

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 62

BY SENATOR NELSON

[Originating in the Committee on Government
Organization; reported on February 24, 2023]

1 A BILL to amend and reenact §19-23-12a of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §29-22A-12 of said code; to amend and reenact §29-22C-3, §29-22C-
3 4, §29-22C-6, and §29-22C-7 of said code; to amend said code by adding thereto a new
4 section, designated §29-22C-7a; to amend and reenact §29-22C-8 of said code; and to
5 amend and reenact §29-22D-15 of said code, all relating to allowing for the establishment
6 of a secondary location for pari-mutuel wagering on simulcast races, racetrack video
7 lottery terminals, sport wagering kiosks, and racetrack table games of licensed racetracks
8 at an alternative location within the current county of the licensed racetrack; providing that
9 the original venue must remain in operation; providing that the original venue continue to
10 offer amenities, accommodations, options and services at the same level; providing for a
11 local option election; defining terms; providing Lottery Commission authority to regulate
12 secondary locations; providing for rulemaking; providing for licensing of secondary
13 locations; and removing special elections to establish racetracks.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1 (1) Notwithstanding any other provisions of this code, a racing association licensed in this
2 state to conduct race meetings may, with the consent of the Racing Commission and the written
3 approval of the authorized representative of a majority of the owners and trainers who hold the
4 permit required by §19-23-2 of this code at the horse racetrack, contract with any legal wagering
5 entity in this or any other state to accept wagers on any race or races conducted by such legal
6 wagering entity. Unless the wager becomes part of the host licensee's pari-mutuel pool, such
7 wagering shall be conducted within the confines of such licensee's racetrack or at a hotel as

8 defined in §16-6-3 of this code, controlled by such licensee and contiguous to the licensee's
9 property, subject to the following requirements:

10 (a) That such hotel ~~contain~~ contains at least 100 rooms and be in existence on the effective
11 date of this section;

12 (b) That the licensee shall have invested at least \$1 million in the hotel; and

13 (c) That ~~such~~ the hotel is within one-half mile of the licensee's racetrack surface.

14 (2) ~~Such~~ The horse association shall retain a basic commission not to exceed 17 and 25
15 one-hundredths percent of all money wagered, plus an additional amount equal to one and 75
16 one-hundredths percent of the amount wagered each day on all multiple wagers determined by a
17 combination of two winning horses, including, but not limited to, the daily double, quinella and
18 perfecta or plus an additional amount equal to seven and 75 one-hundredths percent of the
19 amount wagered each day on all trifecta wagers or any other multiple wager which involves a
20 single betting interest on three or more horses. Breakage shall be calculated and distributed in
21 the manner provided by §19-23-9(c) of this code.

22 (3) The commission deducted by any licensee from the pari-mutuel pools on dog racing
23 ~~shall~~ may not exceed 16 and one-fourth percent of the total of ~~such~~ the pari-mutuel pools for the
24 day.

25 (4) Out of the commission retained or deducted by a licensee under the provisions of
26 subsections (2) and (3) of this section, the licensee shall pay one tenth of one percent into the
27 General Fund of the county commission of the county in which the racetrack is located, except if
28 within a municipality, then to ~~such~~ the municipality's general fund.

29 (5) The association shall pay each day a pari-mutuel pools tax calculated under the
30 provisions of §19-23-10 of this code.

31 (6) After deducting the county or municipal share provided for in subsection (4) of this
32 section and the pari-mutuel pools tax required by subsection (5) of this section, and the amount
33 required to be paid under the terms of the contract with the legal wagering entity of this or another

34 state and the cost of transmission, the horse racing association shall make a deposit equal to 50
35 percent of the remainder into the purse fund established under the provisions of §19-23-9(1)(b)
36 of this code.

37 (7) All of the provisions of the Federal Interstate Horseracing Act of 1978, also known as
38 Public Law 95-515, section 3001-3007 of title 15, U.S. Code, shall be instructive as the intent of
39 this section.

