WEST virginia legislature

2023 regular session

Introduced

House Bill 3031

By Delegates Kirby, Longanacre, Brooks, Toney, Butler, Thorne, Chiarelli, Pinson, Steele, and Foster

[Introduced ; Referred

to the Committee on]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12n; to amend and reenact §19-23-3, §19-23-7, §19-23-10, §19-23-12b, §19-23-13, and §19-23-13c of said code; to amend said code by adding thereto a new section, designated §19-23-10a; to amend and reenact §29-22-18a of said code; to amend and reenact §29-22A-3, §29-22A-7, §29-22A-10, §29-22A-10b, §29-22A-10d, §29-22A-10e, and §29-22A-12 of said code; and to amend and reenact §29-22C-3, §29-22C-8, §29-22C-10, §29-22C-27, and §29-22C-27a of said code, all relating generally to horse and dog racing lottery; modifying certain definitions; discontinuing the West Virginia Racing Commission special account known as the West Virginia Greyhound Breeding Development Fund; transferring all moneys in the West Virginia Greyhound Breeding Development Fund to the State Excess Lottery Revenue Fund for appropriation by the Legislature; requiring that upon transfer of moneys from the West Virginia Greyhound Breeding Development Fund to the State Excess Lottery Revenue Fund, a certain amount be withheld and deposited in the special account known as the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account; requiring that all moneys previously required to be directed to the West Virginia Greyhound Breeding Development Fund be redirected to the State Excess Lottery Revenue Fund for appropriation by the Legislature; requiring that all moneys previously required to be directed into any fund or paid for the purposes of funding purses, awards, or providing any other funding for greyhound races to be redirected to the State Excess Lottery Revenue Fund for appropriation by the Legislature; eliminating the requirement that an applicant for a dog racing license race a minimum number of dates to qualify for such a license; eliminating the requirement that an applicant for a dog racing license race a minimum number of dates to contract to receive telecasts and accept wagers; providing that a dog racetrack is required to hold a racing license to conduct simulcast racing regardless of whether the racetrack continues to conduct live dog racing; authorizing the West Virginia Racing Commission to promulgate rules, including emergency rules, regarding licensure of dog racetracks conducting only simulcast racing; eliminating the requirement that a video lottery licensee at a dog track must hold a racing license to renew a video lottery license or racetrack table games license; requiring the Lottery Commission to transfer a percentage of gross terminal revenue derived from racetrack video lottery at thoroughbred tracks, and deducted for administrative costs and expenses, to the Racing Commission’s General Administrative Account; eliminating the requirement that an applicant for a video lottery license or license renewal at a dog racetrack must provide evidence of the existence of an agreement regarding proceeds from video lottery terminals with certain parties; providing that a percentage of net terminal income originating at thoroughbred racetracks will be deposited in the West Virginia Thoroughbred Development Fund; permitting a dog racetrack to continue to operate operational video lottery and racetrack table games in a location where live racing was previously conducted; eliminating the requirement that a racetrack table games licensee at a dog racetrack must race a minimum number of dates; providing a one-time credit toward personal income taxes for the adoption of displaced greyhounds; and requiring that a certain amount of money be withheld and deposited into a special revenue account known as the Displaced Workers Employment Retraining Fund to assist with the retraining of workers directly impacted by the termination of greyhound racing.

Be it enacted by the Legislature of West Virginia:

chapter 11. taxation.

article 21. personal income tax.

§11-21-12n. Credit for greyhound dog adoption.

For taxable years beginning on or after January 1, 2023, any state resident that adopts a greyhound dog acquired from a licensed greyhound breeder in this state, either directly from the licensed breeder or from a humane society or other nonprofit organization promoting the adoption of displaced greyhound dogs, is entitled to a one-time credit against the taxes imposed by the provisions of this article in the amount of $500: *Provided,* That this tax credit expires effective January 1, 2025.

chapter 19. agriculture.

Part II. Definitions; West Virginia Racing Commissioner – Organization and Operation.

Article 23. horse and dog racing.

§19-23-3. Definitions.

Unless the context clearly requires a different meaning, as used in this article:

~~(1)~~ "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

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

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

~~(4)~~ "Horse race meeting" means the whole period of time for which a license is required by the provisions of §19-23-1 of this code;

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

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

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

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

~~(9)~~ "License" means the license required by the provisions of §19-23-1 of this code or the license required to conduct televised racing pursuant to §19-23-12b of this code;

~~(10)~~ "Permit" means the permit required by the provisions of §19-23-2 of this code;

~~(11)~~ "Construction permit" means the construction permit required by the provisions of §19-23-18 of this code;

~~(12)~~ "Licensee" means any racing association holding a license required by the provisions of §19-23-1 of this code and issued under the provisions of this article;

~~(13)~~ "Permit holder" means any person holding a permit required by the provisions of §19-23-2 of this code and issued under the provisions of this article;

~~(14)~~ "Construction permit holder" means any person holding a construction permit required by the provisions of §19-23-18 of this code and issued under the provisions of this article;

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

~~(16)~~ "Racing Commission" means the West Virginia Racing Commission;

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

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

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

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

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

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

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

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

(A) Foaled in West Virginia; or

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

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

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

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

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

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

~~(27)~~ "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished 12 consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. In the event the yearling was born in another state and transported to this state, this definition does not apply after ~~the~~ December 31, 2007, to any pari-mutuel racing facility located in Jefferson County nor shall it apply after ~~the~~ December 31, 2012, and thereafter to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out of the state for sales, the raiser must notify the Racing Commission of his or her intentions;

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

~~(29)~~ The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided in §19-23-13b of this code;

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

~~(31)~~ "Fund" means the West Virginia Thoroughbred Development Fund established in §19-23-13b of this code; and

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

Part V. License and Permit Procedures.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.

