racing Commission special account - unredeemed pari-mutuel tickets.

104 (h) Nothing contained in this article shall prohibit one person from qualifying for all or more
105 than one of the aforesaid awards or for awards under section thirteen-b of this article.

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

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

113 (k) The provisions of this section relating to the Greyhound Breeding Development Fund
114 are hereby altered and amended by the provisions of section ten-a of this article as enacted during
115 the 2016 legislative session.

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

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

1 (a) The Racing Commission shall deposit moneys required to be withheld by an
2 association or licensee in subsection (b), section nine of this article in a banking institution of its
3 choice in a special account to be known as West Virginia Racing Commission Special Account,
4 West Virginia Thoroughbred Development Fund: *Provided*, That after the West Virginia Lottery
5 Commission has divided moneys between the West Virginia Thoroughbred Development Fund

6 and the West Virginia Greyhound Breeding Development Fund, pursuant to the provisions of
7 sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing
8 Commission shall, beginning October 1, 2005, deposit the remaining moneys required to be
9 withheld from an association or licensee designated to the Thoroughbred Development Fund
10 under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e),
11 section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B),
12 subdivision (3), subsection (b), section thirteen-c of this article and sections ten and ten-b, article
13 twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred racetrack
14 licensee with a banking institution of its choice with a separate account for each association or
15 licensee. Each separate account shall be a special account to be known as West Virginia Racing
16 Commission Special Account, West Virginia Thoroughbred Development Fund and shall name
17 the licensee for which the special account has been established: *Provided, however,* That the
18 Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by
19 a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund
20 for at least four consecutive calendar years prior to December 31, 1992, from July 8, 2005, until
21 the effective date of the amendment to this section passed during the fourth extraordinary session
22 of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack
23 licensee: *Provided further,* That the moneys paid into the Thoroughbred Development Fund by a
24 thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund
25 for at least four consecutive calendar years prior to December 31, 1992, shall be transferred into
26 that licensees purse fund until April 1, 2006. Notice of the amount, date and place of the deposits
27 shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the
28 funds is to promote better breeding and racing of thoroughbred horses in the state through awards
29 and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners:
30 *Provided,* That five percent of the deposits required to be withheld by an association or licensee
31 in subsection (b), section nine of this article shall be placed in a special revenue account hereby

32 continued in the State Treasury called the Administration and Promotion Account: *Provided,*
33 *however,* That four and one-half percent of the deposits into the Thoroughbred Development Fund
34 shall be placed in the Administration and Promotion Account, except that of this percentage, no
35 more than \$305,000 shall be placed in the account in any year.

36 (b) The Racing Commission is authorized to expend the moneys deposited in the
37 administration and promotion account at times and in amounts as the commission determines to
38 be necessary for purposes of administering and promoting the thoroughbred development
39 program: *Provided,* That during any fiscal year in which the commission anticipates spending any
40 money from the account, the commission shall submit to the executive department during the
41 budget preparation period prior to the Legislature convening before that fiscal year for inclusion
42 in the executive budget document and budget bill the recommended expenditures, as well as
43 requests of appropriations for the purpose of administration and promotion of the program. The
44 commission shall make an annual report to the Legislature on the status of the administration and
45 promotion account, including the previous years expenditures and projected expenditures for the
46 next year.

47 (c) The fund or funds and the account or accounts established in subsection (a) of this
48 section shall operate on an annual basis.

49 (d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for
50 each association or licensee as provided in subsection (a) of this section shall be expended for
51 awards and purses except as otherwise provided in this section. Annually, the first \$800,000 shall
52 be available for distribution for a minimum of fourteen accredited stakes races at a racetrack which
53 has participated in the West Virginia Thoroughbred Development Fund for a period of more than
54 four consecutive calendar years prior to December 31, 1992. The weights for all accredited stakes
55 races shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the
56 second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West
57 Virginia Futurity only, all mares, starting with the breeding season beginning February 1 through

58 July 31, 2004, and each successive breeding season thereafter, shall be bred back that year to
59 an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred
60 Breeders Association. The accredited stake races shall be chosen by the committee set forth in
61 subsection (f) of this section.

62 (e) Awards and purses shall be distributed as follows:

63 (1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a
64 participating West Virginia meet shall receive a bonus award calculated at the end of the year as
65 a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the
66 fund available for distribution in any one year. The total amount available for the breeders/raisers
67 awards shall be distributed according to the ratio of purses earned by an accredited race horse
68 to the total amount earned in the participating races by all accredited race horses for that year as
69 a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may
70 receive from the fund dedicated to breeders/raisers awards an amount in excess of the earnings
71 of the accredited horse at West Virginia meets. In addition, should a horses breeder and raiser
72 qualify for the same award on the same horse, they will each be awarded one half of the proceeds.
73 The bonus referred to in this subdivision may only be paid on the first \$100,000 of any purse and
74 not on any amounts in excess of the first \$100,000.

75 (2) The owner of an accredited West Virginia sire of an accredited thoroughbred horse
76 that earns a purse in any race at a participating West Virginia meet shall receive a bonus award
77 calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall
78 be fifteen percent of the fund available for distribution in any one year. The total amount available
79 for the sire owners awards shall be distributed according to the ratio of purses earned by the
80 progeny of accredited West Virginia stallions in the participating races for a particular stallion to
81 the total purses earned by the progeny of all accredited West Virginia stallions in the participating
82 races. However, no sire owner may receive from the fund dedicated to sire owners an amount in
83 excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this

84 subdivision shall only be paid on the first \$100,000 of any purse and not on any amounts in excess
85 of the first \$100,000.

86 (3) The owner of an accredited thoroughbred horse that earns a purse in any participating
87 race at a West Virginia meet shall receive a restricted purse supplement award calculated at the
88 end of the year, which shall be twenty-five percent of the fund available for distribution in any one
89 year, based on the ratio of the earnings in the races of a particular race horse to the total amount
90 earned by all accredited race horses in the participating races during that year as a percentage
91 of the fund dedicated to purse supplements. However, the owners may not receive from the fund
92 dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited
93 earnings for each accredited race horse. The bonus referred to in this subdivision shall only be
94 paid on the first \$100,000 of any purse and not on any amounts in excess of the first \$100,000.

95 (4) In no event may purses earned at a meet held at a track which did not make a
96 contribution to the Thoroughbred Development Fund out of the daily pool on the day the meet
97 was held qualify or count toward eligibility for an award under this subsection.

98 (5) Any balance in the breeders/raisers, sire owners and purse supplement funds after
99 yearly distributions shall first be used to fund the races established in subsection (f) of this section.
100 Any amount not so used shall revert into the general account of the Thoroughbred Development
101 Fund for each racing association or licensee for distribution in the next year.

102 Distribution shall be made on the fifteenth day of each February for the preceding year's
103 achievements.

104 (f)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race
105 per racing day: *Provided*, That sufficient horses and funds are available. For purposes of the one
106 restricted race required by this subdivision, there are sufficient horses if there are at least seven
107 single betting interests received for the race: *Provided, however*, That, if sufficient horses and
108 funds are available, any thoroughbred horse racetrack whose licensee participated in the
109 Thoroughbred Development Fund for at least four consecutive calendar years prior to December

110 31, 1992, shall provide three restricted races per racing day, at least one of which may be split at
111 the discretion of the racing secretary. For the purposes of a second restricted race there shall be
112 at least seven single betting interests and for purposes of a third restricted race there must be at
113 least nine single betting interests in one of the restricted races run that day. The restricted race
114 required by this section must be included in the first nine races written in the condition book for
115 that racing day.

116 (2) The restricted races established in this subsection shall be administered by a three-
117 member committee at each track consisting of:

118 (A) The racing secretary at each track;

119 (B) A member appointed by the authorized representative of a majority of the owners and
120 trainers at the thoroughbred track; and

121 (C) A member appointed by the West Virginia Thoroughbred Breeders Association.

122 (3) Restricted races shall be funded by each racing association from:

123 (A) Moneys placed in the general purse fund: *Provided*, That a thoroughbred horse
124 racetrack which did not participate in the West Virginia Thoroughbred Development Fund for a
125 period of more than four consecutive years prior to December 31, 1992, may fund restricted races
126 in an amount not to exceed \$1,000,000 per year.

127 (B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be
128 placed in a special fund called the West Virginia Accredited Race Fund.

129 (4) The racing schedules, purse amounts and types of races are subject to the approval
130 of the West Virginia Racing Commission.

131 (g) As used in this section, "West Virginia-bred foal" means a horse that was born in the
132 State of West Virginia.

133 (h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under
134 one of the following:

135 (1) The breeder of the West Virginia-bred foal is a West Virginia resident;

136 (2) The breeder of the West Virginia-bred foal is not a West Virginia resident, but keeps
137 his or her breeding stock in West Virginia year round; or

138 (3) The breeder of the West Virginia-bred foal is not a West Virginia resident and does not
139 qualify under subdivision (2) of this subsection, but either the sire of the West Virginia-bred foal
140 is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or
141 stallions before December 31 of the calendar year following the birth of that West Virginia-bred
142 foal.

143 (i) From July 1, 2001, West Virginia accredited thoroughbred horses have preference for
144 entry in all accredited races at a thoroughbred race track at which the licensee participates in the
145 West Virginia Thoroughbred Development Fund.

146 (j) Beginning July 1, 2006, any racing association licensed by the Racing Commission to
147 conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the
148 provisions of this article must have a West Virginia Thoroughbred Racing Breeders Program.