40 (8) For the purposes of this section the words term "legal wagering entity" shall be limited
41 to any person engaged in horse racing or dog racing pursuant to a license or other permission
42 granted by the state in which such person's racetrack is situated and conducting race meetings,
43 with a pari-mutuel wagering system permitted under that state's laws and in which the participants
44 are wagering with each other and not the operator.

45 (9) Notwithstanding any provision of this chapter to the contrary, a licensed racetrack may
46 establish a secondary location for its business at any building owned or leased by the licensed
47 racetrack within the county the licensed racetrack is located to conduct pari-mutuel wagering on
48 simulcast races: *Provided*, That the licensed racetrack receives approval from the State Lottery
49 Commission and has received voter approval pursuant to §29-22C-7a of this code. The total
50 amount of locations a licensed racetrack may operate within a county is two locations with no
51 requirement that the second location have a racetrack: *Provided, however*, That any licensed
52 racetrack establishing a secondary location shall continue to operate its original facility and
53 continue to maintain and offer amenities, accommodations, options, and services at the original
54 facility, and shall continue to maintain and offer the same level of amenities, accommodations,
55 options, and services as of the effective date of the amendments to this section enacted during
56 the regular session of the Legislature, 2023. As used in this subsection, amenities,
57 accommodations, options, and services may include, but are not limited to, table games, video
58 lottery terminals, live racing, and sports wagering kiosks offered to the public.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

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

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

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

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

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

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

16 (4) ~~No~~ A video lottery terminal may not be relocated without prior approval from the
17 commission; and

18 (5) Operational video lottery terminals may only be located in the building or structure in
19 which the grandstand area of the racetrack is located and in the area of the building or structure
20 where pari-mutuel wagering is permitted under the provisions of ~~article twenty three, chapter~~
21 ~~nineteen~~ §19-23-1 et seq. of this code: *Provided*, That if the commission, before November 1,
22 1993, has authorized any racetrack to operate video lottery terminals and offer video lottery

23 games in a location which would not conform to the requirements of this subdivision, the racetrack
24 may continue to use video lottery terminals registered with and approved by the commission at
25 that nonconforming location and to offer the games and any variations or composites of the games
26 as may be approved by the commission.

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

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

35 (e) Notwithstanding any provision in this chapter to the contrary, a licensed racetrack may
36 establish a secondary location for its business, including authorized operational video lottery
37 terminals, at any building owned or leased by the licensed racetrack within the county the licensed
38 racetrack is located so long as the licensed racetrack receives approval from the State Lottery
39 Commission and has received voter approval pursuant to §29-22C-7a of this code. The total
40 amount of locations a licensed racetrack may operate within a county is two locations: *Provided*,
41 That if any licensed racetrack relocates operational video lottery terminals outside of a
42 municipality, the municipality may receive the share of funds it received under §29-22A-10 and
43 §29-22A-10b of this code up to the amount received in the fiscal year immediately preceding the
44 relocation of the operational video lottery terminals, and the excess of this amount shall be divided
45 proportionally to the said municipality and the new municipality, if any, based on the revenues
46 generated at each location: *Provided, however*, That the total amount of funds transferred to the
47 municipalities may not exceed the percentage provided under §29-22A-10 and §29-22A-10b of
48 this code: *Provided further*, That any licensed racetrack establishing a secondary location shall

49 continue to operate its original facility and continue to maintain and offer amenities,
50 accommodations, options, and services at the original facility, and shall continue to maintain and
51 offer the same level of amenities, accommodations, options, and services as of the effective date
52 of the amendments to this section enacted during the regular session of the Legislature, 2023. As
53 used in this subsection, amenities, accommodations, options, and services may include, but are
54 not limited to, table games, video lottery terminals, live racing, and sports wagering kiosks offered
55 to the public.

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

§29-22C-3. Definitions.