(a) Any racing association desiring to hold or conduct a horse or dog race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the Racing Commission an application for a license to hold or conduct such horse or dog race meeting. A separate application shall be filed for each separate license sought for each horse or dog race meeting which such applicant proposes to hold or conduct. The Racing Commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the Racing Commission and shall disclose, but not be limited to, the following:

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

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

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

(4) The dates, totaling not less than 200, such applicant intends to hold or conduct such horse or dog race meeting (which may be on any day including Sundays): *Provided,* That effective July 1, 2023, and thereafter, an applicant is not required to race any minimum number of dates in order to qualify for a license to hold a dog race meeting;

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

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

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

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

(c) Any person desiring to obtain a permit, as required by the provisions of §19-23-2 of this code, shall make application therefor on a form prescribed by the Racing Commission. The application for any such permit shall be accompanied by the fee prescribed therefor by the Racing Commission. Each applicant for a permit shall set forth in the application such information as the Racing Commission shall reasonably require.

Part VII. Taxation of Horse and Dog Racing and Pari-Mutuel Wagering; Disposition of Revenues.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of $250. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of $150. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of $150. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of $250 shall be paid for that day. Any daily license tax shall not apply to any local, county, or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November, and December, shall be calculated at four tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at one and four-tenths percent of the pool: *Provided,* That out of the amount realized from the three tenths of one percent decrease in the tax effective for fiscal year 1991 and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate: (i) One half of the realized amount for capital improvements in its barn area at the track, subject to the Racing Commission’s prior approval of the plans for the improvements; and (ii) the remaining one half of the realized amount for capital improvements as the licensee may determine appropriate at the track. The term "capital improvement" shall be as defined by the Internal Revenue Code: *Provided, however,* That any racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of $280,000 or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding $300,000 the daily pari-mutuel pool tax shall be $1,000 plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of $300,000: *Provided further,* That upon the effective date of the reduction of the daily pari-mutuel pool tax to $1,000 from the former $2,000, the association or licensee shall daily deposit $500 into the special fund for regular purses established by §19-23-9(b)(1) of this code: *And provided further,* That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to 13 races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: *And provided further,* That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by §19-23-13b of this code: *And provided further,* That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years prior to December 31, 1992.

(c) Any racing association licensed by the Racing Commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first $100,000 wagered, or any part thereof; four percent of the next $150,000; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the Racing Commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first $50,000 or any part thereof of the pari-mutuel pools, five percent of the next $50,000 of the pari-mutuel pools, six percent of the next $100,000 of the pari-mutuel pools, seven percent of the next $150,000 of the pari-mutuel pools, and eight percent of all over $350,000 wagered each day: *Provided,* That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year 1990; fifteen hundredths of one percent in fiscal year 1991; two tenths of one percent in fiscal year 1992; one quarter of one percent in fiscal year 1993; and three tenths of one percent in fiscal year 1994 and every fiscal year thereafter. The amounts deducted shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as the West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund: *Provided*, *however,* That effective July 1, 2023, and thereafter, the amounts deducted and any other moneys required by this section to be deposited in the West Virginia Greyhound Breeding Development Fund shall instead be deposited in the State Excess Lottery Revenue Fund pursuant to the provisions of §19-23-10a of this code: *Provided further,* That effective July 1, 2023, and thereafter, any expenditures from the West Virginia Greyhound Breeding Development Fund required by this section shall be discontinued: *And provided further,* That effective July 1, 2023, and thereafter, all amounts required by this section to be deposited into any fund or paid for the purpose of funding purses, awards, or providing any other funding for dog races shall be discontinued pursuant to §19-23-10a of this code. The purpose of the West Virginia Greyhound Breeding Development Fund is to promote better breeding, training track facilities, and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to participate and be eligible to receive an award or purse through the fund, the registered greyhound owner must have an appropriate license from the Racing Commission to race in West Virginia. The registered greyhound dam at the time of breeding must be wholly or solely owned or leased by a bona fide resident or residents of West Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned by a bona fide resident or residents of this state. To qualify as a bona fide resident of West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the State of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The Racing Commission shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses for stake races, training track facilities, supplemental purse awards, administration, promotion, education, and greyhound adoption programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the Racing Commission. The Racing Commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of $75,000 for the fiscal year ending June 30, 1994. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of §19-23-9 of this code. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the Racing Commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.

The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of 50 percent of the total moneys deposited into the West Virginia Greyhound Breeding Development Fund monthly.

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

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the Racing Commission for a percentage of his or her dog’s earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the 15th day of each month for the preceding month’s achievements.

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

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: *Provided,* That not more than $2 million from the balance in the purse supplemental fund shall be used for the construction and maintenance of two dog training track facilities if such be approved by the Racing Commission: *Provided, however,* That not more than $1 million may be allocated for the construction and maintenance of each training track: *Provided further,* That both training track facilities must be located in West Virginia. The West Virginia Racing Commission shall be authorized to promulgate rules governing dog training tracks: *And provided further,* That the Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the construction or maintenance, or both, of the training tracks; and (2) set standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

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

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: *Provided,* That each pari-mutuel track shall have one juvenile and one open stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for accredited West Virginia whelped greyhounds per race card: *Provided, however,* That sufficient dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West Virginia Racing Commission by July 1 each year shall establish and announce the minimum number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West Virginia dog tracks must have on their racing active list during the calendar year following such action. The minimum number may vary from dog track to dog track. The minimum number shall be established after consultation with the West Virginia Greyhound Owners and Breeders Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel’s racing license. The Racing Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the Greyhound Breeding Development Fund beginning July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to Include Spaying and Neutering Account. The Racing Commission is authorized to expend the moneys deposited in the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to Include Spaying and Neutering Account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: *Provided,* That beginning with fiscal year 1995 and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the Executive Budget Document and Budget Bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion, education, capital improvement, and greyhound adoption programs to include spaying and neutering. The commission shall make an annual report to the Legislature on the status of the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to Include Spaying and Neutering Account, including the previous year’s expenditures and projected expenditures for the next year.

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

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

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of §19-23-9 and §19-23-10 of this code, shall annually submit to the Racing Commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position, and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

§19-23-10a. West Virginia Greyhound Breeding Development Fund; transfer of current funds and future deposits.

