

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

### Committee Substitute

for

### Senate Bill 9

SENATORS TARR, WELD, JEFFRIES, PHILLIPS, NELSON,

TAKUBO, MARONEY, AND WOODRUM, *original sponsors*

[Originating in the Committee on Finance; reported on

February 12, 2021]



1 A BILL to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended,  
2 relating to continuation of Licensed Racetrack Modernization Fund; and making technical  
3 corrections.

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

**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 30 days' advance notice of any  
10 proposed account changes in order to assure the uninterrupted electronic transfer of funds. From  
11 the gross terminal income remitted by the licensee to the commission:

12 (1) The commission shall deduct an amount sufficient to reimburse the commission for its  
13 actual costs and expenses incurred in administering racetrack video lottery at the licensed  
14 racetrack and the resulting amount after the deduction is the net terminal income. The amount  
15 deducted for administrative costs and expenses of the commission may not exceed four percent

16 of gross terminal income: *Provided*, That 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~~ June 30, 2030,  
19 the term “actual costs and expenses” may include transfers of up to \$10 million in surplus  
20 allocations for each fiscal year, as calculated by the commission when it has closed its books for  
21 the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), of this  
22 subsection. 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 §29-22-18a ~~of this~~  
27 ~~chapter~~ of this code; 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~~ July 1, 2030, the commission shall deposit such amounts as are available according to  
31 subdivision (1) of this subsection into a separate facility modernization account maintained within  
32 the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack’s share of each  
33 year’s deposit shall be calculated in the same ratio as each racetrack’s apportioned contribution  
34 to the four percent administrative costs and expenses allowance provided for in subdivision (1) of  
35 this subsection for that year. For each \$2 expended by a licensed racetrack for facility  
36 modernization improvements at the racetrack, having a useful life of three or more years and  
37 placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from  
38 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 ~~§29-22A-10b of this article~~ of this code. The licensed racetrack’s  
51 share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses  
52 required to be expended by the licensed racetrack in connection with video lottery operations.  
53 The division shall be made as follows:

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

56 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be  
57 deposited in the special fund established by the licensee, and used for payment of regular purses  
58 in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1,  
59 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 50 percent of the excess amount; and

67 (ii) The municipalities of the county shall receive 50 percent of the excess amount, said  
68 50 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 subdivision is located and where the racetrack has been located  
73 in a municipality within the county since on or before January 1, 1999, shall be divided, if  
74 applicable, as follows:

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

76 (ii) The municipality shall receive 50 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 subdivision;

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~~ pursuant to §19-  
84 23-13b of this code and the West Virginia Greyhound Breeding Development Fund created ~~under~~  
85 ~~section ten of said article~~ pursuant to §19-23-10 of this code shall receive an equal share of a  
86 total 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 §19-23-13c of this code;

89 (7) A licensee shall receive 46 and one-half percent of net terminal income;

90 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive  
91 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,  
92 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three

93 percent of the net terminal income described in this section and §29-22A-10b of this code into the  
94 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of  
95 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the  
96 Department of Administration pursuant to §5A-4-6 of this code, and \$5 million into the Tax  
97 Reduction and Federal Funding Increased Compliance Fund; and

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

102 (i) 1.375 percent of the total amount of net terminal income described in this section and  
103 §29-22A-10b ~~of this article~~ of this code shall be deposited into the Tourism Promotion Fund  
104 created ~~under~~ pursuant to §5B-2-12 of this code;

105 (ii) 0.375 percent of the total amount of net terminal income described in this section and  
106 in §29-22A-10b ~~of this article~~ of this code shall be deposited into the Development Office  
107 Promotion Fund created ~~under~~ pursuant to §5B-2-3b of this code;

108 (iii) 0.5 percent of the total amount of net terminal income described in this section and in  
109 §29-22A-10b ~~of this article~~ of this code shall be deposited into the Research Challenge Fund  
110 created ~~under~~ pursuant to §18B-1B-10 of this code;

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

115 (v) 0.0625 percent of the total amount of net terminal income described in this section and  
116 in §29-22A-10b ~~of this article~~ of this code shall be deposited into the 2004 Capitol Complex  
117 Parking Garage Fund administered by the Department of Administration pursuant to §5A-4-5a of  
118 this code;

119 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited  
120 into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided,*  
121 That in any fiscal year when the amount of money generated by this subdivision totals \$11 million,  
122 all subsequent distributions ~~under~~ pursuant to this subdivision shall be deposited in the special  
123 fund established by the licensee and used for the payment of regular purses in addition to the  
124 other amounts provided in §19-23-1 *et seq.* of this code;

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

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

135 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive  
136 one percent of the net terminal income until sufficient moneys have been received to complete  
137 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.  
138 The moneys shall be deposited in the State Treasury in the Division of Culture and History special  
139 fund created ~~under~~ pursuant to §29-11-3 of this code: *Provided,* That only after sufficient moneys  
140 have been deposited in the fund to complete the veterans memorial and to pay in full the annual  
141 bonded indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net  
142 terminal income provided in this subdivision shall be deposited into a special revenue fund in the  
143 State Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall  
144 be expended by the Division of Veterans Affairs to provide for the placement of markers for the



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

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

165 (i) Five hundred thousand dollars of the one percent of net terminal income shall be  
166 deposited in the State Treasury in a special fund of the Department of Administration, created  
167 ~~under~~ pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking  
168 garage on the State Capitol Complex; and

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

171 follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and  
172 Capitol Improvements Fund created ~~under~~ pursuant to §5A-4-2 of this code and the Cultural  
173 Facilities and Capitol Resources Matching Grant Program Fund created ~~under~~ pursuant to §29-  
174 1-3 of this code until a total of \$1,500,000 is deposited into the Cultural Facilities and Capitol  
175 Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the  
176 Capitol Dome and Capitol Improvements Fund.

177 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater  
178 than the gross terminal income from its operation of video lottery machines, to be electronically  
179 transferred by the commission on dates established by the commission. Upon a licensed  
180 racetrack's failure to maintain this balance, the commission may disable all of a licensed  
181 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall  
182 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax  
183 delinquency ~~under~~ pursuant to chapter 11 of this code. The interest shall begin to accrue on the  
184 date payment is due to the commission.

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

193 (f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the  
194 commission may make no credit adjustments. For any video lottery terminal reflecting a  
195 discrepancy, the licensed racetrack shall submit to the commission the maintenance log which  
196 includes current mechanical meter readings and the audit ticket which contains electronic meter

197 readings generated by the terminal's software. If the meter readings and the commission's  
198 records cannot be reconciled, final disposition of the matter shall be determined by the  
199 commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved  
200 in favor of the commission.

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

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

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

NOTE: The purpose of this bill is to continue the Licensed Racetrack Modernization Fund.

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