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

5 (b) ~~*Terms defined.*~~ *Definitions.* —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 (17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility
66 licensed under both §29-22A-1 *et seq.* and §19-23-1 *et seq.* of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

101 (27) "Racetrack table games license" means authorization granted under this article by
102 the commission to a racetrack that is already licensed under §29-22A-1 *et seq.* of this code to
103 operate racetrack video lottery terminals and holds a valid racing license granted by the West
104 Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code, which
105 permits the racetrack as an agent of the commission for the limited purpose of operation of West
106 Virginia Lottery table games in one or more designated gaming areas in one or more buildings
107 owned or leased by the licensed racetrack on the grounds where live pari-mutuel racing is
108 conducted by the licensee or at a secondary location consisting of any building owned or leased
109 by the licensed racetrack within the county the licensed racetrack is located: *Provided*, That the
110 licensed racetrack receives approval from the State Lottery Commission.

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

113 (29) "Secondary or satellite locations" means a secondary location of a business in any
114 building owned or leased by a licensed racetrack within the county the licensed racetrack is
115 located to conduct pari-mutuel wagering on simulcasts, video lottery terminals, sports wagering
116 kiosks, and racetrack table games.

117 ~~(29)~~(30) "Significant influence" means the capacity of a person to affect substantially (but
118 not control) either, or both, of the financial and operating policies of another person.

119 ~~(30)~~(31) "Supplier" means a person who the commission has identified under legislative
120 rules of the commission as requiring a license to provide a racetrack table games licensee with
121 goods or services to be used in connection with operation of table games.

122 ~~(34)~~(32) "Wager" means a sum of money or thing of value risked on an uncertain
123 occurrence.

124 ~~(32)~~(33) "West Virginia Lottery table game" means any game played with cards, dice or
125 any mechanical, electromechanical or electronic device or machine for money, credit or any
126 representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette,
127 wheel of fortune or any variation of these games similar in design or operation and expressly
128 authorized by rule of the commission, including multiplayer electronic table games, machines and
129 devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets,
130 pull tabs, or similar games.

131 ~~(33)~~(34) "Winnings" means the total cash value of all property or sums including currency,
132 tokens, or instruments of monetary value paid to players as a direct result of wagers placed on
133 West Virginia Lottery table games.

§29-22C-4. Commission duties and powers.

1 (a) *Duties.* — In addition to the duties set forth elsewhere in this article or in §29-22-1 *et*
2 *seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, ~~and or~~ §29-25-1 *et seq.* of this code, the commission
3 shall:

4 (1) Establish minimum standards for gaming equipment, including, but not limited to,
5 electronic and mechanical gaming equipment;

6 (2) Enter into licensing agreements with facilities eligible to operate West Virginia Lottery
7 table games for the state, providing criteria and guidelines for preservation of the state's
8 ownership, operation, and control interests as provided by general law herein;

9 (3) Approve, modify, or reject game rules of play proposed by the licensee for West
10 Virginia Lottery table games proposed to be operated at a licensed racetrack;

11 (4) Approve, modify, or reject minimum internal control standards proposed by the
12 licensee governing racetrack table game operations, including the maintenance of financial
13 records;

14 (5) Approve staff considered necessary by the director to oversee, inspect and monitor
15 the operation of table games at any racetrack licensed under this article and §29-22A-1 *et seq.* of
16 this code, including, but not limited to, inspection of designated gaming areas, gaming equipment
17 and security equipment used in the operation of table games to assure continuous compliance
18 with the provisions of this article, required license conditions and terms, and applicable rules of
19 the commission;

20 (6) Determine eligibility of a person to hold or continue to hold a license issued under this
21 article;

22 (7) License, establish standards and requirements for operation, and approve operation
23 of a secondary location: *Provided*, That voters approve of the operation of a secondary location
24 in a local option election pursuant to §29-22C-7a of this code.