(a) Notwithstanding any other provision of this code, effective July 1, 2023, the West Virginia Greyhound Breeding Development Fund created in §19-23-10 of this code is discontinued. On or before July 1, 2023, all amounts remaining in the West Virginia Greyhound Breeding Development Fund shall be transferred to the State Excess Lottery Revenue Fund created in §29-22-18a of this code for appropriation by the Legislature: *Provided*,That $1 million shall be withheld by the Racing Commission and placed in the special revenue account called the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account created in §19-23-10(d) of this code, to be allocated specifically to facilitate care for and adoption of, or placement in no-kill animal shelters of, accredited West Virginia whelped greyhounds actively running at each West Virginia dog track: *Provided, however,* That $3 million shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the Displaced Racing Workers Employment Retraining Fund, which is to be allocated by Workforce West Virginia for the retraining of any workers with a direct relationship to the greyhound racing industry who are displaced as a direct result of the termination of the West Virginia Greyhound Breeding Development Fund, as verified by the Racing Commission. Any funds remaining in either the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account or the Displaced Racing Workers Employment Retraining Fund as of June 30, 2024, shall thereafter be transferred into the State Excess Lottery Revenue Fund for appropriation by the Legislature.

(b) Notwithstanding any other provision of this code, effective July 1, 2023, and thereafter, all amounts required to be deposited into the West Virginia Greyhound Breeding Development Fund prior to the enactment of this section shall, in lieu thereof, be deposited into the State Excess Lottery Revenue Fund for appropriation by the Legislature: *Provided*, That net terminal lottery income shall be distributed as provided in §29-22A-10(c)(5) and §29-22A-10b(a)(5) of this code.

(c) Notwithstanding any other provision of this code to the contrary, effective July 1, 2023, and thereafter, all amounts required to be deposited into any fund or paid for the purpose of funding purses, awards or providing any other funding for greyhound races shall, in lieu thereof, be deposited into the State Excess Lottery Fund for appropriation by the Legislature.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at other racetracks in this state or at racetracks outside of this state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by §19-23-2 of this code; and

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

(b) (1) A licensee conducting not less than 220 live racing dates for each horse or dog race meeting may, with the prior approval of the State Racing Commission, contract with any legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers on races conducted by the legal wagering entity: *Provided,* That effective July 1, 2023, and thereafter, a licensee that was licensed prior to January 1, 1994, to conduct dog racing is not required to conduct a minimum number of live racing dates to contract with a legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers on dog and horse races: *Provided, however,* That at those thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less than 210 live racing dates for each horse race meeting: *Provided further,* That at those thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, the licensee may apply for not less than 159 live racing dates during the calendar year 1997. If, thereafter, for reasons beyond the licensee’s control, related to adverse weather conditions, unforeseen casualty occurrences, or a shortage of thoroughbred horses eligible to compete for purses, the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the Racing Commission to reduce the authorized live racing days. Upon receipt of the request the Racing Commission shall within 72 hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track and the representative of the majority of the mutuel clerks at the requesting track that such request has been received and that if no objection to the request is received within 10 days of the notification the request will be approved: *And provided further,* That the commission shall give consideration to whether there existed available unscheduled potential live racing dates following the adverse weather or casualty and prior to the end of the race meeting which could be used as new live racing dates in order to maintain the full live racing schedule previously approved by the Racing Commission. If an objection is received by the commission within the time limits, the commission shall, within 30 days of receipt of such objection, set a hearing on the question of reducing racing days, which hearing shall be conducted at a convenient place in the county in which the requesting racetrack is located. The commission shall hear from all parties concerned and, based upon testimony and documentary evidence presented at the hearing, shall determine the required number of live racing days: *And provided further,* That the commission shall not reduce the number of live racing days below 185 days for a horse race meeting unless the licensee requesting such reduction has: (i) Filed with the commission a current financial statement, which shall be subject to independent audit; and (ii) met the burden of proving that just cause exists for such requested reduction in live racing days. The telecasts may be received and wagers accepted at any location authorized by the provisions of §19-23-12a of this code. The contract must receive the approval of the representative of the majority of the owners and trainers who hold permits required by §19-23-2 of this code at the receiving thoroughbred racetrack.

(2) A facility that was licensed prior to January 1, 1994, to conduct dog racing is required to hold a racing license to receive telecasts and accept wagers on dog and horse races, regardless of whether the facility continues to conduct live dog racing.

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

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

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

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

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

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

(f) After deducting the tax and other payments required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the host racing association and the cost of transmission, the horse racing association shall make a deposit equal to 50 percent of the remainder into the purse fund established under the provisions of §19-23-9(b)(1) of this code. After deducting the tax and other payments required by subsection (e) of this section, dog racetracks shall pay an amount equal to two tenths of one percent of the daily simulcast pari-mutuel pool to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund: *Provided*, That effective July 1, 2023, and thereafter, the amount required to be paid to the West Virginia Greyhound Breeding Development Fund by this subsection shall instead be paid to the State Excess Lottery Revenue Fund pursuant to §19-23-10a of this code.

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

Part VIII. Disposition of Funds for Payment of Outstanding and Unredeemed Pari-Mutuel Tickets; Irredeemable Tickets; Awards.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within 90 days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the Racing Commission within 15 days after the expiration of the 90-day period, and the licensee shall give any information required by the Racing Commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets. Notice of the amount, date and place of each deposit shall be given by the Racing Commission, in writing, to the State Treasurer. The Racing Commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed tickets for payment at the principal office of the Racing Commission within 90 days from the date of the publication of the notice. The notice shall be published within 15 days following the receipt of the outstanding and unredeemed pari-mutuel ticket moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county in which the horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for payment within 90 days from the date of the publication of the notice are thereafter irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the property of the Racing Commission and shall be expended as provided in subsections (c) and (d) of this section. The Racing Commission shall maintain separate accounts for each licensee and shall record in each separate account the moneys turned over by the licensee and the amount expended at the licensee’s track for the purposes set forth in this subsection.

