

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3450

BY DELEGATES ESPINOSA, WILLIS, HOUSEHOLDER,
HARDY, CRISS, ZATEZALO, STORCH, CLARK, FLUHARTY
AND SHAMBLIN

[Passed March 6, 2023; in effect ninety days from passage.]

FILED

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SECRETARY OF STATE

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1 AN ACT to amend and reenact §29-22A-10 and §29-22A-10b of the Code of West Virginia, 1931,
2 as amended, all relating to racetrack video lottery; providing for certain transfers to and
3 from the Licensed Racetrack Modernization Fund; specifying eligible purposes for
4 recoupment of funds on deposit in facility modernization account within the Licensed
5 Racetrack Modernization Fund; and modifying the distribution of net terminal income to
6 counties where the video lottery terminals are located.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

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

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

12 (1) The commission shall deduct an amount sufficient to reimburse the commission for its
13 actual costs and expenses incurred in administering racetrack video lottery at the licensed
14 racetrack and the resulting amount after the deduction is the net terminal income. The amount
15 deducted for administrative costs and expenses of the commission may not exceed four percent
16 of gross terminal income: *Provided*, That any amounts deducted by the commission for its actual
17 costs and expenses that exceeds its actual costs and expenses shall be deposited into the State
18 Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2030, the term "actual
19 costs and expenses" may include transfers of up to \$9 million in surplus allocations for each fiscal
20 year, as calculated by the commission when it has closed its books for the fiscal year, to the
21 Licensed Racetrack Modernization Fund created by subdivision (2), of this subsection. For all
22 fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of
23 gross terminal income in excess of the amount of gross terminal income received during the fiscal
24 year ending on June 30, 2001, but four percent of any amount of gross terminal income received
25 in excess of the amount of gross terminal income received during the fiscal year ending on June
26 30, 2001, shall be deposited into the fund established in §29-22-18a of this code; and

27 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all
28 fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,
29 2030, the commission shall deposit such amounts as are available according to subdivision (1) of
30 this subsection into a separate facility modernization account maintained within the Licensed
31 Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit
32 shall be calculated in the same ratio as each racetrack's apportioned contribution to the four
33 percent administrative costs and expenses allowance provided for in subdivision (1) of this
34 subsection for that year. For each \$2 expended by a licensed racetrack for facility modernization
35 improvements or capital improvements at facilities located in this state that are on or contiguous
36 to the premises of the licensed racetrack, having a useful life of three or more years and placed
37 in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from its facility

38 modernization account. If the licensed racetrack's facility modernization account contains a
39 balance in any fiscal year, the unexpended balance from that fiscal year will be available for
40 matching for one additional fiscal year, after which time, the remaining unused balance carried
41 forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization
42 improvements" includes acquisitions of new and unused video lottery terminals and related
43 equipment, and the term "capital improvements" means real property that is expected to replace
44 or modernize buildings, equipment, machinery and other tangible property used in connection
45 with the operation of the gaming, hospitality, or entertainment at the facility. Video lottery terminals
46 financed through the recoupment provided in this subdivision must be retained by the licensee in
47 its West Virginia licensed location for a period of not less than five years from the date of initial
48 installation.

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

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

59 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be
60 deposited in the special fund established by the licensee, and used for payment of regular purses
61 in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1,
62 2005, the rate shall be seven percent of net terminal income;

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

65 (A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent
66 received during the fiscal year 1999 by a county in which a racetrack is located that has
67 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,
68 1999, shall be divided as follows:

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

70 (ii) The municipalities of the county shall receive 50 percent of the excess amount, said
71 50 percent to be divided among the municipalities on a per capita basis as determined by the
72 most recent decennial United States census of population; and

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

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

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

80 (C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or
81 (B) of this subdivision is located and where the racetrack has been located within that county
82 since on or before January 1, 1999, and where the racetrack is not located in a municipality, the
83 two percent of net terminal income shall be divided, if applicable, as follows:

84 (i) The county shall receive one percent; and

85 (ii) The remaining one percent shall be distributed in equal shares to all municipalities
86 located wholly within the county. Per capita population has no effect on distributions under this
87 paragraph;

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

92 (5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b
93 of this code and the West Virginia Greyhound Breeding Development Fund created pursuant to
94 §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half
95 percent of the net terminal income;

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

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

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

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

111 (i) 1.375 percent of the total amount of net terminal income described in this section and
112 §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant
113 to §5B-2-12 of this code;

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

117 (iii) 0.5 percent of the total amount of net terminal income described in this section and in
118 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant
119 to §18B-1B-10 of this code;

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

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

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

132 (B) The deposit of the seven percent of net terminal income into the Workers'
133 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed
134 with respect to these funds and shall be deposited in the special fund established by the licensee
135 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*
136 *seq.* of this code on and after the first day of the month following the month in which the Governor
137 certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this
138 code have been retired or payment of the debt service provided for; and (ii) that an independent

139 certified actuary has determined that the unfunded liability of the old fund, as defined in chapter
140 23 of this code, has been paid or provided for in its entirety; and