25 ~~(7)~~ (8) Issue all licenses;

26 ~~(8)~~ (9) Maintain a record of all licenses issued;

27 ~~(9)~~ (10) Levy and collect the taxes imposed by this article and the fees, surcharges and
28 civil penalties authorized, required or specified in this article or the legislative rules of the
29 commission, and receive, accept and pay all taxes, fees, surcharges and civil penalties collected
30 under this article into the Racetrack Table Games Fund, except as otherwise provided under this
31 article; and

32 ~~(10)~~ (11) Keep a public record of all commission actions and proceedings with respect to
33 West Virginia Lottery table games.

34 (b) *Powers*. — In addition to the powers set forth elsewhere in this article or in §29-22-1
35 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, and §29-25-1 *et seq.* of this code, the commission
36 may:

37 (1) Sue to enforce any provision of this article or any rule of the commission, whether by
38 civil action or petition for injunctive relief;

39 (2) Hold hearings, administer oaths, and issue subpoenas for attendance of witnesses to
40 testify or subpoenas duces tecum for the production of documents or other evidence;

41 (3) Enter a licensed racetrack with West Virginia Lottery table games at any time and
42 without notice to ensure strict compliance with this article and with the rules of the commission;

43 (4) Bar, for cause, any person from:

44 (A) Entering a designated gaming area of a licensed racetrack with table games, or the
45 grounds of a racetrack licensed under this article; or

46 (B) Participating in any capacity in the play of any West Virginia Lottery table game, or in
47 the operation of West Virginia Lottery table games;

48 (5) (A) Promulgate, or propose for promulgation, in accordance with the provision of §29A-
49 3-1 *et seq.* of this code, any legislative, interpretive, and procedural rules the commission
50 considers necessary for the successful implementation, administration, and enforcement of this
51 article, and to amend or revoke any promulgated rule, in accordance with provisions of §29A-3-1
52 *et seq.* of this code, at the discretion of the commission;

53 (B) Promulgate rules for the operation of secondary or satellite locations. These rules may
54 include the maximum number of allowable table games and video lottery terminals that are
55 permissible at a secondary or satellite location; and

56 (C) Any rule proposed by the commission before September 1, 2007, may be promulgated
57 as an emergency rule;

58 (6) Upon the effective date of this article and prior to promulgation of emergency rules, the
59 commission may accept applications, evaluate qualifications of applicants, and undertake initial

60 review of licenses for: Racetracks under §29-22C-8 of this code; suppliers §29-22C-11 of this
61 code; racetrack employees under §29-22C-12 of this code; and providers of management
62 services under §29-22C-13 of this code; and

63 (7) Exercise any other powers necessary to effectuate the provisions of this article and the
64 rules of the commission.

§29-22C-6. Licenses required.

1 (a) ~~No~~ A person may not engage in any activity in connection with a racetrack with West
2 Virginia Lottery table games in this state for which a license is required by this article or rules of
3 the commission unless all necessary licenses have been obtained in accordance with this article
4 and rules of the commission.

5 (b) Licenses are required for the following purposes:

6 (1) For any person operating a racetrack West Virginia Lottery table game in the state;

7 (2) For any person supplying a racetrack table games licensee with gaming equipment or
8 gaming equipment services;

9 (3) For any individual employed by a racetrack table games licensee in connection with
10 the operation of West Virginia Lottery table games in the state; and

11 (4) For any person providing management services under a contract to a racetrack table
12 games licensee.

