

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3093

BY DELEGATES GRAVES, FOSTER, KEATON, KESSINGER,

AND PRITT

[Introduced March 12, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §19-23-3, §19-23-7 and §19-23-12b of the Code of West Virginia,
 2 1931, as amended; to amend and reenact §29-22A-3, §29-22A-7 and §29-22A-12 of said
 3 code; and to amend and reenact §29-22C-3, §29-22C-8 and §29-22C-10 of said code, all
 4 relating to dog racing requirements; modifying certain definitions; eliminating the
 5 requirement that an applicant for a dog racing license race a minimum number of dates to
 6 qualify for such a license; eliminating the requirement that an applicant for a dog racing
 7 license race a minimum number of dates to contract to receive telecasts and accept
 8 wagers; providing that a dog racetrack is required to hold a racing license to conduct
 9 simulcast racing regardless of whether the racetrack continues to conduct live dog racing;
 10 authorizing the West Virginia Racing Commission to promulgate rules, including
 11 emergency rules, regarding licensure of dog racetracks conducting only simulcast racing;
 12 eliminating the requirement that a video lottery licensee at a dog track must hold a racing
 13 license to renew a video lottery license or racetrack table games license; permitting a dog
 14 racetrack to continue to operate operational video lottery and racetrack table games in a
 15 location where live racing was previously conducted; and eliminating the requirement that
 16 a racetrack table games licensee at a dog racetrack must race a minimum number of
 17 dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

PART V. LICENSE AND PERMIT PROCEDURES.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-3. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article:
 2 (1) "Horse racing" means any type of horse racing, including, but not limited to,
 3 thoroughbred racing and harness racing;

4 (2) "Thoroughbred racing" means flat or running type horse racing in which each horse
5 participating is a thoroughbred and mounted by a jockey;

6 (3) "Harness racing" means horse racing in which the horses participating are harnessed
7 to a sulky, carriage or other vehicle and does not include any form of horse racing in which the
8 horses are mounted by jockeys;

9 (4) "Horse race meeting" means the whole period of time for which a license is required
10 by the provisions of section one of this article;

11 (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound
12 racing;

13 (6) "Purse" means any purse, stake or award for which a horse or dog race is run;

14 (7) "Racing association" or "person" means any individual, partnership, firm, association,
15 corporation or other entity or organization of whatever character or description;

16 (8) "Applicant" means any racing association making application for a license under the
17 provisions of this article or any person making application for a permit under the provisions of this
18 article or any person making application for a construction permit under the provisions of this
19 article;

20 (9) "License" means the license required by the provisions of section one of this article or
21 the license required to conduct televised racing pursuant to §19-23-12b of this code;

22 (10) "Permit" means the permit required by the provisions of section two of this article;

23 (11) "Construction permit" means the construction permit required by the provisions of
24 section eighteen of this article;

25 (12) "Licensee" means any racing association holding a license required by the provisions
26 of section one of this article and issued under the provisions of this article;

27 (13) "Permit holder" means any person holding a permit required by the provisions of
28 section two of this article and issued under the provisions of this article;

29 (14) "Construction permit holder" means any person holding a construction permit required

30 by the provisions of section eighteen of this article and issued under the provisions of this article;

31 (15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

32 (16) "Racing commission" means the West Virginia Racing Commission;

33 (17) "Stewards" means the steward or stewards representing the Racing Commission, the
34 steward or stewards representing a licensee and any other steward or stewards whose duty it is
35 to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the
36 Racing Commission which rules shall specify the number of stewards to be appointed, the method
37 and manner of their appointment and their powers, authority and duties;

38 (18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who
39 have contributed their wagers to one central agency, the odds to be reckoned in accordance to
40 the collective amounts wagered upon each contestant running in a horse or dog race upon which
41 the pool is made, but the total to be divided among the first three contestants on the basis of the
42 number of wagers on these;

43 (19) "Pari-mutuel clerk" means any employee of a licensed racing association who is
44 responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets,
45 verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

46 (20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in
47 such enterprise;

48 (21) "Legitimate breakage" is the percentage left over in the division of a pool;

49 (22) "To the dime" means that wagers shall be figured and paid to the dime;

50 (23) "Code" means the Code of West Virginia, 1931, as heretofore and hereinafter
51 amended;

52 (24) "Accredited thoroughbred horse" means a thoroughbred horse that is registered with
53 the West Virginia Thoroughbred Breeders Association and that is:

54 (A) Foaled in West Virginia; or

55 (B) Sired by an accredited West Virginia sire; or

56 (C) As a yearling, finished 12 consecutive months of verifiable residence in the state,
57 except for 30 days' grace:

58 (i) For the horse to be shipped to and from horse sales where the horse is officially entered
59 in the sales catalogue of a recognized thoroughbred sales company, or

60 (ii) For obtaining veterinary services, documented by veterinary reports;

61 (25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia,
62 stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders
63 Association;

64 (26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it
65 was born in West Virginia;

66 (27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time
67 it finished twelve consecutive months of verifiable residence in the state. During the period, the
68 raiser will be granted one month of grace for his or her horse to be shipped to and from
69 thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized
70 thoroughbred sales company. In the event the yearling was born in another state and transported
71 to this state, this definition does not apply after the December 31, 2007, to any pari-mutuel racing
72 facility located in Jefferson County nor shall it apply after the December 31, 2012, and thereafter
73 to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out
74 of the state for sales, the raiser must notify the Racing Commission of his or her intentions;

75 (28) The "owner of an accredited West Virginia sire" is the owner of record at the time the
76 offspring is conceived;

77 (29) The "owner of an accredited West Virginia horse" means the owner at the time the
78 horse earned designated purses to qualify for restricted purse supplements provided in section
79 thirteen-b of this article;

80 (30) "Registered greyhound owner" means an owner of a greyhound that is registered with
81 the National Greyhound Association;

82 (31) "Fund" means the West Virginia Thoroughbred Development Fund established in
83 section thirteen-b of this article; and

84 (32) "Regular purse" means both regular purses and stakes purses.

**§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. The Racing Commission
6 shall prescribe blank forms to be used in making such application. Such application shall be filed
7 on or before a day to be fixed by the Racing Commission and shall disclose, but not be limited to,
8 the following:

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

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

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

16 (4) The dates, totaling not less than 200, such applicant intends to hold or conduct such
17 horse or dog race meeting (which may be on any day including Sundays): Provided, That effective
18 July 1, 2021, and thereafter, an applicant is not required to race any minimum number of dates in
19 order to qualify for a license to hold a dog race meeting;

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

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

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

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

39 (c) Any person desiring to obtain a permit, as required by the provisions of section two of
40 this article, shall make application therefor on a form prescribed by the Racing Commission. The
41 application for any such permit shall be accompanied by the fee prescribed therefor by the Racing
42 Commission. Each applicant for a permit shall set forth in the application such information as the
43 Racing Commission shall reasonably require.

44 (d) On or after July 1, 2021, a licensee that was licensed prior to January 1, 1994, to
45 conduct dog racing may continue to maintain a license as provided for in §19-22A-7 and §29-
46 22C-8 of this code without the requirement of conducting live racing dates. In order to discontinue
47 live dog racing dates, any such licensee shall comply with the following requirements:

48 (1) Provide written notification to the Racing Commission of the licensee's intent to
49 discontinue live dog racing dates;

50 (2) Comply with any and all requirements established by the Racing Commission for the
51 discontinuance of live dog racing; and

52 (3) Pay a \$10,000 live racing cessation fee, which shall be placed by the Racing
53 Commission in the special revenue account called the Administration, Promotion, Education,
54 Capital Improvement and Greyhound Adoption Programs to Include Spaying and Neutering
55 Account created in §19-23-10(d) of this code, to be allocated specifically to facilitate care for and
56 adoption of, or placement in no-kill animal shelters of accredited West Virginia whelped
57 greyhounds actively running at any such West Virginia dog track.

58 Nothing in this subsection amends or alters any amounts deducted and any other moneys
59 required by this code to be deposited in the West Virginia Greyhound Breeding Development
60 Fund, as created in §19-21-10 of this code, or any other amounts required to be deposited into
61 any fund or paid for the purposes of funding purses, awards or providing any other funding for
62 greyhound racing.

63 (e) The Racing Commission shall have the authority to promulgate rules, including
64 emergency rules, in accordance with §29A-3-1 et seq., of this code, as it deems necessary to
65 implement and efficiently administer the requirement of §19-23-7(d) of this code.