149 (k) The provisions of this section relating to the West Virginia Greyhound Breeding
150 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
151 and amended by the provisions of section ten-a and thirteen-d of this article as enacted during
152 the 2016 legislative session.

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

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

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

10 (1) For each fiscal year, the first \$800,000 deposited in the separate account plus the
11 amount then remaining of the June 30, 1997, balance in the separate account previously
12 established for the West Virginia breeders classic under section thirteen of this article, shall be
13 used by the Commission for promotional activities, advertising, administrative costs and purses
14 for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all
15 horses qualifying under the West Virginia breeders program for each stake race, based solely on
16 the horses sex, age and earnings.

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

21 (3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this
22 subsection have been deposited into separate bank accounts for use in connection with the West
23 Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the Commission shall
24 return to each racetrack all additional amounts deposited which originate during that fiscal year
25 from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article
26 twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as
27 follows:

28 (A) For each dog racetrack, one half of the returned excess funds shall be used for capital
29 improvements at the racetrack and one half of the returned excess funds shall be deposited into
30 the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding
31 Development Fund.

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 licensees 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 licensees 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.

45 (d) The provisions of this section relating to the West Virginia Greyhound Breeding
46 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
47 and amended by the provisions of section ten-a and section thirteen-d of this article as enacted
48 during the 2016 legislative session.

**§19-23-13d. Transfer of present and future moneys required to be deposited in West
Virginia Thoroughbred Development Fund.**

1 Notwithstanding any provision of this code to the contrary, effective July 1, 2016, any
2 money in the “West Virginia Racing Commission Special Account-West Virginia Thoroughbred
3 Development Fund” created in section thirteen-b of this article shall be transferred by the Racing
4 Commission to the State Excess Lottery Revenue Fund created in section eighteen-a, article
5 twenty-two, chapter twenty-nine of this code. Effective as of July 1, 2016, any money directed to
6 be deposited into the Thoroughbred Development Fund under code sections ten, twelve-b,
7 twelve-c, thirteen-b and thirteen-c of this article; sections ten and ten-b, article twenty-two-a,
8 chapter twenty-nine of this code; and section twenty-seven, article twenty-two-c, chapter twenty-
9 nine of this code shall instead be deposited into the Excess Lottery Revenue Fund for
10 appropriation by the Legislature.

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 sections ten-b and ten-c,
5 article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the
6 amounts due the commission under subdivision (1), subsection (a), section one thousand four
7 hundred eight, article twenty-two-b of this chapter, shall be deposited in the State Treasury and
8 placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the
9 manner provided in this section for the purposes stated in this section and shall not be treated by
10 the State Auditor and the State Treasurer as part of the general revenue of the state.

11 (b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) \$65 million
12 into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State
13 Treasury to be known as the General Purpose Account to be expended pursuant to appropriation
14 of the Legislature; (2) \$10 million into the Education Improvement Fund for appropriation by the
15 Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter
16 eighteen-c of this code; (3) \$19 million into the Economic Development Project Fund created in
17 subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance
18 with the provisions of said subsection; (4) \$20 million into the School Building Debt Service Fund
19 created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue
20 bonds; (5) \$40 million into the West Virginia Infrastructure Fund created in section nine, article
21 fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said
22 article; (6) \$10 million into the Higher Education Improvement Fund for Higher Education; and (7)

23 \$5 million into the state Park Improvement Fund for Park Improvements. For the fiscal year
24 beginning July 1, 2003, the commission shall deposit: (1) \$65 million into the General Purpose
25 Account to be expended pursuant to appropriation of the Legislature; (2) \$17 million into the
26 Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship
27 Fund created in section seven, article seven, chapter eighteen-c of this code; (3) \$19 million into
28 the Economic Development Project Fund created in subsection (e) of this section for the issuance
29 of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$20
30 million into the School Building Debt Service Fund created in section six, article nine-d, chapter
31 eighteen of this code for the issuance of revenue bonds; (5) \$40 million into the West Virginia
32 Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be
33 spent in accordance with the provisions of said article; (6) \$10 million into the Higher Education
34 Improvement Fund for Higher Education; and (7) \$7 million into the state Park Improvement Fund
35 for Park Improvements.

36 (c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the
37 fiscal year ending June 30, 2009, the commission shall deposit: (1) \$65 million into the General
38 Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$27 million into
39 the Education Improvement Fund for appropriation by the Legislature to the PROMISE
40 Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) \$19
41 million into the Economic Development Project Fund created in subsection (e) of this section for
42 the issuance of revenue bonds and to be spent in accordance with the provisions of said
43 subsection; (4) \$19 million into the School Building Debt Service Fund created in section six,
44 article nine-d, chapter eighteen of this code for the issuance of revenue bonds: *Provided*, That for
45 the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited
46 in the School Building Debt Service Fund pursuant to this subsection and instead \$19 million shall
47 be deposited into the Excess Lottery School Building Debt Service Fund; (5) \$40 million into the
48 West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of

49 this code to be spent in accordance with the provisions of said article; (6) \$10 million into the
50 Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the state Park
51 Improvement Fund for Park Improvements. No portion of the distributions made as provided in
52 this subsection and subsection (b) of this section, except distributions made in connection with
53 bonds issued under subsection (e) of this section, may be used to pay debt service on bonded
54 indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment
55 of debt service on the bonds through statutory enactment or the adoption of a concurrent
56 resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption
57 of a resolution that expressly authorizes issuance of the bonds and payment of debt service on
58 the bonds with funds distributed under this subsection and subsection (b) of this section, except
59 distributions made in connection with bonds issued under subsection (d) of this section, the
60 distributions may be used only to fund capital improvements that are not financed by bonds and
61 only pursuant to appropriation of the Legislature.

62 (d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission
63 shall deposit: (1) \$65 million into the General Purpose Account to be expended pursuant to
64 appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund for
65 appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven,
66 article seven, chapter eighteen-c of this code; (3) \$19 million into the Economic Development
67 Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to
68 be spent in accordance with the provisions of said subsection; (4) \$19 million into the Excess
69 Lottery School Building Debt Service Fund created in section six, article nine-d, chapter eighteen
70 of this code; (5) \$40 million into the West Virginia Infrastructure Fund created in section nine,
71 article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of
72 said article; (6) \$10 million into the Higher Education Improvement Fund for Higher Education;
73 and (7) \$5 million into the state Park Improvement Fund for Park Improvements. No portion of the
74 distributions made as provided in this subsection and subsection (b) of this section, except

75 distributions made in connection with bonds issued under subsection (e) of this section, may be
76 used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes
77 issuance of the bonds and payment of debt service on the bonds through statutory enactment or
78 the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent
79 legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds
80 and payment of debt service on the bonds with funds distributed under this subsection and
81 subsection (b) of this section, except distributions made in connection with bonds issued under
82 subsection (e) of this section, the distributions may be used only to fund capital improvements
83 that are not financed by bonds and only pursuant to appropriation of the Legislature.

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

90 (1) The West Virginia Economic Development Authority created and provided for in article
91 fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of
92 this article and article fifteen, chapter thirty-one of this code, and upon direction of the Governor,
93 issue revenue bonds of the Economic Development Authority in no more than two series to pay
94 for all or a portion of the cost of constructing, equipping, improving or maintaining projects under
95 this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on
96 or after July 1, 2002, which are secured by State Excess Lottery revenue proceeds shall mature
97 at a time or times not exceeding thirty years from their respective dates. The principal of and the
98 interest and redemption premium, if any, on the bonds shall be payable solely from the special
99 fund provided in this section for the payment.

100 (2) The special revenue fund named the Economic Development Project Fund into which

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

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

123 (4) Bonds issued under this subsection shall state on their face that the bonds do not
124 constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges
125 thereon cannot become an obligation of the State of West Virginia; and that the bondholders'
126 remedies are limited in all respects to the Special Revenue Fund established in this subsection

127 for the liquidation of the bonds.

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

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

146 (7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled
147 with the committee. Within ten days from the effective date of this section as amended in the year
148 2003, the lead applicant shall file with the committee any amendments to the original application
149 that may be necessary to properly reflect changes in facts and circumstances since the
150 application was originally filed with the committee.

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

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

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

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

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

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

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

165 (9) A grant may not be awarded to an individual or other private person or entity. Grants
166 may be awarded only to an agency, instrumentality or political subdivision of this state or to an
167 agency or instrumentality of a political subdivision of this state.

168 The project of an individual or private person or entity may be certified to receive a low-
169 interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not
170 limited to, the rate of interest to be paid and the period of the repayment, shall be determined by
171 the Economic Development Authority after considering all applicable facts and circumstances.

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

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

- 179 (A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;
180 (B) Health clinics and other health facilities;
181 (C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping
182 facilities and transmission lines;
183 (D) State-of-the-art telecommunications infrastructure;
184 (E) Biotechnical incubators, development centers and facilities;
185 (F) Industrial parks, including construction of roads, sewer, water, lighting and other
186 facilities;
187 (G) Improvements at state parks, such as construction, expansion or extensive renovation
188 of lodges, cabins, conference facilities and restaurants;
189 (H) Railroad bridges, switches and track extension or spurs on public or private land
190 necessary to retain existing businesses or attract new businesses;
191 (I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails,
192 picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and
193 baseball, football and soccer fields;
194 (J) State-owned buildings that are registered on the National Register of Historic Places;
195 (K) Retail facilities, including related service, parking and transportation facilities,
196 appropriate lighting, landscaping and security systems to revitalize decaying downtown areas;
197 and
198 (L) Other facilities that promote or enhance economic development, educational
199 opportunities or tourism opportunities thereby promoting the general welfare of this state and its
200 residents.
- 201 (12) Prior to the issuance of bonds under this subsection, the committee shall certify to
202 the Economic Development Authority a list of those certified projects that will receive funds from
203 the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other
204 than by legislative enactment.