13 (c) The commission may not grant a license to an applicant until the commission
14 determines that each person who has control of the applicant also meets all ~~of~~ the qualifications
15 the applicant must meet to hold the license for which application is made. The following persons
16 are considered to have control of an applicant:

17 (1) Each person associated with a corporate applicant, including any corporate holding
18 company, parent company or subsidiary company of the applicant, but not including a bank or
19 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary

20 course of business, who has the ability to control the activities of the corporate applicant or elect
21 a majority of the board of directors of that corporation;

22 (2) Each person associated with a noncorporate applicant who directly or indirectly holds
23 any beneficial or proprietary interest in the applicant or who the commission determines to have
24 the ability to control the applicant; and

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

28 (d) Notwithstanding any provision of this code to the contrary, any license granted
29 pursuant to the provisions of this section also authorizes the operation of a secondary location:
30 Provided, That voters approve of the operation of a secondary location in a local option election
31 pursuant to §29-22C-7a of this code.

32 ~~(d)~~(e) Any license required by this article or rules of the commission is in addition to all
33 other licenses or permits required by applicable federal, state, or local law.

§29-22C-7. Local option election.

1 (a) A racetrack may not be licensed under this article to operate West Virginia Lottery table
2 games until a local option election is held in the county in which pari-mutuel wagers are received
3 at a racetrack licensed under §19-23-1 *et seq.* of this code and the voters of that county voting on
4 the question approve having West Virginia Lottery table games at the racetrack.

5 (b) The county commission shall place the question of whether a racetrack shall be
6 permitted to operate West Virginia Lottery table games on the ballot upon the receipt of a written
7 notice from a licensed racetrack located within that county requesting that the question be placed
8 on the ballot.

9 (c) The county commission of the county in which table games would be located shall give
10 notice to the public of the election by publication of the notice as a Class II-0 legal advertisement
11 in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the

12 publication shall be the county in which the election is to be held. The date of the last publication
13 of the notice shall fall on a date at least 30 days preceding the day of the election. A local option
14 election shall be effective even though the date of the order of the county commission setting the
15 election or the date of publication of notice of the election is prior to the effective date of this article
16 if the election is otherwise held in accordance with the provisions of this section.

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

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

19 Yes No

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

21 (e) The local option election shall be held in conjunction with the next primary or general
22 election scheduled more than 90 days following receipt by the county commission of the notice
23 required by this section ~~or at a special election: *Provided*, That upon written request by the~~
24 ~~licensed racetrack that a special election be called, the county commission shall order a special~~
25 ~~election to be held on the question within 90 days after the receipt by the county commission of~~
26 ~~that request. The county commission may require the licensed racetrack to pay the entire cost~~
27 ~~incurred by the county to hold the special election.~~ Approval shall be by a majority of the voters
28 casting votes at the election on the question of approval or disapproval of West Virginia Lottery
29 table games at a licensed racetrack.

30 (f) If the majority votes against allowing table games at a licensed racetrack, no election
31 on the issue shall be held for a period of 104 weeks. A local option election may thereafter be
32 held in the manner provided in this section. The process to hold another election on the question
33 shall start anew, as if no prior request for an election on the question had been filed with county
34 commission and as if there had been no prior election on the question.

35 (g) If the majority votes for allowing West Virginia Lottery table games at a licensed
36 racetrack facility in a county, another local option election on the issue shall not be held for a
37 period of five years. A local option election may thereafter be held in conjunction with the next

38 primary or general election if a written petition of qualified voters residing within the county equal
39 to at least five percent of the number of persons who were registered to vote in the next preceding
40 general election is received by the county commission of the county in which the horse or dog
41 racetrack is located. The petition may be in any number of counterparts. The petition shall be in
42 the following form:

43 Petition For Local Option Election

44 We, the undersigned legally qualified voters, resident within the County of [name of
45 county], do hereby petition that a ~~special~~ local option election be held within the County of [name
46 of county] in conjunction with the next primary or general election upon the following question:
47 Shall West Virginia Lottery table games be permitted at the [name of racetrack]?

48 Name Address Date

49 (Post office or street address)

§29-22C-7a. Local option election for secondary or satellite locations.