§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 §19-23-2
7 of this code; 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) (1) A licensee conducting not less than 225 live racing dates for each horse or dog
12 race meeting may, with the prior approval of the state Racing Commission, contract with any legal
13 wagering entity in this state or in any other governmental jurisdiction to receive telecasts and
14 accept wagers on races conducted by the legal wagering entity: *Provided, That effective July 1,*
15 2021, and thereafter, a licensee that was licensed prior to January 1, 1994 to conduct dog racing
16 is not required to conduct a minimum number of live racing dates to contract with a legal wagering
17 entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers
18 on dog and horse races: *Provided, however,* That at those thoroughbred racetracks the licensee,
19 in applying for racing dates, shall apply for not less than 210 live racing dates for each horse race
20 meeting: *Provided, however further,* That at those thoroughbred racetracks that have participated
21 in the West Virginia thoroughbred development fund for a period of more than four consecutive
22 calendar years prior to December 31, 1992, the licensee may apply for not less than 159 live
23 racing dates during the calendar year 1997. If, thereafter, for reasons beyond the licensee's
24 control, related to adverse weather conditions, unforeseen casualty occurrences or a shortage of
25 thoroughbred horses eligible to compete for purses, the licensee concludes that this number of
26 racing days cannot be attained, the licensee may file a request with the Racing Commission to
27 reduce the authorized live racing days. Upon receipt of the request the Racing Commission shall
28 within 72 hours of the receipt of the request notify the licensee and the representative of a majority
29 of the owners and trainers at the requesting track and the representative of the majority of the
30 mutuel clerks at the requesting track that such request has been received and that if no objection
31 to the request is received within 10 days of the notification the request will be approved: *And*
32 *provided further,* That the commission shall give consideration to whether there existed available
33 unscheduled potential live racing dates following the adverse weather or casualty and prior to the

34 end of the race meeting which could be used as new live racing dates in order to maintain the full
35 live racing schedule previously approved by the Racing Commission. If an objection is received
36 by the commission within the time limits, the commission shall, within 30 days of receipt of such
37 objection, set a hearing on the question of reducing racing days, which hearing shall be conducted
38 at a convenient place in the county in which the requesting racetrack is located. The commission
39 shall hear from all parties concerned and, based upon testimony and documentary evidence
40 presented at the hearing, shall determine the required number of live racing days: *And provided*
41 *further*, That the commission shall not reduce the number of live racing days below 185 days for
42 a horse race meeting unless the licensee requesting such reduction has: (i) Filed with the
43 commission a current financial statement, which shall be subject to independent audit; and (ii)
44 met the burden of proving that just cause exists for such requested reduction in live racing days.
45 The telecasts may be received and wagers accepted at any location authorized by the provisions
46 of §19-23-12a of this code. The contract must receive the approval of the representative of the
47 majority of the owners and trainers who hold permits required by §19-23-2 of this code at the
48 receiving thoroughbred racetrack.

49 (2) A facility that was licensed prior to January 1, 1994, to conduct dog racing is required
50 to hold a racing license to receive telecasts and accept wagers on dog and horse races,
51 regardless of whether the facility continues to conduct live dog racing: *Provided*, That nothing in
52 this section permits a racetrack to receive telecasts and accept wagers on dog and horse races
53 in more than one location.

54 (3) The commission shall have the authority to promulgate rules, including emergency
55 rules, in accordance with §29A-3-1 *et seq.* of this code, as it deems necessary to implement and
56 efficiently administer the requirement of §19-23-12b(b)(2) of this code: *Provided*, That the rules
57 are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at live
58 racetracks.

59 (c) The commission may allow the licensee to commingle its wagering pools with the

60 wagering pools of the host racing association. If the pools are commingled, the wagering at the
61 licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and
62 be electronically linked with the equipment at the sending racetrack. Subject to the approval of
63 the commission, the types of betting, licensee commissions and distribution of winnings on pari-
64 mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack.
65 Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with
66 the law or rules governing the sending racetrack and must be distributed in a manner agreed to
67 between the licensee and the sending racetrack. For the televised racing services it provides, the
68 host racing association shall receive a fee to be paid by the receiving licensee racetrack which
69 shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing
70 association.

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

74 (e) (1) From the licensee commissions authorized by subsection (c) of this section, the
75 licensee shall pay one tenth of one percent of each commission into the General Fund of the
76 county, in which the racetrack is located and at which the wagering occurred and there is imposed
77 and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool
78 exceeds \$100,000, the greater of either: (i) The total of the daily license tax and the pari-mutuel
79 pools tax required by §19-23-10 of this code; or (ii) a daily license tax of \$1,250. For each televised
80 racing day on which the total pari-mutuel pool is \$100,000, the licensee shall pay a daily license
81 tax of \$500 plus an additional license tax of \$100 for each \$10,000, or part thereof, that the pari-
82 mutuel pool exceeds \$50,000, but does not exceed \$100,000. The calculation of the total pari-
83 mutuel pool for purposes of this subsection shall include only one half of all wagers placed at a
84 licensed racetrack in this state on televised races conducted at another licensed racetrack within
85 this state. Payments of the tax imposed by this section are subject to the requirements of §19-23-

86 10(e) of this code.

