# WEST VIRGINIA CODE: §29-22A-10

**§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 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 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), of this subsection. 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

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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 or capital improvements at facilities located in this state that are on or contiguous to the premises of the licensed 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, and the term "capital improvements" means real property that is expected to replace or modernize buildings, equipment, machinery and other tangible property used in connection with the operation of the gaming, hospitality, or entertainment at the facility. 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

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

(i) The county shall receive one percent; and

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

(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 pursuant to §19-23-13b of this code shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks;

(B) Effective July 1, 2026, the West Virginia Greyhound Breeding Development Fund created pursuant to §19-23-10 of this code shall receive one and one-half percent of the net terminal income originating at licensed greyhound tracks;

(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

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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;

(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

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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) 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

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(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.

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(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.

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