

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 604

FISCAL
NOTE

BY SENATORS SYPOLT, AZINGER, CLINE AND MULLINS

[Introduced March 14, 2017; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended,
 2 relating to terminating the Licensed Racetrack Modernization Fund after existing
 3 obligations are paid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§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 racetrack's share of each years
33 deposit shall be calculated in the same ratio as each racetrack's 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~~ \$2 expended by a licensed
36 racetrack for facility modernization improvements at the racetrack, having a useful life of three or
37 more years and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in
38 recoupment from its facility modernization account. If the licensed racetrack's facility
39 modernization account contains a balance in any fiscal year, the unexpended balance from that

40 fiscal year will be available for matching for one additional fiscal year, after which time, the
41 remaining unused balance carried forward shall revert to the lottery fund. For purposes of this
42 section, the term "facility modernization improvements" includes acquisitions of new and unused
43 video lottery terminals and related equipment. Video lottery terminals financed through the
44 recoupment provided in this subdivision must be retained by the licensee in its West Virginia
45 licensed location for a period of not less than five years from the date of initial installation.
46 Notwithstanding any provision of this section or section ten-d of this article to the contrary, the
47 commission shall transfer no additional moneys to the Licensed Racetrack Modernization Fund
48 on or after the effective date of the amendments to this section by the Legislature during its 2017
49 regular session: *Provided*, That a licensed racetrack may, pursuant to the provisions of this
50 subsection (b) and the rules of the commission, seek recoupment for facility modernization
51 improvements ordered before the effective date of this amendment. Any money remaining in the
52 Licensed Racetrack Modernization Fund for which recoupment has not been requested by a
53 licensed racetrack pursuant to the provisions of this subsection shall be deposited into the Excess
54 Lottery Revenue Fund for appropriation by the Legislature.

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

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

65 (2) Until July 1, 2005, fourteen percent of net terminal income at a licensed racetrack shall

66 be deposited in the special fund established by the licensee, and used for payment of regular
67 purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this
68 code, on and after July 1, 2005, the rate shall be seven percent of net terminal income;

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

71 (A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent
72 received during the fiscal year 1999 by a county in which a racetrack is located that has
73 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,
74 1999 shall be divided as follows:

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

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

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

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

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

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

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

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

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

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

100 (8)(A) The Tourism Promotion Fund established in section twelve, article two, chapter five-
101 b of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal
102 year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion
103 Fund \$5 million of the three percent of the net terminal income described in this section and
104 section ten-b of this article into the fund administered by the West Virginia Economic Development
105 Authority pursuant to section seven, article fifteen, chapter thirty-one of this code, \$5 million into
106 the Capitol Renovation and Improvement Fund administered by the Department of Administration
107 pursuant to section six, article four, chapter five-a of this code and \$5 million into the Tax
108 Reduction and Federal Funding Increased Compliance Fund; and

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

113 (i) 1.375 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 Tourism Promotion Fund created under
115 section twelve, article two, chapter five-b of this code;

116 (ii) 0.375 percent of the total amount of net terminal income described in this section and
117 in section ten-b of this article shall be deposited into the Development Office Promotion Fund

118 created under section three-b, article two, chapter five-b of this code;

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

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

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

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

137 (B) The deposit of the seven percent of net terminal income into the Workers'
138 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed
139 with respect to these funds and shall be deposited in the special fund established by the licensee
140 and used for payment of regular purses in addition to the other amounts provided in article twenty-
141 three, chapter nineteen of this code, on and after the first day of the month following the month in
142 which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to
143 article two-d, chapter twenty-three of this code, have been retired or payment of the debt service

144 provided for; and (ii) that an independent certified actuary has determined that the unfunded
145 liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided
146 for in its entirety; and