1 (1) A secondary or satellite location may not be licensed pursuant to this article to operate
2 West Virginia Lottery table games, pari-mutuel wagering on simulcast, sports wagering kiosks, or
3 video lottery terminals until a secondary local option election is held in the county in which pari-
4 mutuel wagers are received at a racetrack licensed pursuant to §19-23-1 et seq. and §29-23-1 et
5 seq. of this code, and the voters of that county voting on the question approve having West
6 Virginia Lottery table games, pari-mutuel wagering on simulcast, and video lottery terminals at a
7 secondary location operated by a racetrack licensed pursuant to §19-23-1 et seq. and §29-23-1
8 et seq. of this code.

9 (2) The county commission shall place the question of whether a racetrack licensed
10 pursuant to §19-23-1 et seq. and §29-23-1 et seq. of this code shall be permitted to operate West
11 Virginia Lottery table games, pari-mutuel wagering on simulcast, sports wagering kiosks, and
12 video lottery terminals at a secondary or satellite location on the ballot upon the receipt of a written

13 notice from a licensed racetrack located within that county requesting that the question be placed
14 on the ballot.

15 (3) The county commission of the county in which the secondary or satellite location would
16 be located shall give notice to the public of the election by publication of the notice as a Class II-
17 0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the
18 publication area for the publication shall be the county in which the election is to be held. The date
19 of the last publication of the notice shall fall on a date at least 30 days preceding the day of the
20 election. A local option election shall be effective even though the date of the order of the county
21 commission setting the election or the date of publication of notice of the election is prior to the
22 effective date of this article if the election is otherwise held in accordance with the provisions of
23 this section.

24 (4) The following shall be printed on the local option election ballot:

25 Shall secondary or satellite locations for gaming be permitted to be operated by [name of
26 licensed racetrack]?

27 [] Yes [] No

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

29 (5) The local option election shall be held in conjunction with the next primary or general
30 election scheduled more than 90 days following receipt by the county commission of the notice
31 required by this section. Approval shall be by a majority of the voters casting votes at the election
32 on the question of approval or disapproval of secondary or satellite locations operated by a
33 licensed racetrack.

34 (6) If the majority votes against allowing operation of secondary or satellite locations by a
35 licensed racetrack, no election on the issue shall be held for a period of 104 weeks. A local option
36 election may thereafter be held in the manner provided in this section. The process to hold another
37 election on the question shall start anew, as if no prior request for an election on the question had
38 been filed with county commission and as if there had been no prior election on the question.

39 (7) If the majority votes for allowing operation of secondary or satellite locations by a
40 licensed racetrack facility in a county, another local option election on the issue shall not be held
41 for a period of five years. A local option election may thereafter be held in conjunction with the
42 next primary or general election if a written petition of qualified voters residing within the county
43 equal to at least five percent of the number of persons who were registered to vote in the next
44 preceding general election is received by the county commission of the county in which the horse
45 or dog racetrack is located. The petition may be in any number of counterparts. The petition shall
46 be in the following form:

47 Petition For Local Option Election

48 We, the undersigned legally qualified voters, resident within the County of [name of
49 County], do hereby petition that a local option election be held within the County of [name of
50 County] in conjunction with the next primary or general election upon the following question: Shall
51 secondary or satellite locations for gaming be permitted to be operated by [name of licensed
52 racetrack]?

53 Name _____ Address _____ Date _____

54 (Post office or street address)

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

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

5 (b) *Grant of license.* — Upon the passage of a local option election in a county in
6 accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant
7 a West Virginia Lottery table games license, and a license for the right to conduct West Virginia
8 Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee
9 to conduct West Virginia Lottery table games at the licensed pari-mutuel racetrack identified on

10 the local option election ballot, provided that racetrack holds a valid racetrack video lottery license
11 issued by the commission pursuant to §29-22A-1 *et seq.* of this code and a valid racing license
12 granted by the West Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of
13 this code and has otherwise met the requirements for licensure under the provisions of this article
14 and the rules of the commission.