205 (13) If any proceeds from sale of bonds remain after paying costs and making grants and
206 loans as provided in this subsection, the surplus may be deposited in an account in the State
207 Treasury known as the Economic Development Project Bridge Loan Fund administered by the
208 Economic Development Authority created in article fifteen, chapter thirty-one of this code.
209 Expenditures from the fund are not authorized from collections but are to be made only in
210 accordance with appropriation by the Legislature and in accordance with the provisions of article
211 three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-
212 a of this code. Loan repayment amounts, including the portion attributable to interest, shall be
213 paid into the fund created in this subdivision.

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

223 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections
224 (b), (c), (d) and (i) of this section and after transferring to the state Lottery Fund created under
225 section eighteen of this article an amount equal to any transfer from the state Lottery Fund to the
226 Excess Lottery Fund pursuant to subsection (f), section eighteen of this article, deposit fifty
227 percent of the amount by which annual gross revenue deposited in the state Excess Lottery
228 Revenue Fund exceeds \$225 million in a fiscal year in a separate account in the state Lottery
229 Fund to be available for appropriation by the Legislature.

230 (h) When bonds are issued for projects under subsection (d) (e) of this section or for the

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

244 (i) Prior to the distributions provided in subsection (d) of this section, the Lottery
245 Commission shall deposit into the General Revenue Fund amounts necessary to provide
246 reimbursement for the refundable credit allowable under section twenty-one, article twenty-one,
247 chapter eleven of this code.

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

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

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

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

255 (2) The provisions of this subsection may not be construed by any court to require any
256 appropriation or any specific appropriation or level of funding for the purposes set forth in this

257 subsection.

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

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

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

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

279 ~~(3) Five and one-half percent shall be distributed to the Racing Commission special~~
280 ~~account -- unredeemed pari-mutuel tickets established on behalf of a thoroughbred racetrack~~
281 ~~licensee that did not participate in the Thoroughbred Development Fund for at least four~~
282 ~~consecutive calendar years prior to December 31, 1992; and~~

283 ~~(4) Five percent shall be distributed to the West Virginia Racing Commission special~~
 284 ~~account – greyhound breeding development 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 article twenty-two of this chapter.

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

18 (g) "Costs" means the expenses incurred by the commission in the testing and
 19 examination of video lottery terminals and the performance of background investigations and
 20 other related activities which are charged to and collected from applicants or license or permit
 21 holders.

22 (h) "Director" means the individual appointed by the Governor to provide management and

23 administration necessary to direct the state Lottery Office.

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

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

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

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

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

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

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

46 (p) "Manufacturer" means any person holding a permit granted by the commission to
47 engage in the business of designing, building, constructing, assembling or manufacturing video
48 lottery terminals, the electronic computer components of the video lottery terminals, the random

49 number generator of the video lottery terminals, or the cabinet in which it is housed, and whose
50 product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia,
51 and who contracts directly with the licensee for the sale, lease or other assignment to a licensed
52 racetrack in West Virginia.

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

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

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

62 (t) "Pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" means a facility
63 where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized
64 pursuant to the provisions of article twenty-three, chapter nineteen of this code: *Provided, That,*
65 ~~for the purposes of this article effective for periods on or after July 1, 2016,~~ "pari-mutuel racing
66 facility," "licensed racetrack," "racetrack" or "track" includes only a facility which was licensed prior
67 to January 1, 1994, to hold horse or dog race meetings. ~~and which conducts not less than two~~
68 ~~hundred twenty live racing dates for each horse or dog race meeting or such other number of live~~
69 ~~racing dates as may be approved by the Racing Commission in accordance with the provisions~~
70 ~~of section twelve b, article twenty-three, chapter nineteen of this code~~

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

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

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

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

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

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

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

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

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

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

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

99 (aa) "Video lottery" means a lottery which allows a game to be played utilizing an electronic
100 computer and an interactive computer terminal device, equipped with a video screen and keys, a

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

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

113 (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 or its predecessor in interest must ~~hold~~ prior
4 to January 1, 1994, have held a valid racing license granted by the West Virginia Racing
5 Commission under provisions of article twenty-three, chapter nineteen of this code: Provided,
6 That an applicant may not be required to hold a current racing license to renew its 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 article twenty-two of this chapter or of this
20 article or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible
21 for any 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
34 thirty days before the effective date of the change.

35 ~~(6) A racetrack applying for a video lottery license or a license renewal must present to~~
36 ~~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 and the representative of a~~
39 ~~majority of the breeders or the representative of a majority of the kennel owners for the applicable~~
40 ~~racetrack who hold permits required by section two, article twenty-three, chapter nineteen of this~~
41 ~~code~~

42 (7)(6) A racetrack applying for a video lottery license or a license renewal must file with
43 the 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 article one, chapter twenty-nine-b 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-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.

1 (a) The commission shall determine the form of applications to be used and shall not
2 consider incomplete applications. The commission may consider an application when the
3 applicant has completed and executed all forms and documents required by the commission and
4 all application fees and costs have been paid.

5 (b) The question of whether video lottery games shall be permitted at pari-mutuel
6 racetracks shall be determined by local option election in each county in which a pari-mutuel
7 racetrack is located. The local option election on this question may be placed on the ballot in each
8 county at any general election. The county commission of the county in which the racetrack is
9 located shall give notice to the public of the election by publication of the notice as a Class II-0
10 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this
11 code, and the publication area for the publication shall be the county in which the election is to be
12 held. The date of the last publication of the notice shall fall on a date within the period of the
13 fourteen consecutive days next preceding the election.

14 On the local option election ballot shall be printed the following:

15 Shall West Virginia Lottery Commission video lottery games be permitted within an area
16 at the [name of racetrack] in which pari-mutuel betting is authorized by law?

17 Yes No

18 (Place a cross mark in the square opposite your choice.)

19 The ballots shall be counted, returns made and canvassed as in general elections, and
20 the results certified by the commissioners of election to the county commission. The county
21 commission shall, without delay, certify the result of the election to the commission.

22 (c) Upon receipt of the results of the election from the county commission, and if a majority
23 has voted "yes", the commission shall issue the requested license if the applicant is otherwise
24 qualified for the license. If a majority has voted "no", the commission shall notify the applicant of
25 the results, the application shall be denied, and another election on the issue shall not be held for
26 a period of two years: *Provided*, That for purposes of this section, the term "two years" means the

27 interval between a general election and the next general election, and in no event shall it mean
 28 or encompass a period of time in excess of one hundred four weeks. ~~If a majority has voted "yes",~~
 29 ~~another local option election on the issue shall not be held for a period of five years. A local option~~
 30 ~~election may thereafter be held if a written petition of qualified voters residing within the county~~
 31 ~~equal to at least five percent of the number of persons who were registered to vote in the next~~
 32 ~~preceding general election is received by the county commission of the county in which the horse~~
 33 ~~or dog racetrack is located. The petition may be in any number of counterparts.~~

34 The petition shall be in the following form:

35 **Petition For Local Option Election**

36 ~~We, the undersigned legally qualified voters, resident within the county of~~
 37 ~~_____~~, do hereby petition that a special election be held within the county of
 38 ~~_____~~ upon the following question: Shall West Virginia Lottery Commission video
 39 lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting
 40 ~~is authorized by law?~~

41 Name _____ Address _____ Date _____
 42 (Post office or street address)

43 (d) The commission may not issue any license or permit until background investigations
 44 are concluded. The commission shall make an affirmative determination that the applicant is
 45 qualified and the applicable license or permit fees have been paid prior to issuing any license or
 46 permit.

47 (e) The commission shall notify the applicant if an application is incomplete and the
 48 notification shall state the deficiencies in the application.

49 (f) The commission shall notify applicants in writing of the denial, suspension or revocation
 50 of a permit or license and the reasons for the denial, suspension or revocation in accordance with
 51 the provisions of section fifteen of this article.

52 (g) An applicant may request a hearing to review a license or permit denial, suspension

53 or revocation in accordance with section fifteen of this article.

54 (h) The following license or permit fees shall be paid annually by each licensed racetrack,
55 or permitted manufacturer, service technician, floor attendant or validation manager:

- 56 (1) Racetrack:..... \$1,000
- 57 (2) Manufacturer\$10,000
- 58 (3) Service technician\$100
- 59 (4) Validation manager: \$50
- 60 (5) Floor attendant:\$50

61 The fees shall be paid to the commission at the time of license or permit application and
62 on or before July 1, of each year thereafter, at which time the license or permit may be renewed.

63 (i) An applicant for a video lottery license shall, prior to the issuance of the license, post a
64 bond or irrevocable letter of credit in a manner and in an amount established by the commission.
65 The bond shall be issued by a surety company authorized to transact business in West Virginia
66 and the company shall be approved by the Insurance Commissioner of this state as to solvency
67 and responsibility.

68 (j) The commission shall renew video lottery licenses and permits annually as of July 1, of
69 each year, if each person seeking license or permit renewal submits the applicable renewal fee,
70 completes all renewal forms provided by the commission, and continues to meet all qualifications
71 for a license or permit.

72 (k) License and permit holders shall notify the commission of any proposed change of
73 ownership or control of the license or permit holder and of all other transactions or occurrences
74 relevant to license or permit qualification. In order for a license or permit to remain in effect,
75 commission approval is required prior to completion of any proposed change of ownership or
76 control of a license or permit holder.