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

93 (3) From the licensee commissions authorized by subsection (c) of this section, after
94 payments are made in accordance with the provisions of subdivisions (1) and (2) of this
95 subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for
96 each televised racing day on or after July 1, 1997, an additional five and one-half percent of net
97 simulcast income into the West Virginia thoroughbred development fund established by the
98 Racing Commission according to §19-23-13b of this code: *Provided*, That no licensee qualifying
99 for the alternate tax provisions of §19-23-10(b) of this code shall be required to make the
100 payments unless the licensee has participated in the West Virginia thoroughbred development
101 fund for a period of more than four consecutive calendar years prior to December 31, 1992. For
102 the purposes of this section, the term "net simulcast income" means the total commission
103 deducted each day by the licensee from the pari-mutuel pools on simulcast horse or dog races,
104 less direct simulcast expenses, including, but not limited to, the cost of simulcast signals,
105 telecommunication costs and decoder costs.

106 (f) After deducting the tax and other payments required by subsection (e) of this section,
107 the amount required to be paid under the terms of the contract with the host racing association
108 and the cost of transmission, the horse racing association shall make a deposit equal to 50
109 percent of the remainder into the purse fund established under the provisions of §19-23-9(b)(1)
110 of this code. After deducting the tax and other payments required by subsection (e) of this section,
111 dog racetracks shall pay an amount equal to two tenths of one percent of the daily simulcast pari-

112 mutuel pool to the “West Virginia Racing Commission Special Account-West Virginia Greyhound
113 Breeding Development Fund”.

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

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 §29-22-1 *et seq.* of this code.

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 §19-23-1 *et seq.* of this code permitting the racetrack
43 to operate video lottery terminals authorized by the commission: Provided, That effective July 1,

44 2021, and thereafter, "license" or "video lottery license" also means authorization granted
45 pursuant to said article to a racetrack which was licensed to conduct greyhound racing meetings
46 prior to January 1, 1994.

47 (o) "Lottery" means the public gaming systems or games established and operated by the
48 State Lottery Commission.

49 (p) "Manufacturer" means any person holding a permit granted by the commission to
50 engage in the business of designing, building, constructing, assembling or manufacturing video
51 lottery terminals, the electronic computer components of the video lottery terminals, the random
52 number generator of the video lottery terminals, or the cabinet in which it is housed, and whose
53 product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia,
54 and who contracts directly with the licensee for the sale, lease or other assignment to a licensed
55 racetrack in West Virginia.

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

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

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

65 (t) "Pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" means a facility
66 where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized
67 pursuant to the provisions of §19-23-1 *et seq.* of this code: *Provided, That, for the purposes of*
68 *this article, "pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" includes only a*
69 *facility which was licensed prior to January 1, 1994, to hold horse or dog race meetings, and which*

70 conducts not less than 220 live racing dates for each horse or dog race meeting or such other
71 number of live racing dates as may be approved by the Racing Commission in accordance with
72 the provisions of §19-23-12b of this code: Provided Further, That effective July 1, 2021, and
73 thereafter, "pari-mutuel racing facility," "licensed racetrack," "racetrack" or "track" also includes a
74 racetrack which was licensed to conduct greyhound racing meetings prior to January 1, 1994,
75 and continues to hold a racing license to receive telecasts and accept wagers on horse or dog
76 races, regardless of whether the facility continues to conduct live dog racing.

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

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

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

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

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

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

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

94 (3) Allows the player to win additional game play credits, coins or tokens based upon game
95 rules which establish the random selection of winning combinations of symbols or numbers or

96 both and the number of free play credits, coins or tokens to be awarded for each winning
97 combination of symbols or numbers or both;

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

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

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

105 (aa) "Video lottery" means a lottery which allows a game to be played utilizing an electronic
106 computer and an interactive computer terminal device, equipped with a video screen and keys, a
107 keyboard or other equipment allowing input by an individual player, into which the player inserts
108 coins, currency, vouchers or tokens as consideration in order for play to be available, and through
109 which terminal device the player may receive free games, coins, tokens or credit that can be
110 redeemed for cash, annuitized payments over time, a noncash prize or nothing, as may be
111 determined wholly or predominantly by chance. "Video lottery" does not include a lottery game
112 which merely utilizes an electronic computer and a video screen to operate a lottery game and
113 communicate the results of the game, such as the game "Travel," and which does not utilize an
114 interactive electronic terminal device allowing input by an individual player.