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

142 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
143 one percent of the net terminal income until sufficient moneys have been received to complete
144 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.
145 The moneys shall be deposited in the State Treasury in the Division of Culture and History special
146 fund created pursuant to §29-11-3 of this code: *Provided*, That only after sufficient moneys have
147 been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded
148 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal
149 income provided in this subdivision shall be deposited into a special revenue fund in the State
150 Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be
151 expended by the Division of Veterans Affairs to provide for the placement of markers for the
152 graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall
153 promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying
154 the manner in which the funds are spent, determine the ability of the surviving spouse to pay for
155 the placement of the marker and setting forth the standards to be used to determine the priority
156 in which the veterans' grave markers will be placed in the event that there are not sufficient funds
157 to complete the placement of veterans' grave markers in any one year, or at all. Upon payment in
158 full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net
159 terminal income provided in this subdivision shall be deposited in the special fund in the Division
160 of Culture and History created pursuant to §29-11-3 of this code and be expended by the Division
161 of Culture and History to establish a West Virginia veterans memorial archives within the Cultural
162 Center to serve as a repository for the documents and records pertaining to the veterans
163 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided*,
164 *however*, That \$500,000 of the one percent of net terminal income shall be deposited in the State

165 Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of
166 this code, to be used for construction and maintenance of a parking garage on the State Capitol
167 Complex; and the remainder of the one percent of net terminal income shall be deposited in equal
168 amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code
169 and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to
170 §29-1-3 of this code.

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

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

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

184 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater
185 than the gross terminal income from its operation of video lottery machines, to be electronically
186 transferred by the commission on dates established by the commission. Upon a licensed
187 racetrack's failure to maintain this balance, the commission may disable all of a licensed
188 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall
189 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax

190 delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date
191 payment is due to the commission.

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

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

208 (g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is
209 not operational or the commission notifies licensed racetracks that remittance by this method is
210 required. The licensed racetracks shall report an amount equal to the total amount of cash
211 inserted into each video lottery terminal operated by a licensee, minus the total value of game
212 credits which are cleared from the video lottery terminal in exchange for winning redemption
213 tickets, and remit the amount as generated from its terminals during the reporting period. The
214 remittance shall be sealed in a properly addressed and stamped envelope and deposited in the

215 United States mail no later than noon on the day when the payment would otherwise be completed
216 through electronic funds transfer.

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

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

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

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

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

5 (1) The Commission shall receive forty-one percent of net terminal income, which the
6 Commission shall deposit in the state Excess Lottery Revenue Fund created in §29-22-18a of
7 this code;

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

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

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

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

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

22 (B) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this
23 code is in excess of the two percent received during fiscal year 1999 by a county in which a
24 racetrack other than a racetrack described in paragraph (A) of this proviso is located and where
25 the racetrack has been located in a municipality within the county since on or before January 1,
26 1999, shall be divided, if applicable, as follows:

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

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

29 (C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or
30 (B) of this subdivision is located and where the racetrack has been located within that county
31 since on or before January 1, 1999, and where the racetrack is not located in a municipality, the
32 two percent of net terminal income shall be divided, if applicable, as follows:

33 (i) The county shall receive one percent; and

34 (ii) The remaining one percent shall be distributed in equal shares to all municipalities
35 located wholly within the county. Per capita population has no effect on distributions under this
36 paragraph;

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

41 (5) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this
42 code and the West Virginia greyhound breeding development fund created under §19-23-10 of
43 this code shall receive an equal share of a total of not less than one and one-half percent of the
44 net terminal income.

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

47 (7) A licensee shall receive forty-two percent of net terminal income;

48 (8) The tourism promotion fund established in §5B-2-12 of this code shall receive three
49 percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30,
50 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of
51 §29-22A-10(c)(8)(B) of this code;

52 (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited
53 into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*,
54 That in any fiscal year when the amount of money generated by this subdivision together with the
55 total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals \$11 million, all
56 subsequent distributions under this subdivision (9) during that fiscal year shall be deposited in the
57 special fund established by the licensee and used for payment of regular purses in addition to
58 other amounts provided in §19-23-1 *et seq.* of this code;

59 (B) The deposit of the four percent of net terminal income into the Worker's Compensation
60 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to
61 these funds, which shall be deposited in the special fund established by the licensee and used
62 for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this

63 code on and after the first day of the month following the month in which the Governor certifies to
64 the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have
65 been retired or payment of the debt service is provided for; and (ii) that an independent certified
66 actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-
67 three of this code, has been paid or provided in its entirety; and

68 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in
69 the capitol dome and improvements fund created under §5A-4-2 of this code and cultural facilities
70 and capitol resources matching grant program fund created under §29-1-3 of this code; and

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

74 (b) The Commission may establish orderly and effective procedures for the collection and
75 distribution of funds under this section in accordance with the provisions of this section and §29-
76 22A-10 of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Steve Harris
.....
Clerk of the House of Delegates

Jaemi
.....
Clerk of the Senate

FILED
2023 MAR 29 P 5:19
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the House of Delegates.

In effect ninety days from passage.

Roger Hancock
.....
Speaker of the House of Delegates

C. O. B. S.
.....
President of the Senate

The within is Approved this the 29th
Day of March 2023.

James Owens
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 22 2023

Time 2:14 pm