77 (l) A license or permit is a privilege personal to the license or permit holder and is not a
78 legal right. A license or permit granted or renewed pursuant to this article may not be transferred

79 or assigned to another person, nor may a license or a permit be pledged as collateral. The
80 purchaser or successor of any license or permit holder shall independently qualify for a license or
81 permit. The sale of more than five percent of a license or permit holder's voting stock, or more
82 than five percent of the voting stock of a corporation which controls the license or permit holder
83 or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary
84 course of business, or any interest therein, to any person not already determined to have met the
85 qualifications of section seven of this article voids the license unless the sale has been approved
86 in advance by the commission.

§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of floor attendants; duties of licensed racetracks.

- 1 (a) All video lottery license and permit holders shall:
- 2 (1) Promptly report to the commission any facts or circumstances related to video lottery
3 operations which constitute a violation of state or federal law;
- 4 (2) Conduct all video lottery activities and functions in a manner which does not pose a
5 threat to the public health, safety or welfare of the citizens of this state, and which does not
6 adversely affect the security or integrity of the lottery;
- 7 (3) Hold the commission and this state harmless from and defend and pay for the defense
8 of any and all claims which may be asserted against a license or permit holder, the commission,
9 the state or the employees thereof, arising from the license or permit holders participation in the
10 video lottery system authorized by this article;
- 11 (4) Assist the commission in maximizing video lottery revenues;
- 12 (5) Maintain all records required by the commission;
- 13 (6) Upon request by the commission, provide the commission access to all records and
14 the physical premises of the business or businesses where the license or permit holders video

15 lottery activities occur, for the purpose of monitoring or inspecting the license or permit holders
16 activities and the video lottery games, video lottery terminals and associated equipment; and

17 (7) Keep current in all payments and obligations to the commission.

18 (b) Manufacturers shall:

19 (1) Manufacture terminals and associated equipment for placement in this state in
20 accordance with the specifications and procedures specified in sections five and six of this article;

21 (2) Manufacture terminals and associated equipment to ensure timely delivery to licensed
22 racetracks;

23 (3) Maintain and provide an inventory of spare parts to assure the timely repair and
24 continuous operation of licensed video lottery terminals intended for placement in this state;

25 (4) Provide to licensed racetracks and permitted service technicians technical assistance
26 and training in the service and repair of video lottery terminals and associated equipment so as
27 to assure the continuous authorized operation and play of the video lottery terminals; and

28 (5) Obtain certification of compliance under the provisions of part fifteen of the federal
29 communication commission rules for all video lottery terminals placed in this state.

30 (c) Service technicians shall:

31 (1) Maintain all skills necessary for the timely repair and service of licensed video lottery
32 terminals and associated equipment so as to ensure the continued, approved operation of those
33 terminals;

34 (2) Attend all commission mandated meetings, seminars and training sessions concerning
35 the repair and maintenance of licensed video lottery terminals and associated equipment; and

36 (3) Promptly notify the commission of any electronic or mechanical video lottery terminal
37 malfunctions.

38 (d) Validation managers shall:

39 (1) Attend all commission mandated meetings, seminars and training sessions concerning
40 the validation and redemption of video lottery winning tickets and the operation of all ticket

41 validation terminals and equipment;

42 (2) Maintain all skills necessary for the accurate validation of video lottery tickets; and

43 (3) Supervise video lottery ticket validation procedures at the applicable licensed
44 racetrack.

45 (e) Floor attendants shall:

46 (1) Provide change and assistance to persons playing video lottery games in a licensed
47 racetrack video lottery gaming area;

48 (2) Open video lottery terminal access doors to clear ticket paper jams and to insert new
49 paper ticket tapes into the video lottery terminals; and

50 (3) Open video lottery terminal access doors to clear bill jams from the bill acceptors in
51 video lottery terminals.

52 (f) The specific duties required of all licensed racetracks are as follows:

53 (1) Acquire video lottery terminals by purchase, lease or other assignment and provide a
54 secure location for the placement, operation and play of the video lottery terminals;

55 (2) Pay for the installation and operation of commission approved telephone lines to
56 provide direct dial-up or on-line communication between each video lottery terminal and the
57 commissions central control computer;

58 (3) Permit no person to tamper with or interfere with the operation of any video lottery
59 terminal;

60 (4) Ensure that telephone lines from the commission's central control computer to the
61 video lottery terminals located at the licensed racetrack are at all times connected and prevent
62 any person from tampering or interfering with the operation of the telephone lines;

63 (5) Ensure that video lottery terminals are within the sight and control of designated
64 employees of the licensed racetrack;

65 (6) Ensure that video lottery terminals are placed and remain placed in the specific
66 locations within the licensed racetrack which have been approved by the commission. No video

67 lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the
68 commission;

69 (7) Monitor video lottery terminals to prevent access to or play by persons who are under
70 the age of eighteen years or who are visibly intoxicated;

71 (8) Maintain at all times sufficient change and cash in the denominations accepted by the
72 video lottery terminals;

73 ~~(9) Provide no access by a player to an automated teller machine (ATM) in the area of the~~
74 ~~racetrack where video lottery games are played, accept no credit card or debit card from a player~~
75 ~~for the exchange or purchase of video lottery game credits or for an advance of coins or currency~~
76 ~~to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a~~
77 ~~player so as to enable the player to play a video lottery game;~~

78 ~~(10)~~ (9) Pay for all credits won upon presentment of a valid winning video lottery ticket;

79 ~~(14)~~ (10) Report promptly to the manufacturer and the commission all video lottery terminal
80 malfunctions and notify the commission of the failure of a manufacturer or service technician to
81 provide prompt service and repair of such terminals and associated equipment;

82 ~~(12)~~ (11) Conduct no video lottery advertising and promotional activities without the prior
83 written approval of the director;

84 ~~(13)~~ (12) Install, post and display prominently at locations within or about the licensed
85 racetrack, signs, redemption information and other promotional material as required by the
86 commission;

87 ~~(14)~~ (13) Permit video lottery to be played only during those hours established and
88 approved by the commission;

89 ~~(15)~~ (14) Maintain general liability insurance coverage for all video lottery terminals in an
90 amount of at least \$2 million per claim;

91 ~~(16)~~ (15) Promptly notify the commission in writing of any breaks or tears to any logic unit
92 seals;

93 ~~(17)~~ (16) Assume liability for lost or stolen money from any video lottery terminal; and
94 ~~(18)~~ (17) Submit an audited financial statement, which has been approved by the
95 commission, to the commission when applying for a license or permit and annually thereafter prior
96 to the time a license or permit may be renewed.

§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 thirty 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 any amounts deducted by the commission for its actual

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

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

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

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

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

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

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

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

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

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

69 most recent decennial United States census of population; and

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

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

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

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

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

83 (5) The West Virginia Thoroughbred Development Fund created under section thirteen-b,
84 article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding
85 Development Fund created under section ten of said article shall receive an equal share of a total
86 of not less than one and one-half percent of the net terminal income;

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

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

91 (8)(A) The Tourism Promotion Fund established in section twelve, article two, chapter five-
92 b of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal
93 year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion
94 Fund \$5 million of the three percent of the net terminal income described in this section and

95 section ten-b of this article into the fund administered by the West Virginia Economic Development
96 Authority pursuant to section seven, article fifteen, chapter thirty-one of this code, \$5 million into
97 the Capitol Renovation and Improvement Fund administered by the Department of Administration
98 pursuant to section six, article four, chapter five-a of this code and \$5 million into the Tax
99 Reduction and Federal Funding Increased Compliance Fund; and

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

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

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

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

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

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

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

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

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

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

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

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

170 (i) Five hundred thousand dollars of the one percent of net terminal income shall be
171 deposited in the State Treasury in a special fund of the Department of Administration, created
172 under section five, article four, chapter five-a of this code, to be used for construction and

173 maintenance of a parking garage on the state Capitol Complex; and

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

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

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

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

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

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

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

225 (j) The provisions of this section relating to the West Virginia Greyhound Breeding
226 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
227 and amended by the provisions of section ten-a and section thirteen-d, article twenty-three,
228 chapter nineteen of this code as enacted during the 2016 legislative session.

§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 forty-one percent of net terminal income, which the
6 Commission shall deposit in the state Excess Lottery Revenue Fund created in section eighteen-
7 a, article twenty-two of this chapter;

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

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

14 (A) Any amount by which the total amount under this section and subdivision (3),
15 subsection (c), section ten of this article is in excess of the two percent received during fiscal year
16 1999 by a county in which a racetrack is located that has participated in the West Virginia
17 thoroughbred development fund since on or before January 1, 1999, shall be divided as follows:

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

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

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

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

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

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

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

35 (5) The West Virginia Thoroughbred Development Fund created under section thirteen-b,
36 article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding
37 Development Fund created under section ten of said article shall receive an equal share of a total
38 of not less than one and one-half percent of the net terminal income.