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

119 (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 must hold a valid racing license granted by the
4 West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code: Provided,
5 That effective July 1, 2021, and thereafter, an applicant that held a valid dog racing license prior
6 to January 1, 1994, is not required to hold a valid racing license in order to renew a video lottery
7 license so long as the applicant continues to operate its original facility and continues to maintain
8 and offer amenities, accommodations, options and services at such original facility.

9 (2) An applicant must be a person of good character and integrity.

10 (3) An applicant must be a person whose background, including criminal record,
11 reputation, and associations, does not pose a threat to the security and integrity of the lottery or
12 to the public interest of the state. All new applicants for licenses and permits issued by the
13 commission shall furnish fingerprints for a national criminal records check by the Criminal
14 Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation.
15 The fingerprints shall be furnished by all persons required to be named in the application and
16 shall be accompanied by a signed authorization for the release of information by the Criminal
17 Investigation Bureau and the Federal Bureau of Investigation. The commission may require any
18 applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal
19 records check by the Criminal Identification Bureau of the West Virginia State Police and the
20 Federal Bureau of Investigation: *Provided,* That the Lottery Commission shall apply §29-22A-7(g)
21 and §29-22A-7(h) of this code in determining whether an applicant's prior criminal convictions
22 bear a rational nexus to the license or permit being sought.

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 30
34 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 §19-23-2 of this code.

41 (7) A racetrack applying for a video lottery license or a license renewal must file with the
42 commission a copy of any current or proposed agreement between the applicant and any
43 manufacturer for the sale, lease, or other assignment to the racetrack of video lottery terminals,
44 the electronic computer components of the terminals, the random number generator of the
45 terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is
46 a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

47 (b) No video lottery license or permit may be granted to an applicant until the commission
48 determines that each person who has control of the applicant meets all applicable qualifications
49 of subsection (a) of this section. The following persons are considered to have control of an
50 applicant:

51 (1) Each person associated with a corporate applicant, including any corporate holding

52 company, parent company, or subsidiary company of the applicant, but not including a bank or
53 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary
54 course of business, who has the ability to control the activities of the corporate applicant or elect
55 a majority of the board of directors of that corporation.

56 (2) Each person associated with a noncorporate applicant who directly or indirectly holds
57 any beneficial or proprietary interest in the applicant or whom the commission determines to have
58 the ability to control the applicant.

59 (3) Key personnel of an applicant, including any executive, employee or agent, having the
60 power to exercise significant influence over decisions concerning any part of the applicant's
61 business operation.

62 (c) Applicants must furnish all information, including financial data and documents,
63 certifications, consents, waivers, individual history forms, and other materials requested by the
64 commission for purposes of determining qualifications for a license or permit. No video lottery
65 license or permit may be granted to an applicant who fails to provide information and
66 documentation requested by the commission. The burden of proving qualification for any video
67 lottery license or permit is on the applicant.

68 (d) Each applicant bears all risks of adverse public notice, embarrassment, criticism,
69 damages, or financial loss which may result from any disclosure or publication of any material or
70 information obtained by the commission pursuant to action on an application. The applicant shall,
71 as a part of its application, expressly waive any and all claims against the commission, the State
72 of West Virginia and the employees of either for damages as a result of any background
73 investigation, disclosure, or publication relating to an application for a video lottery license or
74 permit.

75 (e) All application, registration, and disclosure forms and other documents submitted to
76 the commission by or on behalf of the applicant for purposes of determining qualification for a
77 video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer

78 oaths.

79 (f) An applicant who knowingly fails to reveal any fact material to qualification or who
80 knowingly submits false or misleading material information is ineligible for a video lottery license
81 or permit.

82 (g) The Lottery Commission may not disqualify an applicant from an initial license or permit
83 because of a prior criminal conviction that remains unreversed unless that conviction is for a crime
84 that bears a rational nexus to the activity requiring a license or permit. In determining whether a
85 criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission
86 shall consider at a minimum:

87 (1) The nature and seriousness of the crime for which the individual was convicted;

88 (2) The passage of time since the commission of the crime;

89 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
90 duties and discharge the responsibilities of the profession or occupation; and

91 (4) Any evidence of rehabilitation or treatment undertaken by the individual.