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

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

27 (e) *Management service contracts.* —

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

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

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

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

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

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

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

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

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

59 (1) An initial racetrack table games license fee of \$1,500,000 shall be paid to the
60 commission at the time of issuance of the racetrack table games license, regardless of the number

61 of months remaining in the license year for which it is issued. All licenses expire at the end of the
62 day on September 30 each year.

63 (2) The commission shall annually renew a racetrack table games license as of October
64 1, of each year provided the licensee:

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

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

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

73 (3) *Annual license surcharge for failure to construct hotel on premises.* — It is the intent
74 of the Legislature that each racetrack for which a racetrack table games license has been issued
75 be or become a destination tourism resort facility. To that end, it is important that each racetrack
76 for which a racetrack table games license has been issued operate a hotel with significant
77 amenities. Therefore, in addition to all other taxes and fees required by the provisions of this
78 article, there is hereby imposed, upon each racetrack for which a racetrack table games license
79 has been issued an annual license surcharge, payable to the commission in the amount of
80 \$2,500,000 if that racetrack does not operate a hotel on its racing property that contains at least
81 150 guest rooms with significant amenities within three years of the passage of the local option
82 election in its county authorizing table games at the racetrack, provided the time for completion
83 of the hotel shall be extended by the same number of days as the completion of the hotel is
84 delayed by a force majeure events or conditions beyond the reasonable control of the racetrack
85 licensee. The surcharge shall be paid upon each renewal of its racetrack table games license

86 made after the expiration of the three year period, and may be extended by the above force
87 majeure events or conditions, until the racetrack opens a qualifying hotel.

88 (4) If the licensee fails to apply to renew its license under §19-23-1 *et seq.* and §29-22A-
89 1 *et seq.* of this code until after the license expires, the commission shall renew its license under
90 this article at the time it renews its license under §29-22A-1 *et seq.* of this code provided the
91 licensee has paid the annual license fee required by this section and during the preceding license
92 year the licensee complied with all provisions of this article, all rules adopted by the commission
93 and all final orders of the commission applicable to the licensee.

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

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

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

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

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

109 (j) *Authorization.* — A racetrack table games license authorizes the licensee act as an
110 agent of the commission in operating an unlimited amount of West Virginia Lottery table games

111 while the license is active, subject to subsection (d) of this section. A racetrack table games
112 license is not transferable or assignable and cannot be sold or pledged as collateral.

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

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

121 (m) Notwithstanding anything in this chapter to the contrary, a licensed racetrack may
122 establish a secondary location for its business, including authorized racetrack table games, video
123 lottery terminals, sports wagering kiosks, and pari-mutuel wagering on simulcasts at any building
124 owned or leased by the licensed racetrack within the county the licensed racetrack is located:
125 *Provided*, That the licensed racetrack receives approval from the State Lottery Commission and
126 has received voter approval pursuant to §29-22C-7a of this code. The total amount of locations a
127 licensed racetrack may operate within a county is two locations: *Provided, however*, That if any
128 licensed racetrack relocates racetrack table games outside of a municipality, the municipality may
129 receive the share of funds it received under §29-22C-27 of this code up to the amount received
130 in the fiscal year immediately preceding the relocation of the racetrack table games and the
131 excess of this amount shall be divided proportionally to that municipality and the new municipality,
132 if any, based on the revenues generated at each location: *Provided, further*, That the total amount
133 of funds transferred to the municipalities may not be in excess of the percentage provided for
134 under §29-22C-27 of this code: *And provided further*, That any licensed racetrack establishing a
135 secondary location shall continue to operate its original facility and continue to maintain and offer
136 amenities, accommodations, options, and services at the original facility, and shall continue to

137 maintain and offer the same level of amenities, accommodations, options, and services as of the
138 effective date of the amendments to this section enacted during the regular session of the
139 Legislature, 2023. As used in this subsection, amenities, accommodations, options, and services
140 may include, but are not limited to, table games, video lottery terminals, live racing, and sports
141 wagering kiosks offered to the public.