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

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

43 (8) The tourism promotion fund established in section twelve, article two, chapter five-b of
44 this code shall receive three percent of the net terminal income: *Provided*, That for each fiscal
45 year beginning after June 30, 2004, this three percent of net terminal income shall be distributed
46 pursuant to the provisions of paragraph (B), subdivision (8), subsection (c), section ten of this
47 article;

48 (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited
49 into the Workers Compensation Debt Reduction Fund created in section five, article two-d,
50 chapter twenty-three of this code: *Provided*, That in any fiscal year when the amount of money
51 generated by this subdivision together with the total allocation transferred by the operation of
52 subdivision (9), subsection (c), section ten of this article totals \$11,000,000, all subsequent
53 distributions under this subdivision (9) during that fiscal year shall be deposited in the special fund
54 established by the licensee and used for payment of regular purses in addition to other amounts
55 provided in article twenty-three, chapter nineteen of this code;

56 (B) The deposit of the four percent of net terminal income into the Workers Compensation
57 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to
58 these funds, which shall be deposited in the special fund established by the licensee and used
59 for payment of regular purses in addition to the other amounts provided in article twenty-three,
60 chapter nineteen of this code on and after the first day of the month following the month in which
61 the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to article
62 two-d, chapter twenty-three of this code have been retired or payment of the debt service is
63 provided for; and (ii) that an independent certified actuary has determined that the unfunded
64 liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided
65 in its entirety; and

66 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in
67 the capitol dome and improvements fund created under section two, article four, chapter five-a of
68 this code and cultural facilities and capitol resources matching grant program fund created under
69 section three, article one of this chapter; and

70 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for
71 each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be
72 distributed pursuant to the provisions of subparagraph (ii), paragraph (B), subdivision (9),
73 subsection (c), section ten of this article.

74 (b) The Commission may establish orderly and effective procedures for the collection and
75 distribution of funds under this section in accordance with the provisions of this section and section
76 ten of this article.

77 (c) The provisions of this section relating to the West Virginia Greyhound Breeding
78 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
79 and amended by the provisions of section ten-a and section thirteen-d, article twenty-three,
80 chapter nineteen of this code as enacted during the 2016 legislative session.

§29-22A-10c. Surcharge; Capital Reinvestment Fund; redirect surcharge moneys to
Excess Lottery Revenue Fund.

1 (a) For all fiscal years beginning on or after July 1, 2001, there shall be imposed a
2 surcharge of ten percent against the excess of total net terminal income generated from a licensed
3 racetrack for that fiscal year over total net terminal income from that licensed racetrack for the
4 fiscal year ending June 30, 2001.

5 (b) A Capital Reinvestment Fund is hereby created within the Lottery Fund. Forty-two
6 percent of the surcharge amount attributable to each racetrack shall be retained by the
7 commission and deposited into a separate Capital Reinvestment Account for that licensed
8 racetrack. For each dollar expended by a licensed racetrack for capital improvements at the
9 racetrack, at the location of any amenity associated with the licensed racetrack's destination
10 resort facility operations, or at adjacent facilities owned by the licensee, having a useful life of
11 three or more years and placed in service after April 1, 2001, the licensed racetrack shall receive
12 \$1 in recoupment from its Capital Reinvestment Fund Account: *Provided*, That in the case of
13 thoroughbred horse tracks, four cents of every dollar in recoupment shall be reserved into a
14 separate account, which shall only be spent on capital improvements and upgrading to facilities
15 used for the housing and care of horses, facilities located inside the perimeter of the racing
16 surface, including the surface thereof, facilities used for housing persons responsible for the care
17 of horses, and that any such capital improvements and upgrading shall be subject to recoupment

18 under this section only if they have been approved by the Horsemen Benevolent and Protective
19 Association acting on behalf of the horsemen: *Provided, however,* That in the case of greyhound
20 race tracks, four cents of every dollar in recoupment shall be spent on capital improvements and
21 upgrading in the kennel area or other areas at the track. If a licensed racetracks unrecouped
22 capital improvements exceed its capital reinvestment fund account at the end of any fiscal year,
23 the excess improvements may be carried forward to fifteen subsequent fiscal years.

24 (c) Fifty-eight percent of the surcharge amount plus any moneys remaining in a racetracks
25 Capital Reinvestment Fund Account at the end of any fiscal year shall be deposited in the state
26 Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

27 (d) Notwithstanding any provision of subsections (b) and (c), of this section to the contrary,
28 effective July 1, 2016, one hundred percent of the surcharge provided in subsection (a), of this
29 section shall be deposited in the state Excess Lottery Revenue Fund and expended in accordance
30 with legislative appropriation.

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

1 (a) Notwithstanding any provision of subsection (b), section ten of this article or section
2 ten-d of this article to the contrary, for the fiscal year beginning July 1, 2016, and each fiscal year
3 thereafter, any moneys required by this article to be deposited into the Licensed Racetrack
4 Modernization Fund created by subdivision (2), subsection (b), section ten of this article shall be
5 deposited in the state Excess Lottery Revenue Fund, created by section eighteen-a, article
6 twenty-two of this chapter, subject to legislative appropriation.

7 (b) Notwithstanding any provision of subsection (c), section ten of this article or section
8 ten-d of this article to the contrary, for the fiscal year beginning July 1, 2016, and each fiscal year
9 thereafter, each distribution from subsection (c), section ten of this article, except those
10 distributions to be made pursuant to subdivisions (1), (3) and (7), of said subsection (c), shall be
11 reduced by one hundred percent. For fiscal year beginning July 1, 2016, and each fiscal year

12 thereafter, the distribution to the licensee, pursuant to subdivision (7), subsection (c), section ten
13 of this article shall be fifty percent of net terminal income. Payments shall not be made pursuant
14 to section ten of this article, other than those excepted by this subsection. The total amount of
15 reductions resulting from application of this subsection shall be paid into the state Excess Lottery
16 Revenue Fund.

17 (c) Notwithstanding any other provision of this code to the contrary, for the fiscal year
18 beginning July 1, 2016, and each fiscal year thereafter, moneys deposited to the state Excess
19 Lottery Revenue Fund pursuant to this section shall be expended by the commission in
20 accordance with legislative appropriations.

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

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 section
28 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this
29 section shall be paid on a pro rata basis.

30 (f) Notwithstanding the provisions of paragraph (B), subdivision (9), subsection (c), section
31 ten of this article, for fiscal year beginning July 1, 2016, and each fiscal year thereafter, the
32 transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A),
33 subdivision (9), subsection (c), section ten of this article shall expire and those funds shall be
34 distributed to the state Excess Lottery Revenue Fund subject to appropriation.

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

1 (a) Notwithstanding any provision of subsection (a), section ten-b of this article or section

2 ten-e of this article to the contrary, for the fiscal year beginning July 1, 2016, and each fiscal year
3 thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1),
4 (3) and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent.
5 For fiscal year beginning July 1, 2016, and each fiscal year thereafter, the distribution to the
6 commission pursuant to subdivision (1), subsection (a), section ten-b, of this article shall be forty-
7 eight percent of net terminal income and the distribution to the licensee pursuant to subdivision
8 (7), subsection (a), section ten-b, of this article will be fifty percent of net terminal income.
9 Payments shall not be made pursuant to section ten-b of this article, other than those excepted
10 by this subsection. The total amount of reductions resulting from application of this subsection
11 shall be paid into the state Excess Lottery Revenue Fund.

12 (c) Notwithstanding any other provision of this code to the contrary, for the fiscal year
13 beginning July 1, 2016, and each fiscal year thereafter, moneys deposited to the state Excess
14 Lottery Revenue Fund pursuant to this section shall be expended by the commission in
15 accordance with legislative appropriations.

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

21 (e) Notwithstanding any other provision of this code to the contrary, after payment of debt
22 service from the state Excess Lottery Revenue Fund, all other distributions required by section
23 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this
24 section shall be paid on a pro rata basis.

25 (f) Notwithstanding the provisions of paragraph (B), subdivision (9), subsection (a), section
26 ten-b of this article, for fiscal year beginning July 1, 2016, and each fiscal year thereafter, the
27 transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A),

28 subdivision (9), subsection (a), section ten-b of this article shall expire and those funds shall be
29 distributed to the state Excess Lottery Revenue Fund subject to appropriation.

§29-22A-11. Maintenance of video lottery terminals; manufacturers required to provide training; notice of availability of training; reports and certificates of training programs; terminals to be maintained in the condition approved; maintenance log required; keys to video lottery terminals; notice of repairs to the logic area; notice of broken seals on logic board.

1 (a) No video lottery terminal may be placed in operation in this state until the manufacturer
2 provides training in the service and repair of each approved video lottery terminal model and
3 service technicians complete such training. Manufacturers must submit to the commission the
4 following information on each training program conducted:

- 5 (1) An outline of the training curriculum;
- 6 (2) A list of the instructors and their qualifications;
- 7 (3) Instructional materials; and
- 8 (4) The time, dates and location of the training programs.

9 (b) Manufacturers shall notify all licensed racetracks who have purchased or leased that
10 manufacturer's video lottery terminals of all scheduled training programs. Training programs must
11 be scheduled at convenient locations within this state to facilitate attendance by service
12 technicians. Manufacturers must inform licensed racetracks of any new developments in the
13 service and repair of video lottery terminals and provide appropriate subsequent training
14 programs.

15 (c) The manufacturers shall issue training certificates to each person upon successful
16 completion of a video lottery training program. The certificate shall include the name of the person
17 who completed the training program and the date and the location of the training program. A
18 person who successfully completes training is eligible for a service technician's permit. No person
19 may conduct maintenance on any video lottery terminal or associated equipment unless the

20 commission has issued a service technician permit to that person.

21 (d) Each manufacturer shall file with the commission the following information within two
22 weeks after the completion of a training program:

23 (1) The name of each person who attended and completed the training program;

24 (2) The name of the manufacturer offering the course;

25 (3) The manufacturer's video lottery terminal models on which training for service and
26 repair was provided;

27 (4) The date and location of the training program; and

28 (5) Copies of all certificates of completion.

