WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

House Bill No. 2780

(By Delegates Perdue, R. Thompson, Ellem, Hamilton, Walters, Campbell and Tabb)

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Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended, relating to racetrack video lottery; increasing the allocation of racetrack video lottery net terminal income to be used for payment into the pension plan for employees of the Licensed Racing Association and correspondingly reducing the allocation of racetrack video lottery net terminal income to licensees; deleting provisions relating to a racetrack which does not have a breeder’s program supported by the Thoroughbred Development Fund or Greyhound Breeding Development Fund, requiring the one and one-half percent of terminal net income designated for the West Virginia Thoroughbred Development Fund to be diverted to the special Fund established by the licensee and used for payment of regular purses; limiting allocation to workers’ compensation and providing for distribution of certain funds to be deposited in the special fund established by the licensee and used for payment of regular purses; providing for expiration of certain income into the Worker’s Compensation Debt Reduction Fund.
Be it enacted by the Legislature of West Virginia:

That §29-22A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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.

(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 thirty days’ advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, 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 exceed its actual costs and expenses shall be deposited into the state lottery fund. For all fiscal years beginning on or after the first day of July, two thousand one, 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 the thirtieth day of June, two thousand one, 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 the thirtieth day of June, two thousand one, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter.

(c) Net terminal income shall be divided as set out in this subsection. For all fiscal years beginning on or after the first day of July, two thousand one, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as set out in section ten-b of this article. 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 thirty percent of net terminal income, which shall be paid into the state lottery fund as provided in section ten-a of this article;

(2) Until the first day of July, two thousand five, fourteen 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 article twenty-three, chapter nineteen of this
code, on and after the first day of July, two thousand five, 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 the first day of July, one thousand nine
hundred ninety-nine, and thereafter, any amount in excess of
the two percent received during the fiscal year one thousand
nine hundred ninety-nine by a county in which a racetrack is
located that has participated in the West Virginia thoroughbred
development fund since on or before the first day of January,
one thousand nine hundred ninety-nine shall be divided as
follows:

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

(ii) The municipalities of the county shall receive fifty
percent of the excess amount, said fifty 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 the first day of July, one thousand nine
hundred ninety-nine, and thereafter, any amount in excess of
the two percent received during the fiscal year one thousand
nine hundred ninety-nine by a county in which a racetrack other
than a racetrack described in paragraph (A) of this proviso is
located and where the racetrack has been located in a munici-
pality within the county since on or before the first day of
January, one thousand nine hundred ninety-nine shall be
divided, if applicable, as follows:
(i) The county shall receive fifty percent of the excess amount; and

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

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

(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) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten of said article shall receive an equal share of a total of not less than one and one-half percent of the net terminal income;

(6) The West Virginia racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code.

(7) A licensee shall receive forty-six and one-half percent of net terminal income.

(8) (A) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: Provided, That for the fiscal year beginning the first day of July, two thousand three, the tourism commission shall transfer from the tourism promotion fund five million dollars of the three percent of the net
terminal income described in this section and section ten-b of this article into the fund administered by the West Virginia economic development authority pursuant to section seven, article fifteen, chapter thirty-one of this code, five million dollars into the capitol renovation and improvement fund administered by the department of administration pursuant to section six, article four, chapter five-a of this code and five million dollars 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 the thirtieth day of June, two thousand four, this three percent of net terminal income and the three percent of net terminal income described in paragraph (B), subdivision (8), subsection (a), section ten-b of this article 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 in section ten-b of this article shall be deposited into the tourism promotion fund created under section twelve, article two, chapter five-b of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the development office promotion fund created under section three-b, article two, chapter five-b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the research challenge fund created under section ten, article one-b, chapter eighteen-b of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in section ten-b of this
article shall be deposited into the capitol renovation and improvement fund administered by the department of administration pursuant to section six, article four, chapter five-a of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the 2004 capitol complex parking garage fund administered by the department of administration pursuant to section five-a, article four, chapter five-a of this code;

(9) (A) On and after the first day of July, two thousand five, seven percent of net terminal income shall be deposited into the workers' compensation debt reduction fund created in section five, article two-d, chapter twenty-three of this code: Provided,
That in any fiscal year when the amount of money generated by this subdivision totals eleven million dollars, all subsequent distributions under 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 for in article twenty-three, chapter nineteen of this code;

(B) The deposit of the seven percent of net terminal income into the worker's compensation debt reduction fund pursuant to this subdivision shall expire and not be imposed with respect to these funds 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 for in article twenty-three, chapter nineteen of this code, on and after the first day of the month following the month in which the governor certifies to the legislature that: (i) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired or payment of the debt service provided for, and (ii) that an independent certified actuary has determined that the
unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided 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 the first day of July, two thousand three, 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 under section three, article one-i, chapter twenty-nine 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 twenty thousand dollars of the one percent of net terminal income provided for 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 article three, chapter twenty-nine-a 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, one hundred thousand dollars of the one percent of net terminal income provided for
in this subdivision shall be deposited in the special fund in the
division of culture and history created under section three,
article one-i, chapter twenty-nine 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 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
under section five, article four, chapter five-a 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 under section
two, article four, chapter five-a of this code and cultural
facilities and capitol resources matching grant program fund
created under section three, article one of this chapter.

(B) For each fiscal year beginning after the thirtieth day of
June, two thousand four:

(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 under
section five, article four, chapter five-a of this code, to be used
for construction and maintenance of a parking garage on the
state capitol complex; and

(ii) The remainder of the one percent of net terminal
income described in paragraph (B), subdivision (9), subsection (a),
section ten-b of this article twenty-two-a shall be distributed as
follows: The net terminal income shall be deposited in equal
amounts into the capitol dome and capitol improvements fund
created under section two, article four, chapter five-a of this
code and the cultural facilities and capitol resources matching
grant program fund created under section three, article one,
chapter twenty-nine of this code until a total of one million five
hundred thousand dollars 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 under chapter eleven 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 discrepan-
cies between the commission’s statement and each terminal’s
mechanical and electronic meter readings. The licensed
racetrack is solely responsible for resolving income discrepan-
cies between actual money collected and the amount shown on
the accounting meters or on the commission’s billing statement.

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

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

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

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third
311 parties in possession or in control of the accounts or records to
312 allow examination of any of those accounts or records by the
313 commission.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time