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

(1) The unredeemed pari-mutuel tickets attributable to each licensee horse racetrack together with funds distributed pursuant to §29-22-18a of this code shall be used for claims received pursuant to this subsection by the Racing Commission each calendar quarter: *Provided*, That the first distribution after the effective date of amendments to this section made during the 2010 regular legislative session shall not occur until February 2011 and then each calendar quarter thereafter. Any claims made pursuant to this subsection must be submitted to the Racing Commission no later than 15 days after the race where the funds are awarded. The funds in the two special accounts - unredeemed pari-mutuel tickets shall be distributed based on claims received from each horse racetrack as follows:

(A) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the owner of the horse is at the time of the horse race a bona fide resident of this state, a sum equal to 10 percent of the purse won by the horse at that race: *Provided, however*, That in the event there are more than 10 races in any performance, the award to the resident owner of the winning horse will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he or she filed a personal income tax return in this state for the previous two years and that he or she owned real or personal property in this state and paid taxes in this state on real or personal property for the previous two years, he or she shall be presumed to be a bona fide resident of this state; and

(B) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the mare foaled in this state, a sum equal to 10 percent of the purse won by the horse: *Provided, however*, That in the event there are more than 10 races in any performance, the award to the breeder will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance; and

(C) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the mare which foaled the winning horse was served by a stallion standing and registered in this state, a sum equal to 10 percent of the purse won by the horse: *Provided, however*, That in the event there are more than 10 races in any performance, the award to the owner of the stallion will be a percentage of the purse based upon the fractional share represented by the number of races on the day of the performance.

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

(3) If after paying any claims pursuant to this subsection and funds remain in the accounts, those funds shall carry over to the next calendar quarter. If in any quarter the surplus in either account reaches a balance of $1 million, then that surplus balance shall be placed in to the regular purse fund of that licensee horse racetrack whose unredeemed pari-mutuel account achieves the surplus.

(d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be combined into a single balance and distributed quarterly to the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund: *Provided,* That effective July 1, 2023, and thereafter, the balance shall instead be distributed to the State Excess Lottery Revenue Fund pursuant to §19-23-10a of this code. The deposit made pursuant to this subsection does not create a continuing obligation of payment except to the extent that there are unredeemed pari-mutuel tickets from the licensee dog racetracks.

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

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

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

(2) The Racing Commission is authorized to pay claims received for races completed on or before June 30, 2010, without regard to date of deposit or date of claim. Claims shall be paid in date order, with the oldest claims being paid first, until all claims have been satisfied. All payments made pursuant to this subsection for claims received on purses won on or before June 30, 2010, shall extinguish any further obligation by the state with respect to those claims.

(g) The commission shall submit to the Legislative Auditor a quarterly report and accounting of the income and expenditures in the special account created by this section known as the West Virginia Racing Commission Special Account - Unredeemed Pari-mutuel Tickets.

(h) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under §19-23-13b of this code.

(i) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the State Treasurer collected from the pari-mutuel pools’ tax provided for in §19-23-10 of this code, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the State Auditor.

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

Part IX. Disposition of Permit Fees, Registration Fees, and Fines.

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

(a) Funds received by the Racing Commission pursuant to §29-22A-10(c)(6) of this code, and §29-22A-10b(a)(5) of this code, after the effective date of this section together with the balance in the bank account previously established by the commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as the West Virginia Racing Commission Racetrack Video Lottery Account. Notice of the amount, date, and place of each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

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

(1) For each fiscal year, the first $800,000 deposited in the separate account plus the amount then remaining of the June 30, 1997, balance in the separate account previously established for the West Virginia breeders classic under §19-23-13 of this code, shall be used by the commission for promotional activities, advertising, administrative costs, and purses for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses’ sex, age, and earnings.

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

(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection have been deposited into separate bank accounts for use in connection with the West Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to §29-22A-10(c)(6) of this code, which returned excess funds shall be used as follows:

(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund: *Provided,* That effective July 1, 2023, and thereafter, the funds required by this paragraph to be deposited in the West Virginia Racing Commission Special Account – West Virginia Greyhound Breeding Development Fund shall instead be deposited in the State Excess Lottery Revenue Fund pursuant to §19-23-10a of this code.

(B) At those thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia Thoroughbred Development Fund.

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia Breeders Classic, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia Derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia Racing Commission before the funds are expended for any of the purposes authorized by this section.

chapter 29. miscellaneous boards and officers.

article 22. state lottery act.

§29-22-18a. State Excess Lottery Revenue Fund.

(a) The State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants, or contributions received by the fund. All revenues received under the provisions of §29-22A-10b and §29-22A-10c of this code and under §29-22B-101 *et seq*. of this code, except the amounts due the commission under §29-22B-1408(a)(1) of this code, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the State Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) $65 million into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State Treasury to be known as the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $10 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for higher education; and (7) $5 million into the State Park Improvement Fund for park improvements. For the fiscal year beginning July 1, 2003, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $17 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for higher education; and (7) $7 million into the State Park Improvement Fund for park improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $27 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds: *Provided*, That for the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead $19 million shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for higher education; and (7) $5 million into the State Park Improvement Fund for park improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $29 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the Excess Lottery School Building Debt Service Fund created in §18-9D-6 of this code; (5) $40 million into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for higher education; and (7) $5 million into the State Park Improvement Fund for park improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

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

(1) The West Virginia Economic Development Authority created and provided for in §31-15-1 *et seq*. of this code shall, by resolution, in accordance with the provisions of this article and §31-15-1 *et seq*. of this code, and upon direction of the Governor, issue revenue bonds of the Economic Development Authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving, or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding 30 years from their respective dates. The principal of and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

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

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

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

(5) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for projects certified under the provision of this subsection: *Provided*, That the bond proceeds shall be expended in accordance with the requirements and provisions of §21-5A-1 *et seq*. of this code and either §5-22-1 *et seq*. or §5-22A-1 *et seq*. of this code, as the case may be: *Provided, however*, That if the bond proceeds are expended pursuant to §5-22A-1 *et seq*. of this code and if the Design-Build Board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding the contract, the determination shall be conclusive for all purposes and shall be considered to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the Governor, or his or her designee, the Secretary of the Department of Revenue, the Executive Director of the West Virginia Development Office, and six persons appointed by the Governor: *Provided*, That at least one citizen member must be from each of the state’s three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within 30 days of the effective date of this section.

(7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled with the committee. Within 10 days from the effective date of this section, as amended in the year 2003, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

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

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

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

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

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

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

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

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

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

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least 14 days prior to the date of the public hearing.