29 (e) A written maintenance log shall be kept within the main cabinet access area in each
30 video lottery terminal. Every person, including lottery personnel, who gains entry into any internal
31 space of a video lottery terminal must sign the log, record the time and date of entry, ~~record the~~
32 ~~mechanical meter readings~~ and list the areas inspected or repaired. The maintenance log forms
33 shall be retained by licensed racetracks for a period of three years from the date of the last entry.
34 The maintenance logs shall be available upon request for inspection by the commission.

35 (f) Licensed racetracks shall provide the commission with a master key for access into the
36 main cabinet door of each video lottery terminal placed in operation. A logic box seal shall be
37 provided by the commission. The seal shall be affixed by commission personnel to prevent
38 unauthorized access to the video lottery terminal logic unit.

39 (g) No repairs to, or replacement of, the logic board or circuitry within the logic area may
40 occur unless authorized commission personnel are present and observe the repairs or
41 replacement. The logic area seal shall not be broken by anyone other than authorized commission
42 personnel. Each service technician shall submit a written report within twenty-four hours after the
43 repairs or replacement are completed and the report shall include the serial number of any
44 replacement board and the new logic area seal number.

45 (h) The software eproms on the logic board of each video lottery terminal shall be tested

46 by the commission prior to sealing the logic area. Licensed racetracks or permit holders shall
47 notify the commission in writing of any discovered damage, tears or breaks in the logic area seal
48 and, upon notice, the video lottery terminal shall be disabled. The video lottery terminal shall
49 remain disabled until completion by the commission of an investigation of the seal damage.

50 (i) The provisions of this section relating to the West Virginia Greyhound Breeding
51 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
52 and amended by the provisions of section ten-a and section thirteen-d, article twenty-three,
53 chapter nineteen of this code as enacted during the 2016 legislative session.

§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 four hundred video lottery terminals at a licensed racetrack. A licensed
3 racetrack may apply to the commission for authorization to install and operate more than four
4 hundred video lottery terminals. If the commission determines that the installation of additional
5 machines is in the best interest of the licensed racetrack, the Lottery Commission and the citizens
6 of this state, the 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 thirty 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 article twenty-three, chapter
21 nineteen of this code: *Provided*, That if the commission, before November 1, 1993, has authorized
22 any racetrack to operate video lottery terminals and offer video lottery games in a location which
23 would not conform to the requirements of this subdivision, the racetrack may continue to use video
24 lottery terminals registered with and approved by the commission at that nonconforming location
25 and to offer the games and any variations or composites of the games as may be approved by
26 the commission.

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

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

§29-22A-20. Regulation of smoking in licensed establishments.

1 (a) As used in this section, "smoking" means inhaling, exhaling, burning or carrying, any
2 lighted cigar, cigarette, pipe, weed, plant, or other equipment intended for smoking, in any manner
3 or form.

4 (b) Notwithstanding any provisions of this code to the contrary, the Bureau for Public
5 Health and local health officials, in enforcing state and local rules, regarding the regulation of
6 smoking in public enclosed areas shall not restrict or prohibit smoking in establishments holding
7 a valid license issued pursuant to section seven of this article: *Provided*, That each licensed
8 establishment shall have at least ten percent of the total authorized number of video lottery

9 machines located in a nonsmoking area and shall have a ventilation system installed that ensures
10 a minimum air exchange of six times per hour throughout the premises, and a minimum of twelve
11 times per hour in all spaces that serve food.

12 (c) The provisions of this section preempt and supersede any rule, regulation, ordinance,
13 or law of any county or municipality regulating smoking in public enclosed areas. Any local rule,
14 regulation, ordinance or law restricting smoking in effect on the effective date of this section shall
15 be void and unenforceable to the extent that its provisions conflict with this section.
16 Notwithstanding any provision of this code to the contrary, any local rule restricting smoking
17 promulgated or amended by a local board of health on or after the effective date of this article,
18 shall conform to the provisions of this article.

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

§29-22C-7. Local option election.

1 (a) No racetrack may be licensed under this article to operate West Virginia Lottery table
2 games until a local option election is held in the county in which pari-mutuel wagers are received
3 at a racetrack licensed under article twenty-three, chapter nineteen of this code and the voters of
4 that county voting on the question approve having West Virginia Lottery table games at the
5 racetrack.

6 (b) The county commission shall place the question on the ballot upon the receipt of a
7 written notice from a licensed racetrack located within that county requesting that the question be
8 placed on the ballot.

9 (c) The county commission of the county in which table games would be located shall give
10 notice to the public of the election by publication of the notice as a Class II-0 legal advertisement
11 in compliance with the provisions of article three, chapter fifty-nine of this code and the publication
12 area for the publication shall be the county in which the election is to be held. The date of the last
13 publication of the notice shall fall on a date at least thirty days preceding the day of the election.
14 A local option election shall be effective even though the date of the order of the county

15 commission setting the election or the date of publication of notice of the election is prior to the
16 effective date of this article if the election is otherwise held in accordance with the provisions of
17 this section.

18 (d) On the local option election ballot shall be printed the following:

19 Shall West Virginia Lottery table games be permitted at the [name of licensed racetrack]?

20 [] Yes [] No

21 (Place a cross mark in the square next to your choice.)

22 (e) The local option election shall be held in conjunction with the next primary or general
23 election scheduled more than ninety days following receipt by the county commission of the notice
24 required by this section or at a special election: *Provided*, That upon written request by the
25 licensed racetrack that a special election be called, the county commission shall order a special
26 election to be held on the question within ninety days after the receipt by the county commission
27 of that request. The county commission may require the licensed racetrack to pay the entire cost
28 incurred by the county to hold the special election. Approval shall be by a majority of the voters
29 casting votes at the election on the question of approval or disapproval of West Virginia Lottery
30 table games at a licensed racetrack.

31 (f) If the majority votes against allowing table games at a licensed racetrack, no election
32 on the issue shall be held for a period of one hundred four weeks. A local option election may
33 thereafter be held in the manner provided in this section. The process to hold another election on
34 the question shall start anew, as if no prior request for an election on the question had been filed
35 with county commission and as if there had been no prior election on the question.

36 (g) If the majority votes for allowing West Virginia Lottery table games at a licensed
37 racetrack facility in a county, the measure is approved. ~~another local option election on the issue~~
38 ~~shall not be held for a period of five years. A local option election may thereafter be held if a~~
39 ~~written petition of qualified voters residing within the county equal to at least five percent of the~~
40 ~~number of persons who were registered to vote in the next preceding general election is received~~

41 ~~by the county commission of the county in which the horse or dog racetrack is located. The petition~~
 42 ~~may be in any number of counterparts. The petition shall be in the following form:~~

43 ~~Petition For Local Option Election~~

44 ~~We, the undersigned legally qualified voters, resident within the County of~~
 45 ~~_____~~, do hereby petition that a special election be held within the County of
 46 ~~_____~~ upon the following question: Shall West Virginia Lottery table games be
 47 permitted at the [name of racetrack]?

48 ~~Name _____ Address _____ Date~~

49 ~~(Post office or street address)~~

§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 section seven of this article, the commission shall immediately
 7 grant a West Virginia Lottery table games license, and a license for the right to conduct West
 8 Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow
 9 the licensee to conduct West Virginia table games at the licensed pari-mutuel racetrack identified
 10 on the local option election ballot, provided that racetrack holds a valid racetrack video lottery
 11 license issued by the commission pursuant to article twenty-two-a of this chapter ~~and a valid~~
 12 ~~racing license granted by the West Virginia Racing Commission pursuant to the provision of article~~
 13 ~~twenty-three, chapter nineteen of this code~~ and has otherwise met the requirements for licensure
 14 under the provisions of this article and the 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 article twenty-two-a and the license to conduct horse or
18 dog racing issued pursuant to article twenty-three, chapter nineteen 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 article twenty-two-a of this chapter shall be
49 interpreted to allow West Virginia Lottery table games and racetrack video lottery operations
50 under those articles to be harmoniously conducted in the same designated gaming area.

51 (2) On the effective date of this article, the provisions of section twenty-three of this article
52 apply to all video lottery games conducted within a racetrack facility, notwithstanding any
53 inconsistent provisions contained in article twenty-two-a of this chapter 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 article twenty-two-a of
66 this chapter before July 1, and

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 article twenty-two-a of this~~

69 ~~chapter, and~~

70 (C)(B) During the current license year, the licensee complied with all provisions of this
71 article, all rules adopted by the commission and all final orders of the commission applicable to
72 the 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 article twenty-three, chapter
89 nineteen and article twenty-two-a, chapter twenty-nine of this code until after the license expires,
90 the commission shall renew its license under this article at the time it renews its license under
91 article twenty-two-a of this chapter provided ~~the licensee has paid the annual license fee required~~
92 ~~by this section and~~ during the preceding license year the licensee complied with all provisions of
93 this article, all rules adopted by the commission and all final orders of the commission applicable
94 to the licensee.

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

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

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

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

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

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

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

119 (l) *Commission office space.* -- A racetrack table games licensee shall provide to the
120 commission, at no cost to the commission, suitable office space at the racetrack facility for the

121 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 licensees 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 licensees table games activities and related activities occur, for
27 the purpose of monitoring or inspecting the licensees activities and the table games, gaming
28 equipment and security equipment;

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

30 (9) Conduct no less than ~~two hundred twenty~~ the number of live racing dates, if any, for
31 each horse or dog race meeting ~~or such other number of live racing dates~~ as may be approved
32 by the Racing Commission in accordance with the provisions of section twelve-b, article twenty-
33 three, chapter nineteen of this code, and otherwise keep in good standing, all licenses and permits
34 granted by the Racing Commission pursuant to section six, article twenty-three, chapter nineteen
35 of this code, and any rules promulgated thereunder.