92 (h) Notwithstanding any other provision of this code to the contrary, if an applicant is
93 disqualified from a license or permit because of a prior criminal conviction, the Lottery
94 Commission shall permit the applicant to apply for an initial license or permit if:

95 (1) A period of five years has elapsed from the date of conviction or the date of release
96 from incarceration, whichever is later;

97 (2) The individual has not been convicted of any other crime during the period of time
98 following the disqualifying offense; and

99 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
100 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
101 of disqualification from a license or permit, to be determined by the Lottery Commission.

102 (i) An individual with a criminal record who has not previously applied for a license or
103 permit may petition the Lottery Commission at any time for a determination of whether the

104 individual's criminal record will disqualify the individual from obtaining a license or permit. This
105 petition shall include sufficient details about the individual's criminal record to enable the Lottery
106 Commission to identify the jurisdiction where the conviction occurred, the date of the conviction,
107 and the specific nature of the conviction. The Lottery Commission shall provide the determination
108 within 60 days of receiving the petition from the applicant. The Lottery Commission may charge
109 a fee to recoup its costs for each petition.

§29-22A-12. Number and location of video lottery terminals security.

1 (a) A racetrack which has been licensed to conduct video lottery games has the right to
2 install and operate up to 400 video lottery terminals at a licensed racetrack. A licensed racetrack
3 may apply to the commission for authorization to install and operate more than 400 video lottery
4 terminals. If the commission determines that the installation of additional machines is in the best
5 interest of the licensed racetrack, the Lottery Commission and the citizens of this state, the
6 commission may grant permission to install and operate additional machines.

7 (b) All video lottery terminals in licensed racetracks shall be physically located as follows:

8 (1) The video lottery location shall be continuously monitored through the use of a closed
9 circuit television system capable of recording activity for a continuous 24-hour period. All video
10 tapes shall be retained for a period of at least 30 days;

11 (2) Access to video lottery terminal locations shall be restricted to persons legally entitled
12 by age to play video lottery games;

13 (3) The licensed racetrack shall submit for commission approval a floor plan of the area
14 or areas where video lottery terminals are to be operated showing terminal locations and security
15 camera mount locations;

16 (4) No video lottery terminal may be relocated without prior approval from the commission;
17 and

18 (5) Operational video lottery terminals may only be located in the building or structure in
19 which the grandstand area of the racetrack is located and in the area of the building or structure

20 where pari-mutuel wagering is permitted under the provisions of §19-23-1 *et seq.* of this code:
21 *Provided, That* if the commission, before November 1, 1993, has authorized any racetrack to
22 operate video lottery terminals and offer video lottery games in a location which would not conform
23 to the requirements of this subdivision, the racetrack may continue to use video lottery terminals
24 registered with and approved by the commission at that nonconforming location and to offer the
25 games and any variations or composites of the games as may be approved by the commission:
26 *Provided, however, That a racetrack that held a valid dog racing license prior to January 1, 1994,*
27 *and that no longer conducts live racing, may continue to operate operational video lottery*
28 *terminals in the building or structure in which the grandstand area of the racetrack was located*
29 *and in the area of the building or structure where pari-mutuel wagering was permitted between*
30 *January 1, 1994 and June 30, 2021, so long as applicant continues to operate its original facility*
31 *and continues to maintain and offer amenities, accommodations, options and services at such*
32 *original facility.*

33 (6) Nothing in this subdivision permits a licensed racetrack to operate operational video
34 lottery terminals or offer video lottery games in more than one location.

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

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

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

§29-22C-3. Definitions.

1 (a) *Applicability of definitions.* -- For the purposes of this article, the words or terms defined

2 in this section, and any variation of those words or terms required by the context, have the
3 meanings ascribed to them in this section. These definitions are applicable unless a different
4 meaning clearly appears from the context in which the word or term is used.

5 (b) *Terms defined.* --

6 (1) "Adjusted gross receipts" means gross receipts from West Virginia Lottery table games
7 less winnings paid to patrons wagering on the racetrack's table games.

8 (2) "Applicant" means any person who on his or her own behalf, or on behalf of another,
9 has applied for permission to engage in any act or activity that is regulated under the provision of
10 this article for which a license is required by this article or rule of the commission.

11 (3) "Application" means any written request for permission to engage in any act or activity
12 that is regulated under the provisions of this article submitted in the form prescribed by the
13 commission.

14 (4) "Background investigation" means a security, criminal and credit investigation of an
15 applicant who has applied for the issuance or renewal of a license pursuant to this article, or a
16 licensee who holds a current license.

17 (5) "Commission" or "State Lottery Commission" means the West Virginia Lottery
18 Commission created by §29-22-1 *et seq.* of this code.

19 (6) "Complimentary" means a service or item provided at no cost or at a reduced price.