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

(A) Sports arenas, fields, parks, stadiums, and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities, and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers, and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting, and other facilities;

(G) Improvements at state parks, such as construction, expansion, or extensive renovation of lodges, cabins, conference facilities, and restaurants;

(H) Railroad bridges, switches, and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football, and soccer fields;

(J) State-owned buildings that are registered on the National Register of Historic Places;

(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping, and security systems to revitalize decaying downtown areas; and

(L) Other facilities that promote or enhance economic development, educational opportunities, or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the Economic Development Authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account in the State Treasury known as the Economic Development Project Bridge Loan Fund administered by the Economic Development Authority created in §31-15-1 *et seq*. of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon fulfillment of the provisions of §5A-2-1 *et seq*. of this code. Loan repayment amounts, including the portion attributable to interest, shall be paid into the fund created in this subdivision.

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

(g) Each fiscal year, the commission shall, after meeting the requirements of subsections (b), (c), (d), (i), and (m) of this section and after transferring to the State Lottery Fund created under §29-22-18 of this code an amount equal to any transfer from the State Lottery Fund to the Excess Lottery Fund pursuant to §29-22-18(f) of this code, deposit 50 percent of the amount by which annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds $225 million in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation by the Legislature.

(h) When bonds are issued for projects under subsections (d) and (e) of this section or for the School Building Authority, infrastructure, higher education, or park improvement purposes described in this section that are secured by profits from lotteries deposited in the State Excess Lottery Revenue Fund, the Lottery Commission Director shall allocate first to the Economic Development Project Fund an amount equal to one tenth of the projected annual principal, interest, and coverage requirements on any and all revenue bonds issued, or to be issued as certified to the Lottery Commission Director; and second, to the fund or funds from which debt service is paid on bonds issued under this section for the School Building Authority, infrastructure, higher education, and park improvements an amount equal to one tenth of the projected annual principal, interest, and coverage requirements on any and all revenue bonds issued, or to be issued as certified to the Lottery Commission Director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(i) Prior to the distributions provided in subsection (d) of this section, the Lottery Commission shall deposit into the General Revenue Fund amounts necessary to provide reimbursement for the refundable credit allowable under §11-21-21 of this code.

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

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

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

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

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

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

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

(1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year thereafter, 46 percent shall be placed in the general purse fund of a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, for payment of regular purses;

(2) Forty-three and one-half percent shall be distributed to the Racing Commission Special Account — Unredeemed Pari-mutuel Tickets, established on behalf of a thoroughbred racetrack licensee that did participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992;

(3) Five and one-half percent shall be distributed to the Racing Commission Special Account — Unredeemed Pari-mutuel Tickets, established on behalf of a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992; and

(4) Five percent shall be distributed to the Racing Commission Special Account – Greyhound Breeding Development Fund: *Provided,* That effective July 1, 2023, and thereafter, the amount required by this subdivision to be distributed to the West Virginia Greyhound Breeding Development Fund shall remain in the State Excess Lottery Revenue Fund.

(m) For the fiscal year beginning July 1, 2019, and subsequent fiscal years, the commission shall deposit $11 million to be distributed into the special funds established by the respective licensees and used for the payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq*. of this code; such distribution shall be on a pro rata basis based upon the actual purse earnings of each such licensee as specified in §29-22A-10(c)(2) and §29-22A-10b(a)(2) of this code.

article 22a. racetrack video lottery.

§29-22A-3. Definitions.

As used in this article:

~~(a)~~ "Applicant" means any person applying for any video lottery license or permit.

~~(b)~~ "Associated equipment" means any hardware located on a licensed racetrack’s premises which is connected to the video lottery system for the purpose of performing communication, validation, or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

~~(c)~~ "Background investigation" means a security, criminal, and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

~~(d)~~ "Central computer", "central control computer", or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs.

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

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

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

~~(h)~~ "Director" means the individual appointed by the Governor to provide management and administration necessary to direct the State Lottery Office.

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

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

"Employees of the licensed racing association" means a person or persons employed to work at a facility by an employer, or employer’s predecessors or successors, that was licensed to conduct greyhound racing as a "pari-mutual racing facility", "licensed racetrack", "racetrack", or racing association" prior to January 1, 1994.

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

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

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

~~(n)~~ "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia Racing Commission to conduct thoroughbred or greyhound racing meetings pursuant to §19-23-1 *et seq.* of this code permitting the racetrack to operate video lottery terminals authorized by the commission: *Provided,* That effective July 1, 2023, and thereafter, "license" or "video lottery license" also means authorization granted pursuant to said article to a racetrack which was licensed to conduct greyhound racing meetings prior to January 1, 1994.

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

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

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

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

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

~~(t)~~ "Pari-mutuel racing facility", "licensed racetrack," "racetrack", or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of §19-23-1 *et seq.* of this code: *Provided,* That, for the purposes of this article, "pari-mutuel racing facility", "licensed racetrack", "racetrack", or "track" includes only a facility which was licensed prior to January 1, 1994, to hold horse or dog race meetings, and which conducts not less than 220 live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the Racing Commission in accordance with the provisions of §19-23-12b of this code: *Provided, however,* That effective July 1, 2023, and thereafter, "pari-mutuel racing facility", "licensed racetrack", "racetrack", "racing association", or "track" also includes a racetrack which was licensed to conduct greyhound racing meetings prior to January 1, 1994, and continues to hold a racing license to receive telecasts and accept wagers on horse or dog races, regardless of whether the facility continues to conduct live dog racing.

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

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

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

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

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

~~(1)~~ (A) Is connected to the commission’s central control computer by an on-line or dial-up communication system;

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

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

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

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

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

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

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

~~(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.

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:

(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code: *Provided,* That effective July 1, 2023, and thereafter, an applicant that held a valid dog racing license prior to January 1, 1994, is not required to hold a valid racing license in order to renew a video lottery license.

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

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

(4) An applicant must be a person who demonstrates the business ability and experience necessary to establish, operate, and maintain the business for which a video lottery license or permit application is made.

(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least 30 days before the effective date of the change.

(6) A horse racetrack applying for a video lottery license or a license renewal, or an applicant that held a valid racing license prior to January 1, 1994, must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a majority of the pari-mutuel clerks for horse and dog racing associations, and the representative of a majority of the horse breeders ~~or the representative of a majority of the kennel owners~~ for the applicable racetrack who hold permits required by §19-23-2 of this code.