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

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

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

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

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

50 (5) Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or

51 other electronic media;

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

55 (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 section eight of this article 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;

26 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
27 West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-
28 three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development
29 Fund created under section ten, article twenty-three, chapter nineteen of this code. The total
30 amount transferred under this subdivision shall be divided pro rata among the development funds
31 for each racetrack table games licensee based on relative adjusted receipts from each racetrack.
32 The amounts transferred to these funds may not be used for the benefit of any person or activity
33 other than at or associated with a racetrack table games licensee;

34 (4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to
35 the county commissions of the counties where racetracks with West Virginia Lottery table games
36 are located. County commissions may pledge this money to make payments on lottery revenue
37 bonds issued pursuant to article two-h, chapter thirteen of this code. The one percent transferred
38 under this subdivision shall be divided pro rata among the counties with a racetrack with West
39 Virginia Lottery table games based on relative adjusted gross receipts from each county's
40 racetrack: *Provided*, That the county board of education of a growth county, as that term is defined
41 in section three, article twenty, chapter seven of this code, which has enacted the Local Powers
42 Act, and in which county a racetrack is located that has participated in the West Virginia
43 Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one
44 percent of adjusted gross receipts as provided in this subdivision for the purpose of public
45 projects, as defined in section two, article two-h, chapter thirteen of this code or to make payments

46 on lottery revenue bonds issued to finance public projects;

47 (5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
48 governing bodies of municipalities within counties where racetracks with West Virginia Lottery
49 table games are located. Municipalities may pledge the money to make payments on lottery
50 revenue bonds issued pursuant to article two-h, chapter thirteen of this code. This money shall
51 be allocated as follows:

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

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

72 games are located shall be considered; and (iii) a single municipality in a county where West
73 Virginia Lottery racetrack games are played may not receive a total share under this paragraph
74 that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided,*
75 *however,* That the county board of education of a growth county, as that term is defined in section
76 three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in
77 which county a racetrack is located that has participated in the West Virginia Thoroughbred
78 Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted
79 gross receipts as provided in this subdivision for the purpose of public projects, as defined in
80 section two, article two-h, chapter thirteen of this code, or to make payments on lottery revenue
81 bonds issued to finance the public projects;

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

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

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

97 (1) Retain an amount for the administrative expenses of the commission as determined

98 by the commission in accordance with subsection(e) of this section;

99 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred
100 racetracks with West Virginia Lottery table games to the special funds established by each
101 thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the
102 amount being divided on a pro rata basis between the special funds of each thoroughbred
103 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts
104 from all greyhound racetracks with West Virginia Lottery table games to the special funds
105 established by each greyhound racetrack table games licensee for the payment of regular
106 racetrack purses, the amount being divided equally between the special funds of each greyhound
107 racetrack table games licensee;

108 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
109 West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-
110 three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development
111 Fund created under section ten, article twenty-three, chapter nineteen of this code. The total
112 amount transferred under this subdivision shall be divided pro rata among the development funds
113 for each racetrack table games licensee based on relative adjusted receipts from each racetrack.
114 The amounts transferred to these funds may not be used for the benefit of any person or activity
115 other than at or associated with a racetrack table games licensee;

116 (4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
117 county commissions of the counties where racetracks with West Virginia Lottery table games are
118 located. The money transferred under this subdivision shall be divided pro rata among the
119 counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross
120 receipts from each county's racetrack: *Provided*, That the county board of education of a growth
121 county, as that term is defined in section three, article twenty, chapter seven of this code, which
122 has enacted the Local Powers Act, and in which a racetrack is located that has participated in the
123 West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive

124 one half of that countys share of adjusted gross receipts as provided in this subdivision for the
125 purpose of capital improvements;

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

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

143 (B) One half of the money transferred under this subdivision shall be allocated pro rata to
144 the municipalities within all the counties, other than a county described in paragraph (C) of this
145 subdivision, having a racetrack table games licensee based on each municipality's population
146 determined at the most recent United States decennial census of population: *Provided, That:* (i)
147 A municipality which received funds above its pro rata share pursuant to subparagraph (iii),
148 paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each
149 allocation, when a municipality is physically located in two or more counties, only that portion of

150 its population residing in the county where the authorized table games are located shall be
151 considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games
152 are played may not receive a total share under this paragraph that is in excess of twenty-five
153 percent of the total transfers under this paragraph.

154 (C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a
155 racetrack is located in a growth county, as that term is defined in section three, article twenty,
156 chapter seven of this code, which has enacted the Local Powers Act, and in which county a
157 racetrack is located that has participated in the West Virginia Thoroughbred Development Fund
158 since on or before January 1, 1991, the county board of education shall receive two thirds of the
159 share of adjusted gross receipts from West Virginia Lottery table games from the racetrack in the
160 county as provided in this subdivision and the municipalities within the county shall share the
161 remaining one third of the total amount allocated as provided in this paragraph. The municipal
162 one-third share shall be divided pro rata among the municipalities based on each municipality's
163 population determined at the most recent United States decennial census of population. All money
164 transferred under this paragraph shall be used by the county board of education and by the
165 municipalities for the purpose of capital improvements;

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

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

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

176 (1) Transfer seventy-six percent to the State Debt Reduction Fund which is hereby
177 continued in the State Treasury. Moneys of the fund shall be expended solely for the purpose of
178 accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the
179 state and shall be expended or transferred only upon appropriation of the Legislature;

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

184 (3) Transfer ten percent, to be divided and paid in equal shares, to each county
185 commission in the state that is not eligible to receive a distribution under subdivision (4),
186 subsection (b) of this section: *Provided*, That funds transferred to county commissions under this
187 subdivision shall be used only to pay regional jail expenses and the costs of infrastructure
188 improvements and other capital improvements: *Provided, however*, That up to fifty percent of
189 these funds may be pledged to make payments on lottery revenue bonds issued pursuant to
190 article two-h, chapter thirteen of this code; and

191 (4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies
192 of each municipality in the state that is not eligible to receive a distribution under subdivisions (5)
193 and (6), subsection (b) of this section: *Provided*, That funds transferred to municipalities under
194 this subdivision shall be used only to pay for debt reduction in municipal police and fire pension
195 funds and the costs of infrastructure improvements and other capital improvements: *Provided*,
196 *however*, That up to fifty percent of these funds may be pledged to make payments on lottery
197 revenue bonds issued pursuant to article two-h, chapter thirteen of this code.

198 (e) All expenses of the commission incurred in the administration and enforcement of this
199 article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-
200 enforcement agencies for services performed at the request of the commission pursuant to this
201 article. The commissions expenses associated with a particular racetrack with authorized table

202 games under this article may not exceed three percent of the total annual adjusted gross receipts
203 received from that licensees operation of table games under this article, including, but not limited
204 to, all license fees or other amounts attributable to the licensees operation of table games under
205 this article, except as provided in subdivision (2), subsection (a) of this section. However, for the
206 fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery
207 racetrack table games under this article and for the fiscal year thereafter, the commission's
208 expenses associated with a particular racetrack with authorized table games under this article
209 may not exceed four percent of the total annual adjusted gross receipts received from that
210 licensee's operation of table games under this article, including, but not limited to, all license fees
211 or other amounts attributable to the licensees operation of table games under this article, except
212 as provided in subdivision (2), subsection (a) of this section. These expenses shall either be
213 allocated to the racetrack with West Virginia Lottery table games for which the expense is
214 incurred, if practicable, or be treated as general expenses related to all racetrack table games
215 facilities and be allocated pro rata among the racetrack table games facilities based on the ratio
216 that annual adjusted gross receipts from operation of table games at each racetrack with West
217 Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table
218 games at all racetracks with West Virginia Lottery table games during the fiscal year of the state.
219 From this allowance, the commission shall transfer at least \$100,000 but not more than \$500,000
220 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a
221 of this chapter.

222 (f) The provisions of this section relating to the West Virginia Greyhound Breeding
223 Development Fund and the West Virginia Thoroughbred Development Fund are hereby altered
224 and amended by the provisions of sections ten-a and section thirteen-d, article twenty-three,
225 chapter nineteen of this code as enacted during the 2016 legislative session.

**§29-22C-27b. Changes in distribution from lottery table games fund; distributions from
excess lottery fund.**

1 (a) Notwithstanding any provision of section twenty-seven or section twenty-seven-a of
2 this article to the contrary, for the fiscal year beginning July 1, 2016, and each fiscal year
3 thereafter, the distributions to be made pursuant to subdivisions (2) and (3), subsection (c),
4 section twenty-seven of this article and the distributions made pursuant to subdivision (2),
5 subsection (d), section twenty-seven of this article shall be reduced by one hundred percent, and
6 the amounts resulting from the reduction shall be paid into the state Excess Lottery Revenue
7 Fund.

8 (b) Notwithstanding any other provision of this code to the contrary, for the fiscal year
9 beginning July 1, 2016, and each fiscal year thereafter, moneys deposited to the state Excess
10 Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance
11 with legislative appropriation.

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

17 (d) Notwithstanding any other provision of this code to the contrary, after payment of debt
18 service from the state Excess Lottery Revenue Fund, all other distributions required by section
19 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this
20 section shall be paid on a pro rata basis.

§29-22C-29. Offenses and penalties.