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

148 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
149 one percent of the net terminal income until sufficient moneys have been received to complete
150 the veterans memorial on the grounds of the state Capitol Complex in Charleston, West Virginia.
151 The moneys shall be deposited in the State Treasury in the Division of Culture and History special
152 fund created under section three, article one-i, chapter twenty-nine of this code: *Provided*, That
153 only after sufficient moneys have been deposited in the fund to complete the veterans memorial
154 and to pay in full the annual bonded indebtedness on the veterans memorial, not more than
155 \$20,000 of the one percent of net terminal income provided in this subdivision shall be deposited
156 into a special revenue fund in the State Treasury, to be known as the "John F. 'Jack' Bennett
157 Fund". The moneys in this fund shall be expended by the Division of Veterans Affairs to provide
158 for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The
159 Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of article
160 three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent,
161 determine the ability of the surviving spouse to pay for the placement of the marker and setting
162 forth the standards to be used to determine the priority in which the veterans grave markers will
163 be placed in the event that there are not sufficient funds to complete the placement of veterans
164 grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the
165 veterans memorial, \$100,000 of the one percent of net terminal income provided in this
166 subdivision shall be deposited in the special fund in the Division of Culture and History created
167 under section three, article one-i, chapter twenty-nine of this code and be expended by the
168 Division of Culture and History to establish a West Virginia veterans memorial archives within the
169 Cultural Center to serve as a repository for the documents and records pertaining to the veterans

170 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided,*
171 *however,* That \$500,000 of the one percent of net terminal income shall be deposited in the State
172 Treasury in a special fund of the Department of Administration, created under section five, article
173 four, chapter five-a of this code, to be used for construction and maintenance of a parking garage
174 on the state Capitol Complex; and the remainder of the one percent of net terminal income shall
175 be deposited in equal amounts in the Capitol Dome and Improvements Fund created under
176 section two, article four, chapter five-a of this code and Cultural Facilities and Capitol Resources
177 Matching Grant Program Fund created under section three, article one of this chapter.

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

179 (i) Five hundred thousand dollars of the one percent of net terminal income shall be
180 deposited in the State Treasury in a special fund of the Department of Administration, created
181 under section five, article four, chapter five-a of this code, to be used for construction and
182 maintenance of a parking garage on the state Capitol Complex; and

183 (ii) The remainder of the one percent of net terminal income and all of the one percent of
184 net terminal income described in paragraph (B), subdivision (9), subsection (a), section ten-b of
185 this article shall be distributed as follows: The net terminal income shall be deposited in equal
186 amounts into the Capitol Dome and Capitol Improvements Fund created under section two, article
187 four, chapter five-a of this code and the Cultural Facilities and Capitol Resources Matching Grant
188 Program Fund created under section three, article one, chapter twenty-nine of this code until a
189 total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant
190 Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol
191 Improvements Fund.

192 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater
193 than the gross terminal income from its operation of video lottery machines, to be electronically
194 transferred by the commission on dates established by the commission. Upon a licensed
195 racetrack's failure to maintain this balance, the commission may disable all of a licensed

196 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall
197 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax
198 delinquency under chapter eleven of this code. The interest shall begin to accrue on the date
199 payment is due to the commission.

200 (e) The commission's central control computer shall keep accurate records of all income
201 generated by each video lottery terminal. The commission shall prepare and mail to the licensed
202 racetrack a statement reflecting the gross terminal income generated by the licensee's video
203 lottery terminals. Each licensed racetrack shall report to the commission any discrepancies
204 between the commission's statement and each terminal's mechanical and electronic meter
205 readings. The licensed racetrack is solely responsible for resolving income discrepancies
206 between actual money collected and the amount shown on the accounting meters or on the
207 commission's billing statement.

208 (f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the
209 commission may make no credit adjustments. For any video lottery terminal reflecting a
210 discrepancy, the licensed racetrack shall submit to the commission the maintenance log which
211 includes current mechanical meter readings and the audit ticket which contains electronic meter
212 readings generated by the terminal's software. If the meter readings and the commission's records
213 cannot be reconciled, final disposition of the matter shall be determined by the commission. Any
214 accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the
215 commission.

216 (g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is
217 not operational or the commission notifies licensed racetracks that remittance by this method is
218 required. The licensed racetracks shall report an amount equal to the total amount of cash
219 inserted into each video lottery terminal operated by a licensee, minus the total value of game
220 credits which are cleared from the video lottery terminal in exchange for winning redemption
221 tickets, and remit the amount as generated from its terminals during the reporting period. The

222 remittance shall be sealed in a properly addressed and stamped envelope and deposited in the
223 United States mail no later than noon on the day when the payment would otherwise be completed
224 through electronic funds transfer.

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

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

NOTE: The purpose of this bill is to alter the law relating terminating the Licensed Racetrack Modernization Fund after existing obligations are paid.

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