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

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

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) An individual with a criminal record who has not previously applied for a license or permit may petition the Lottery Commission at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license or permit. This petition shall include sufficient details about the individual’s criminal record to enable the Lottery Commission to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The Lottery Commission shall provide the determinationwithin 60 days of receiving the petition from the applicant. The Lottery Commission may charge a fee to recoup its costs for each petition.

§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.

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

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission 30 days’ advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission:

(1) The commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: *Provided,* That the commission shall transfer 15 percent of the amount deducted, generated from racetrack video lottery at licensed thoroughbred racetracks, to the West Virginia Racing Commission’s General Administrative Account created in §19-23-11 of this code: *Provided,* *however,* That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011, through June 30, 2030, the term "actual costs and expenses" may include transfers of up to $9 million in surplus allocations for each fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), subsection (b) of this section. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

(2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2030, the commission shall deposit such amounts as are available according to subdivision (1) of this subsection into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack’s share of each year’s deposit shall be calculated in the same ratio as each racetrack’s apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1) of this subsection for that year. For each $2 expended by a licensed racetrack for facility modernization improvements at the racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive $1 in recoupment from its facility modernization account. If the licensed racetrack’s facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization improvements" includes acquisitions of new and unused video lottery terminals and related equipment. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in §29-22A-10b of this code. The licensed racetrack’s share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

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

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

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

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

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

(ii) The municipalities of the county shall receive 50 percent of the excess amount, said 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

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

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

(ii) The municipality shall receive 50 percent of the excess amount; and

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

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

(5)(A) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income. Effective July 1, 2023, the requirements of this paragraph are discontinued.

(B) Effective July 1, 2023, and thereafter, the West Virginia Thoroughbred Development Fund, created under §19-23-13b of this code shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks.

(C) Effective July 1, 2023, and thereafter, the State Excess Lottery Revenue Fund, created under §29-22-18a of this code shall receive one and one-half percent of the net terminal income originating at licensed dog racetracks.

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

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

(8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided,* That for the fiscal year beginning July 1, 2003, the Tourism Commission shall transfer from the Tourism Promotion Fund $5 million of the three percent of the net terminal income described in this section and §29-22A-10b of this code into the fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of this code, $5 million into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to §5A-4-6 of this code, and $5 million into the Tax Reduction and Federal Funding Increased Compliance Fund; and

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

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

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

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

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

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

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

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

~~(10)~~ (9) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created pursuant to §29-1I-3 of this code: *Provided*, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than $20,000 of the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the John F. ‘Jack’ Bennett Fund. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq*. of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans’ grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans’ grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, $100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created pursuant to §29-1I-3 of this code and be expended by the Division of Culture and History to establish a West Virginia veterans memorial archives within the Cultural Center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided*, however, That $500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code.

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

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

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a total of $1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

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

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

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

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

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

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

(j) If a court of competent jurisdiction finds that the provisions of this section as amended and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be harmonized, the provisions of §29-22A-10d of this code shall control.

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

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

(1) The commission shall receive 41 percent of net terminal income, which the commission shall deposit in the State Excess Lottery Revenue Fund created in §29-22-18a of this code;

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

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

(A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

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

(ii) The municipalities of the county shall receive 50 percent of the excess amount, the 50 percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this code is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this subdivision is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

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

(ii) The municipality shall receive 50 percent of the excess amount; and

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

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

(5)(A) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created under §29-22A-10 of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income. Effective July 1, 2023, the requirements of this paragraph are discontinued.

(B) Effective July 1, 2023, and thereafter, the West Virginia Thoroughbred Development Fund, created under §19-23-13b of this code shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks.

(C) Effective July 1, 2023, and thereafter, the State Excess Lottery Revenue Fund, created under §29-22-18a of this code shall receive one and one-half percent of the net terminal income originating at licensed dog racetracks;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in §19-23-13c of this code;

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

(8) The tourism promotion fund established in §5B-2-12 of this code shall receive three percent of the net terminal income: *Provided,* That for each fiscal year beginning after June 30, 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(8)(B) of this code; and

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

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

~~(10)~~ (9) (A) One percent of the net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3 of this code; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

(b) The commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and §29-22A-10 of this code.

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

(a) Notwithstanding any provision of §29-22A-10(b) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to $9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of §29-22A-10(c) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to §29-22A-10(c)(1), §29-22A-10(c)(2), §29-22A-10(c)(3), §29-22A-10(c)(4), §29-22A-10(c)(5), and §29-22A-10(c)(7) of this code, shall be reduced by 100 percent. For the fiscal year beginning after July 1, 2023, and each fiscal year thereafter, the distribution to the special fund established by the licensee and used for payment of regular purses, pursuant to §29-22A-10(c)(2) of this code only includes amounts to be distributed to each thoroughbred racetrack video lottery licensee for the payment of regular racetrack purses. Payments shall not be made pursuant to §29-22A-10 of this code, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by §29-22-18a of this code. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to §29-22A-10(c)(2) and §29-22A-10(c)(5) of this code shall be reduced by 10 percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery Commission in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of §29-22-18a, §29-22-18d, and §29-22-18e of this code and in the priority as defined by §29-22-18f(c) of this code.

(f) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of §29-22A-10(c)(9)(B) of this code, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety, the transfers made to the Workers’ Compensation Debt Reduction Fund pursuant to §29-22A-10(c)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, if the budget shortfall, as determined by the State Budget Office as of December 1, 2015, is greater than $100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016, and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety.

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

(a) Notwithstanding any provision of §29-22A-10b(a) of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to §29-22A-10b(a)(1), §29-22A-10b(a)(2), §29-22A-10b(a)(3), §29-22A-10b(a)(4), §29-22A-10b(a)(5), and §29-22A-10b(a)(7) of this code, shall be reduced by 100 percent. For the fiscal year beginning after June 30, 2023, and each fiscal year thereafter, the distribution to the special fund established by the licensee and used for payment of regular purses, pursuant to §29-22A-10b(a)(2) of this code, only includes amounts to be distributed to each thoroughbred racetrack video lottery licensee for the payment of regular racetrack purses. Payments shall not be made pursuant to §29-22A-10b of this code, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this code. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to §29-22A-10b(a)(2) and §29-22A-10b(a)(5) of this code shall be reduced by 10 percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery Commission in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of §29-22-18a, §29-22-18d, and §29-22-18e of this code and in the priority as defined by §29-22-18f(c) of this code.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the provisions of §29-22A-10b(a)(9)(B) of this code, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety, the transfers made to the Workers’ Compensation Debt Reduction Fund pursuant to §29-22A-10b(a)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to appropriation.