1 (a) A racetrack table games licensee is guilty of unlawful operation when:

2 (1) The licensee operates a West Virginia Lottery table game without authority of the
3 commission to do so;

4 (2) The licensee operates a West Virginia Lottery table game in any location that is not a
5 designated gaming area approved by the commission;

6 (3) The licensee knowingly conducts, carries on, operates or exposes for play or allows to
7 be conducted, carried on, operated or exposed for play any table game or other device, equipment
8 or material that has in any manner been tampered with or placed in a condition or operated in a
9 manner, the result of which is designed to deceive the public;

10 (4) The licensee employs an individual in a position or to perform duties, for which a license
11 is required by this article or rules of the commission and the employee does not have a license
12 issued under the provisions of this article or the licensee continues to employ the individual in a
13 position or to perform duties, for which a license is required by this article or rules of the
14 commission, after the employees license expired, was revoked by the commission or not renewed
15 by the commission;

16 (5) The licensee acts or employs another person to act as if he or she is not an agent or
17 employee of the licensee in order to encourage participation in a West Virginia Lottery table game
18 at the licensed racetrack;

19 (6) The licensee knowingly permits an individual under the age of twenty-one years of age
20 to enter or remain in a designated gaming area or to play racetrack video lottery terminals or West
21 Virginia Lottery table games at a licensed racetrack authorized under this article to act as the
22 commissions agent in operating the West Virginia Lottery table games: Provided, That an
23 individual under the age of twenty-one years accompanied by an adult may cross the gaming
24 area on a path approved by the commission to get to buffet and food service areas; or

25 (7) The licensee exchanges tokens, chips, electronic media or other forms of credit to be
26 used for wagering at a licensed racetrack authorized under this article to operate West Virginia
27 Lottery table games, for anything of value except in exchange for money or credits to a player's
28 account.

29 (b) A person is guilty of a misdemeanor when:

30 (1) The person knowingly makes a false statement on any application for a license under
31 this article or on an application for renewal of a license issued under this article;

32 (2) The person operates, carries on or exposes for play a West Virginia Lottery table game
33 prior to obtaining a license or after the persons license has expired and prior to actual renewal of
34 the license or before the West Virginia Lottery table game and the licensees rules for play of the
35 game are approved or modified and approved by the commission; or

36 (3) The person works or is employed in a position requiring a license under the provisions
37 of this article without having the license required by this article.

38 (c) A person is guilty of a felony when:

39 (1) The person offers, promises or gives anything of value or benefit to a person who has
40 an ownership or financial interest in, is employed by or has a service contract with, a racetrack
41 with West Virginia Lottery table games or to that person's spouse or any dependent child or
42 dependent parent, pursuant to an agreement or arrangement, in fact or implied from the
43 circumstances, with intent that the promise or thing of value or benefit will influence the actions of
44 the person in order to affect or attempt to affect the outcome of a West Virginia Lottery table game,
45 or to influence official action of the commission. For the purposes of this subdivision and
46 subdivision (2) of this subsection, the term "person who is connected with a table games facility"
47 includes, but is not limited to, a person licensed under this article as well as an officer or employee
48 of a licensee;

49 (2) The person solicits or knowingly accepts or receives a promise of anything of value or
50 benefit while the person is connected with a racetrack with West Virginia Lottery table games,
51 pursuant to an understanding or arrangement in fact or implied from the circumstances, with the
52 intent that the promise or thing of value or benefit will influence the actions of the person to affect
53 or attempt to affect the outcome of a West Virginia Lottery table game or to influence official action
54 of the commission; or

55 (3) The person uses or possesses on property owned by the licensed racetrack or on
56 property contiguous to the licensed racetrack, with the intent to use, an electronic, electrical or
57 mechanical device that is designed, constructed or programmed to assist the user or another

58 person:

59 (A) In projecting the outcome of a West Virginia Lottery table game;

60 (B) In keeping track of the cards dealt or in play;

61 (C) In analyzing the probability of the occurrence of an event relating to a West Virginia
62 Lottery table game;

63 (D) In analyzing the strategy for playing or betting to be used in a West Virginia Lottery
64 table game, except as permitted in writing by the commission; or

65 (E) In obtaining an advantage at playing any West Virginia Lottery table game at a licensed
66 racetrack authorized under this article to operate West Virginia Lottery table games;

67 (4) The person manufactures, sells or distributes any card, chip, die, game or device, by
68 whatever name called, that is intended by that person to be used to violate any provision of this
69 article or the table gaming laws of any other state;

70 (5) The person places a bet after unlawfully acquiring knowledge of the outcome of the
71 West Virginia Lottery table game that is the subject of the bet or aids a person in acquiring that
72 knowledge for the purpose of placing a bet contingent on the outcome of a West Virginia Lottery
73 table game authorized under this article;

74 (6) The person claims, collects, takes or attempts to claim, collect or take anything of value
75 into or from a racetrack with West Virginia Lottery table games, with intent to defraud, without
76 having made a wager contingent on winning a West Virginia Lottery table game or knowingly
77 claims, collects or takes an amount of money or thing of value of greater value than the amount
78 won;

79 (7) The person knowingly uses chips, electronic media or tokens that are counterfeit to
80 place a wager at a racetrack with West Virginia Lottery table games;

81 (8) The person knowingly uses any medium to place a wager at a racetrack licensed under
82 this article other than tokens, chips, electronic cards or other electronic media, or other method
83 of credit approved by the commission and issued by the racetrack licensed under this article at

84 which the wager is placed on a West Virginia Lottery table game;

85 (9) The person, not a licensed racetrack under this article or an employee or agent of a
86 racetrack licensed under this article acting in furtherance of the licensee's interest, has in his or
87 her possession on grounds owned by the racetrack licensed under this article or on grounds
88 contiguous to the licensed racetrack, any device, by whatever name called, intended to be used
89 to violate a provision of this article or a rule of the commission implementing or explaining a
90 provision of this article; or

91 (10) The person, not a licensee or employee or agent of a licensee acting in furtherance
92 of the racetrack table games licensee's interests, has in his or her possession any key or device
93 designed for the purpose of opening, entering or affecting the operation of a West Virginia Lottery
94 table game, drop box or an electronic or mechanical device connected with or used in connection
95 with a West Virginia Lottery table game in a licensed racetrack or for removing bills, tokens, chips
96 or other contents therefrom.

97 (d) Any person who violates any provision of subsection (a) or (b) of this section is guilty
98 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and
99 committed to a state correctional facility for not more than six months, except that in the case of
100 a person other than a natural person, the amount of the fine imposed may not be more than
101 \$25,000.

102 (e) Any person who violates any provision of subsection (c) of this section is guilty of a
103 felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000
104 and committed to a state correctional facility for a term of imprisonment not less than one year
105 nor more than five years.

106 (f) With regard to subdivision (3), subsection (c) of this section, each racetrack table games
107 licensee shall post notice of this prohibition and the penalties of this section in a manner
108 determined by the commission.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

1 (a) It is unlawful for any licensee, or agent, employee or member thereof, on such
2 licensee's premises to:

3 (1) Sell or offer for sale any alcoholic liquors other than from the original package or
4 container;

5 (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper
6 entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine,
7 multiple coin console slot machine or device in the nature of a slot machine;

8 (3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating
9 beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine
10 or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

11 (4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating
12 beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or
13 for or to any person who is physically incapacitated due to consumption of nonintoxicating beer,
14 wine or alcoholic liquor or the use of drugs;

15 (5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any
16 licensed premises or in any rooms directly connected therewith, between the hours of three
17 o'clock a.m. and one o'clock p.m. on any Sunday: Provided, That, a holder of a license issued
18 pursuant to section seven, article twenty-two-a, chapter twenty-nine of this code may sell, give,
19 or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in
20 any rooms directly connected therewith, during licensee's hours of operation;

21 (6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating
22 beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one

23 years of age;

24 (7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand
25 name of any alcoholic liquor;

26 (8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or
27 approved dues paying member in good standing of said private club or a guest of such member;

28 (9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide,
29 cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as
30 authorized by the commissioner;

31 (10) (A) Employ any person who is less than eighteen years of age in a position where the
32 primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or
33 alcoholic liquors to any person;

34 (B) Employ any person who is between the ages of eighteen and twenty-one who is not
35 directly supervised by a person aged twenty-one or over in a position where the primary
36 responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic
37 liquors to any person; or

38 (11) Violate any reasonable rule of the commissioner.

39 (b) It is unlawful for any licensee to advertise in any news media or other means, outside
40 of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

41 (c) Any person who violates any of the foregoing provisions is guilty of a misdemeanor
42 and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or
43 imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned.

NOTE: The purpose of this bill is to eliminate the hotel-motel tax on complementary hotel rooms; transfer certain revenues derived from racetrack video lottery, and racetrack table games to the state Excess Lottery revenue fund; distribute certain revenues from the state Excess Lottery revenue fund to certain distributees; defund the West Virginia Greyhound Breeding Development Fund and West Virginia Thoroughbred Development Fund and transferring money that would have gone to those funds to the state Excess Lottery Revenue Fund for appropriation by the Legislature; eliminate prohibition of smoking in

certain gaming establishments; provide for Racing Commission to approve number of racing days requested by racing association; eliminate racing day requirement to maintain video lottery license; eliminating prohibition of ATM's on casino floors; authorize minors accompanied by an adult to cross gaming floor to access food service areas; eliminate recall elections for video lottery and racetrack table games and allow video lottery licensees to serve alcoholic beverages during hours of operation.

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