142 (n) Additional license or additional fees are not required, and further surety bond is not
143 required to operate a secondary or satellite location. Any license obtained pursuant to this section,
144 any licensing fees as incident to either of those licenses, and any required surety bond allows
145 operation of a secondary or satellite location. Any license issued pursuant to §29-22A-1 et seq.
146 of this code, §29-22D-1 et seq. of this code, and §19-23-1 et seq. of this code would also extend
147 to any secondary or satellite location as those terms are defined in §29-22C-3 of this code. The
148 secondary location is not required to operate a racetrack.

§29-22D-15. Authorization of sports wagering in this state; requirements.

1 (a) An operator shall accept wagers on sports events and other events authorized under
2 this article from persons physically present in a licensed gaming facility where authorized sports
3 wagering occurs, or from persons not physically present who wager by means of electronic
4 devices. A person placing a wager shall be at least 21 years of age.

5 (b) An operator may accept wagers from an individual physically located within this state
6 using a mobile or other digital platform or a sports wagering device, approved by the commission,
7 through the patron's sports wagering account.

8 (c) An operator may accept wagers from an individual physically located in a state or
9 jurisdiction with which the commission has entered into a sports wagering agreement using a
10 mobile or other digital platform or a sports wagering device through the patron's sports wagering
11 account, so long as the device or platform is approved by the commission and all other
12 requirements of the agreement are satisfied.

13 (d) The commission or operator may ban any person from entering a gaming area of a
14 gaming facility conducting sports wagering or the grounds of a gaming facility licensed under this
15 article or from participating in the play or operation of any West Virginia Lottery sports wagering.
16 A log of all excluded players shall be kept by the commission and each licensee, and no player
17 on the commission's exclusion list or the licensed operator's exclusion list shall wager on any
18 West Virginia Lottery sports wagering under this article.

19 (e) The commission shall promulgate regulations implementing the provisions of §29-22D-
20 15(a) of this code by interpretive rule and minimum internal control standards.

21 (f) The commission shall, when a federal law is enacted or repealed or when a federal
22 court decision is issued that permits a state to regulate sports wagering, publish a notice in the
23 State Register notifying the public of the enactment or repeal of federal law or of the issuance of
24 such court decision. The commission ~~shall~~ may not be authorized to conduct sports wagering in
25 this state until the notice prescribed in this subsection is published in the State Register.

26 (g) ~~No~~ A licensed gaming facility employee may not place a wager on any sports wagering
27 at the employer's facility or through any other mobile application or digital platform of their
28 employer.

29 (h) ~~No~~ A commission employee may not knowingly wager or be paid any prize from any
30 wager placed at any licensed gaming facility with West Virginia Lottery sports wagering within this
31 state or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a
32 sports wagering licensee.

33 (i) Notwithstanding any provision of this chapter to the contrary, a licensed racetrack may
34 establish a secondary location for its business at any building owned or leased by the licensed
35 racetrack within the county the licensed racetrack is located to provide sports wagering kiosks so
36 long as the licensed racetrack receives approval from the State Lottery Commission: *Provided,*
37 That it has received voter approval pursuant to §29-22C-7a of this code. The total amount of
38 locations a licensed racetrack may operate within a county is two locations: *Provided, however,*

39 That any licensed racetrack establishing a secondary location shall continue to operate its original
40 facility and continue to maintain and offer amenities, accommodations, options, and services at
41 such original facility, and shall continue to maintain and offer the same level of amenities,
42 accommodations, options, and services as of the effective date of the amendments to this section
43 enacted during the regular session of the Legislature, 2023. As used in this subsection, amenities,
44 accommodations, options, and services may include, but are not limited to, table games, video
45 lottery terminals, live racing, and sports wagering kiosks offered to the public.