(2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, if the budget shortfall, as determined by the State Budget Office as of December 1, 2015, is greater than $100 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from net terminal income imposed under this article, for any period commencing after February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code, or in any other provision of this code.

(B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, the Governor may, by Executive Order, redirect one half of the deposits of revenues derived from net terminal income imposed under this article, for any period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code, or in any other provision of this code, until certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or provided for in its entirety.

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

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

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

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

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

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

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

(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of §19-23-1 *et seq.* of this code: *Provided,* That if the commission, before November 1, 1993, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission: *Provided, however,* That a racetrack that held a valid dog racing license prior to January 1, 1994, and that no longer conducts live racing, may continue to operate operational video lottery terminals in the building or structure in which the grandstand area of the racetrack was located and in the area of the building or structure where pari-mutuel wagering was permitted between January 1, 1994, and June 30, 2023.

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

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

article 22c. west virginia lottery racetrack table games act.

§29-22C-3. Definitions.

(a) *Applicability of definitions*. — For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context in which the word or term is used.

(b) *Terms defined*. —

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

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

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

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

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

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

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

(8) "Contested case" means a proceeding before the commission, or a hearing examiner designated by the commission to hear the contested case, in which the legal rights, duties, interests or privileges of specific persons are required by law or constitutional right to be determined after a commission hearing, but does not include cases in which the commission issues a license, permit, or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and does not include rulemaking.

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

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

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

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

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

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

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

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

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

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

(17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility licensed under both §29-22A-1 *et seq.* and §19-23-1 *et seq.* of this code: *Provided,* That effective July 1, 2023, and thereafter, "licensed racetrack" or "racing association" includes a facility which was licensed prior to January 1, 1994, to hold dog race meetings and which is licensed under §29-22C-1 *et seq.* of this code.

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

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

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

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

(D) A license to provide management services under a contract to a racetrack licensed under this article to operate table games.

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

(20) "Lottery" means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article and in §29-22-1 *et seq.,* §29-22A-1 *et seq.,* §29-22B-101 *et seq.,* and §29-25-1 *et seq.* of this code.

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

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

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

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

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

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

(27) "Racetrack table games license" means authorization granted under this article by the commission to a racetrack that is already licensed under §29-22A-1 *et seq.* of this code to operate racetrack video lottery terminals and holds a valid horse racing license or held a valid dog racing license prior to January 1, 1994, granted by the West Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code, which permits the racetrack as an agent of the commission for the limited purpose of operation of West Virginia Lottery Commission table games in one or more designated gaming areas in one or more buildings owned or leased by the licensed racetrack on the grounds where live pari-mutuel racing is conducted by the licensee~~.~~, or in the case of a licensee that held a valid dog racing license prior to January 1, 1994, and that no longer conducts live racing, on the grounds where live pari-mutuel racing was conducted between January 1, 1994, and June 30, 2023.

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

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

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

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

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

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

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

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

(b) *Grant of license*. — Upon the passage of a local option election in a county in accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant a West Virginia Lottery table games license, and a license for the right to conduct West Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee to conduct West Virginia Lottery table games at the licensed pari-mutuel racetrack identified on the local option election ballot, provided that racetrack holds a valid racetrack video lottery license issued by the commission pursuant to §29-22A-1 *et seq*. of this code and a valid racing license granted by the West Virginia Racing Commission pursuant to the provisions of §19-23-1 *et seq*. of this code and has otherwise met the requirements for licensure under the provisions of this article and the rules of the commission: *Provided,* That effective July 1, 2023, and thereafter, a racetrack that held a valid dog racing license prior to January 1, 1994, is not required to hold a current dog racing license.

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

(d) *Floor plan submission requirement*. — Prior to commencing the operation of any table games in a designated gaming area, a racetrack table games licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which table games gaming equipment will be located and its proposed arrangement of the table games gaming equipment. Any floor plan submission that satisfies the requirements of the rules promulgated by the commission shall be considered approved by the commission unless the racetrack table games licensee is notified in writing to the contrary within one month of filing a detailed floor plan.

(e) *Management service contracts*. —

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

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

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

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

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

(1) The provisions of this article and of §29-22A-1 *et seq*. of this code shall be interpreted to allow West Virginia Lottery table games and racetrack video lottery operations under those articles to be harmoniously conducted in the same designated gaming area.

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

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

(g) *Fees, expiration date, and renewal*. —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§29-22C-10. Duties of racetrack table games licensee.

(a) *General*. — All racetrack table games licensees shall:

(1) Promptly report to the commission any facts or circumstances related to the operation of a racetrack with West Virginia Lottery Commission table games which constitute a violation of state or federal law;

(2) Conduct all table games activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state and which does not adversely affect the security or integrity of the operation of West Virginia Lottery Commission table games;

(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a racetrack licensee, the commission, the state or employees thereof, arising from the licensee’s actions or omission while acting as an agent of the commission by operation of West Virginia Lottery Commission table games pursuant to this article;

(4) Assist the commission in maximizing table games revenues;

(5) Give preference in hiring to existing employees who have expressed an interest in transferring to an entry level West Virginia Lottery Commission table games job and who have demonstrated the potential to succeed in that job. To enable these employees to develop the skills necessary to fill an entry level West Virginia Lottery Commission table games position, a licensee shall provide customary industry training for entry level West Virginia Lottery Commission table games jobs. The dates, times, place, and manner of providing such training, the appropriate qualifications and certifications, the number of existing employees to be trained, the determination of standards for evaluating successful performance in live auditions for such positions and the determination of who shall be given West Virginia Lottery Commission table game jobs shall be within the sole business discretion of the licensee’s management, provided that among equally qualified applicants, as determined by the licensee, length of service shall be the determining factor;

(6) Maintain all records required by the commission;

(7) Upon request by the commission, provide the commission access to all records and the physical premises where the licensee’s table games activities and related activities occur, for the purpose of monitoring or inspecting the licensee’s activities and the table games, gaming equipment, and security equipment;

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

(9) Conduct no less than 220 live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the Racing Commission in accordance with the provisions of §19-23-12b of this code, and otherwise keep in good standing, all licenses and permits granted by the Racing Commission pursuant to §19-23-6 of this code, and any rules promulgated thereunder: *Provided,* That effective July 1, 2023, and thereafter, a racetrack that held a valid dog racing license prior to January 1, 1994, is not required to race any minimum number of dates.