20 (7) "Compensation" means any money, thing of value, or financial benefit conferred or
21 received by a person in return for services rendered, or to be rendered, whether by that person
22 or another.

23 (8) "Contested case" means a proceeding before the commission, or a hearing examiner
24 designated by the commission to hear the contested case, in which the legal rights, duties,
25 interests or privileges of specific persons are required by law or Constitutional right to be
26 determined after a commission hearing, but does not include cases in which the commission
27 issues a license, permit or certificate after an examination to test the knowledge or ability of the

28 applicant where the controversy concerns whether the examination was fair or whether the
29 applicant passed the examination and does not include rule making.

30 (9) "Control" means the authority directly or indirectly to direct the management and
31 policies of an applicant for a license issued under this article or the holder of a license issued
32 under this article.

33 (10) "Designated gaming area" means one or more specific floor areas of a licensed
34 racetrack within which the commission has authorized operation of racetrack video lottery
35 terminals or table games, or the operation of both racetrack video lottery terminals and West
36 Virginia Lottery table games.

37 (11) "Director" means the Director of the West Virginia State Lottery Commission
38 appointed pursuant to §29-22-6 of this code.

39 (12) "Disciplinary action" is an action by the commission suspending or revoking a license,
40 fining, excluding, reprimanding or otherwise penalizing a person for violating this article or rules
41 promulgated by the commission.

42 (13) "Financial interest" or "financially interested" means any interest in investments,
43 awarding of contracts, grants, loans, purchases, leases, sales or similar matters under
44 consideration for consummation by the commission. A member, employee or agent of the
45 commission will be considered to have a financial interest in a matter under consideration if any
46 of the following circumstances exist:

47 (A) He or she or she owns one percent or more of any class of outstanding securities that
48 are issued by a party to the matter under consideration by the commission; or

49 (B) He or she or she is employed by an independent contractor for a party to the matter
50 under consideration or consummated by the commission.

51 (14) "Gaming equipment" means gaming tables, cards, dice, chips, shufflers, drop boxes
52 or any other mechanical, electronic or other device, mechanism or equipment or related supplies
53 used or consumed in the operation of any West Virginia Lottery table game at a licensed

54 racetrack.

55 (15) "Gross receipts" means the total of all sums including valid or invalid checks, currency,
56 tokens, coupons (excluding match play coupons), vouchers or instruments of monetary value
57 whether collected or uncollected, received by a racetrack with table games from table gaming
58 operations at a race track, including all entry fees assessed for tournaments or other contests.

59 (16) "Indirect ownership" means an interest a person owns in an entity or in property solely
60 as a result of application of constructive ownership rules without regard to any direct ownership
61 interest (or other beneficial interest) in the entity or property. "Indirect ownership" shall be
62 determined under the same rules applicable to determining whether a gain or loss between
63 related parties is recognized for federal income tax purposes.

64 (17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility
65 licensed under both article §29-22A-1 *et seq.* and §19-23-1 *et seq.* of this code: Provided, That
66 effective July 1, 2021, and thereafter, "licensed racetrack" or "racing association" includes a facility
67 which was licensed prior to January 1, 1994, to hold dog race meetings and which is licensed
68 under §29-22C-1 *et seq.* of this code.

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

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

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

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

79 (D) A license to provide management services under a contract to a racetrack licensed

80 under this article to operate table games.

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

82 (20) "Lottery" means the public gaming systems or games regulated, controlled, owned
83 and operated by the state Lottery Commission in the manner provided by general law, as provided
84 in this article and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, and §29-25-1 *et seq.*
85 of this code.

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

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

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

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

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

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

103 (27) "Racetrack table games license" means authorization granted under this article by
104 the commission to a racetrack that is already licensed under §29-22A-1 *et seq.* of this code to
105 operate racetrack video lottery terminals and holds a valid horse racing license or held a valid dog

106 racetrack license prior to January 1, 1994, granted by the West Virginia Racing Commission pursuant
107 to the provision of §19-23-1 *et seq.* of this code, which permits the racetrack as an agent of the
108 commission for the limited purpose of operation of West Virginia Lottery table games in one or
109 more designated gaming areas in one or more buildings owned or leased by the licensed
110 racetrack on the grounds where live pari-mutuel racing is conducted by the licensee, or in the
111 case of a licensee that held a valid dog racing license prior to January 1, 1994, and that no longer
112 conducts live racing, on the grounds where live pari-mutuel racing was conducted between
113 January 1, 1994, and June 30, 2021.