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

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

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

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

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

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

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

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

§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.

(a) (1) The special fund in the State Treasury known as the West Virginia Lottery Racetrack Table Games Fund is continued and all tax collected under this article shall be deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the commission pursuant to §29-22C-8 of this code shall be deposited into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the purpose of enabling the aged and disabled citizens of this state to maintain their residency in the community-based setting through the provision of home and community-based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection (e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee: *Provided,* That effective July 1, 2023, and thereafter, the amount required by this subdivision to be transferred to the special funds established by each greyhound racetrack table game licensee for the payment of regular racetrack purses shall instead be transferred to the State Excess Lottery Fund pursuant to §19-23-10a of this code;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack: *Provided,* That effective July 1, 2023, and thereafter, the amount required by this subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be transferred to the State Excess Lottery Revenue Fund. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. County commissions may pledge this money to make payments on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code. The one percent transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county’s racetrack: *Provided,* That the county board of education of a growth county, as that term is defined in §7-20-3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in §13-2H-2 of this code or to make payments on lottery revenue bonds issued to finance public projects;

(5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located. Municipalities may pledge the money to make payments on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code. This money shall be allocated as follows:

(A) One half of the amounts transferred under this subdivision shall be allocated to the municipalities within each county having a racetrack table games licensee, based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality’s population determined at the most recent United States decennial census of population: *Provided,* That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of 75 percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section; and

(B) One half of the amounts transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, having a racetrack table games licensee based on each municipality’s population determined at the most recent United States decennial census of population: *Provided,* That: (i) A municipality which received funds above its pro rata share pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of 25 percent of the total transfers under this paragraph: *Provided, however,* That the county board of education of a growth county, as that term is defined in §7-20-3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in §13-2H-2 of this code, or to make payments on lottery revenue bonds issued to finance the public projects;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: *Provided,* That distribution under this subdivision may not be made to any municipality which did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided, however,* That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision. The municipality may pledge this money to make payments on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code; and

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

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

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection(e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee: *Provided,* That effective July 1, 2023, and thereafter, the amount required by this subdivision to be transferred to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses shall instead be transferred to the State Excess Lottery Fund pursuant to §19-23-10a of this code;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code: *Provided,* That effective July 1, 2023, and thereafter, the amount required by this subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be transferred to the State Excess Lottery Revenue Fund pursuant to §19-23-10a of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The money transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county’s racetrack: *Provided,* That the county board of education of a growth county, as that term is defined in §7-20-3 of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive one half of that county’s share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

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

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality’s population determined at the most recent United States decennial census of population: *Provided,* That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of 75 percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section.

(B) One half of the money transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on each municipality’s population determined at the most recent United States decennial census of population: *Provided,* That: (i) A municipality which received funds above its pro rata share pursuant to subparagraph (iii), paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of 25 percent of the total transfers under this paragraph.

(C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a racetrack is located in a growth county, as that term is defined in §7-20-3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the county board of education shall receive two thirds of the share of adjusted gross receipts from West Virginia Lottery table games from the racetrack in the county as provided in this subdivision and the municipalities within the county shall share the remaining one third of the total amount allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata among the municipalities based on each municipality’s population determined at the most recent United States decennial census of population. All money transferred under this paragraph shall be used by the county board of education and by the municipalities for the purpose of capital improvements;

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

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

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

(1) Transfer 76 percent to the State Debt Reduction Fund which is hereby continued in the State Treasury. Moneys of the fund shall be expended solely for the purpose of accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall be expended or transferred only upon appropriation of the Legislature;

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

(3) Transfer 10 percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this section: *Provided,* That funds transferred to county commissions under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements: *Provided, however,* That up to 50 percent of these funds may be pledged to make payments on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code; and

 (4) Transfer 10 percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6), subsection (b) of this section: *Provided,* That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements: *Provided, however,* That up to 50 percent of these funds may be pledged to make payments on lottery revenue bonds issued pursuant to §13-2H-1 *et seq.* of this code.

(e) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-enforcement agencies for services performed at the request of the commission pursuant to this article. The commission’s expenses associated with a particular racetrack with authorized table games under this article may not exceed three percent of the total annual adjusted gross receipts received from that licensee’s operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee’s operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article and for the fiscal year thereafter, the commission’s expenses associated with a particular racetrack with authorized table games under this article may not exceed four percent of the total annual adjusted gross receipts received from that licensee’s operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee’s operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least $100,000 but not more than $500,000 into the Compulsive Gambling Treatment Fund created in §29-22A-19 of this code.

§29-22C-27a. Changes in distribution of adjusted gross receipts; distributions from excess lottery fund.

(a) Notwithstanding any provision of §29-22C-27 of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to §29-22C-27(d)(1) of this code shall be reduced by 100 percent. For the fiscal year beginning after June 30, 2023, and each fiscal year thereafter, the distribution to the special fund established by the licensee, and used for payment of regular purses, pursuant to §29-22C-27(c)(2) of this code only includes amounts to be distributed to each thoroughbred racetrack table games licensee for the payment of regular racetrack purses.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this code. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to §29-22C-27(c)(2) and §29-22C-27(c)(3) of this code shall be reduced by 10 percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of §29-22-18a, §29-22-18d, and §29-22-18e of this code and in the priority as defined by §29-22-18f(c) of this code.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

NOTE: The purpose of this bill is to eliminate the West Virginia Greyhound Breeding Development Fund, redirect all moneys from the West Virginia Greyhound Breeding Development Fund to the State Excess Lottery Revenue Fund, and to eliminate requirements that applicants for video lottery and racetrack table game licensees must hold a dog racing license.

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