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

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

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

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

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

129 (33) "Winnings" means the total cash value of all property or sums including currency,
130 tokens, or instruments of monetary value paid to players as a direct result of wagers placed on
131 West Virginia Lottery table games.

§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.

1 (a) *Racetrack table games licenses.* -- The commission may issue up to four racetrack
2 table games licenses to operate West Virginia Lottery table games in accordance with the
3 provisions of this article. The Legislature intends that no more than four licenses to operate a
4 racetrack with West Virginia Lottery table games in this state shall be permitted in any event.

5 (b) *Grant of license.* -- Upon the passage of a local option election in a county in
6 accordance with the provisions of 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 §29-22A-1 *et seq.* of this code and a valid racing
12 license granted by the West Virginia Racing Commission pursuant to the provision of §19-23-1 *et*
13 *seq.* and has otherwise met the requirements for licensure under the provisions of this article and
14 the rules of the commission: Provided, That effective July 1, 2021, and thereafter, a racetrack that
15 held a valid dog racing license prior to January 1, 1994, is not required to hold a current dog racing
16 license so long as the applicant continues to operate its original facility and continues to maintain
17 and offer amenities, accommodations, options and services at such original facility.

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

22 (d) *Floor plan submission requirement.* -- Prior to commencing the operation of any table
23 games in a designated gaming area, a racetrack table games licensee shall submit to the
24 commission for its approval a detailed floor plan depicting the location of the designated gaming
25 area in which table games gaming equipment will be located and its proposed arrangement of the

26 table games gaming equipment. Any floor plan submission that satisfies the requirements of the
27 rules promulgated by the commission shall be considered approved by the commission unless
28 the racetrack table games licensee is notified in writing to the contrary within one month of filing
29 a detailed floor plan.

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

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

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

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

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

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

51 (1) The provisions of this article and of §29-22A-1 *et seq.* of this code shall be interpreted

52 to allow West Virginia Lottery table games and racetrack video lottery operations under those
53 articles to be harmoniously conducted in the same designated gaming area.

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

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

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

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

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

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

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

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

76 (3) *Annual license surcharge for failure to construct hotel on premises.* -- It is the intent of
77 the Legislature that each racetrack for which a racetrack table games license has been issued be

78 or become a destination tourism resort facility. To that end, it is important that each racetrack for
79 which a racetrack table games license has been issued operate a hotel with significant amenities.
80 Therefore, in addition to all other taxes and fees required by the provisions of this article, there is
81 hereby imposed, upon each racetrack for which a racetrack table games license has been issued
82 an annual license surcharge, payable to the commission in the amount of \$2,500,000 if that
83 racetrack does not operate a hotel on its racing property that contains at least 150 guest rooms
84 with significant amenities within three years of the passage of the local option election in its county
85 authorizing table games at the racetrack, provided the time for completion of the hotel shall be
86 extended by the same number of days as the completion of the hotel is delayed by a force majeure
87 events or conditions beyond the reasonable control of the racetrack licensee. The surcharge shall
88 be paid upon each renewal of its racetrack table games license made after the expiration of the
89 three year period, and may be extended by the above force majeure events or conditions, until
90 the racetrack opens a qualifying hotel.

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

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

102 (i) *Surety bond.* -- A racetrack table games licensee shall execute a surety bond to be
103 given to the state to guarantee the licensee faithfully makes all payments in accordance with the

104 provisions of this article and rules promulgated by the commission. The surety bond shall be:

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

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

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

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

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

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

124 (m) Nothing in this section permits a licensed racetrack to operate West Virginia Lottery
125 table games in more than one location.

§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 licensee's 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 licensee's table games activities and related activities occur, for
27 the purpose of monitoring or inspecting the licensee's 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 220 live racing dates for each horse or dog race meeting or such
31 other number of live racing dates as may be approved by the Racing Commission in accordance
32 with the provisions of §19-23-12b of this code, and otherwise keep in good standing, all licenses
33 and permits granted by the Racing Commission pursuant to §19-23-6 of this code, and any rules
34 promulgated thereunder: Provided, That effective July 1, 2021, and thereafter, a racetrack that
35 held a valid dog racing license prior to January 1, 1994, is not required to race any minimum
36 number of dates.

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

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

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

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

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

51 (5) Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or
52 other electronic media;

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

56 (7) Assume liability for stolen money from any table game.

NOTE: The purpose of this bill is to clarify that a licensed racetrack casino must not maintain an active dog racing license in order to receive telecasts and accept wagers on dog and horse races, or to otherwise apply and qualify for a video lottery or racetrack table game licenses.

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