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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

## House Bill No. 2780

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



Passed April 9, 2005

In Effect Ninety Days from Passage

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### H. B. 2780

(BY DELEGATES PERDUE, R. THOMPSON, ELLEM,  
HAMILTON, WALTERS, CAMPBELL AND TABB)

[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.**

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

8 (b) The gross terminal income of a licensed racetrack shall  
9 be remitted to the commission through the electronic transfer of  
10 funds. Licensed racetracks shall furnish to the commission all  
11 information and bank authorizations required to facilitate the  
12 timely transfer of moneys to the commission. Licensed race-  
13 tracks must provide the commission thirtydays' advance notice  
14 of any proposed account changes in order to assure the uninter-  
15 rupted electronic transfer of funds. From the gross terminal  
16 income remitted by the licensee to the commission, the com-  
17 mission shall deduct an amount sufficient to reimburse the  
18 commission for its actual costs and expenses incurred in  
19 administering racetrack video lottery at the licensed racetrack,

20 and the resulting amount after the deduction is the net terminal  
21 income. The amount deducted for administrative costs and  
22 expenses of the commission may not exceed four percent of  
23 gross terminal income: *Provided*, That any amounts deducted  
24 by the commission for its actual costs and expenses that  
25 exceeds its actual costs and expenses shall be deposited into the  
26 state lottery fund. For all fiscal years beginning on or after the  
27 first day of July, two thousand one, the commission shall not  
28 receive an amount of gross terminal income in excess of the  
29 amount of gross terminal income received during the fiscal year  
30 ending on the thirtieth day of June, two thousand one, but four  
31 percent of any amount of gross terminal income received in  
32 excess of the amount of gross terminal income received during  
33 the fiscal year ending on the thirtieth day of June, two thousand  
34 one, shall be deposited into the fund established in section  
35 eighteen-a, article twenty-two of this chapter.

36 (c) Net terminal income shall be divided as set out in this  
37 subsection. For all fiscal years beginning on or after the first  
38 day of July, two thousand one, any amount of net terminal  
39 income received in excess of the amount of net terminal income  
40 received during the fiscal year ending on the thirtieth day of  
41 June, two thousand one, shall be divided as set out in section  
42 ten-b of this article. The licensed racetrack's share is in lieu of  
43 all lottery agent commissions and is considered to cover all  
44 costs and expenses required to be expended by the licensed  
45 racetrack in connection with video lottery operations. The  
46 division shall be made as follows:

47 (1) The commission shall receive thirty percent of net  
48 terminal income, which shall be paid into the state lottery fund  
49 as provided in section ten-a of this article;

50 (2) Until the first day of July, two thousand five, fourteen  
51 percent of net terminal income at a licensed racetrack shall be  
52 deposited in the special fund established by the licensee, and

53 used for payment of regular purses in addition to other amounts  
54 provided for in article twenty-three, chapter nineteen of this  
55 code, on and after the first day of July, two thousand five, the  
56 rate shall be seven percent of net terminal income;

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

60 (A) Beginning the first day of July, one thousand nine  
61 hundred ninety-nine, and thereafter, any amount in excess of  
62 the two percent received during the fiscal year one thousand  
63 nine hundred ninety-nine by a county in which a racetrack is  
64 located that has participated in the West Virginia thoroughbred  
65 development fund since on or before the first day of January,  
66 one thousand nine hundred ninety-nine shall be divided as  
67 follows:

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

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

75 (B) Beginning the first day of July, one thousand nine  
76 hundred ninety-nine, and thereafter, any amount in excess of  
77 the two percent received during the fiscal year one thousand  
78 nine hundred ninety-nine by a county in which a racetrack other  
79 than a racetrack described in paragraph (A) of this proviso is  
80 located and where the racetrack has been located in a munici-  
81 pality within the county since on or before the first day of  
82 January, one thousand nine hundred ninety-nine shall be  
83 divided, if applicable, as follows:

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

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

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

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

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

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

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

108 (8) (A) The tourism promotion fund established in section  
109 twelve, article two, chapter five-b of this code shall receive  
110 three percent of the net terminal income: *Provided*, That for the  
111 fiscal year beginning the first day of July, two thousand three,  
112 the tourism commission shall transfer from the tourism promo-  
113 tion fund five million dollars of the three percent of the net

114 terminal income described in this section and section ten-b of  
115 this article into the fund administered by the West Virginia  
116 economic development authority pursuant to section seven,  
117 article fifteen, chapter thirty-one of this code, five million  
118 dollars into the capitol renovation and improvement fund  
119 administered by the department of administration pursuant to  
120 section six, article four, chapter five-a of this code and five  
121 million dollars into the tax reduction and federal funding  
122 increased compliance fund; and

123 (B) Notwithstanding any provision of paragraph (A) of this  
124 subdivision to the contrary, for each fiscal year beginning after  
125 the thirtieth day of June, two thousand four, this three percent  
126 of net terminal income and the three percent of net terminal  
127 income described in paragraph (B), subdivision (8), subsection  
128 (a), section ten-b of this article shall be distributed as provided  
129 in this paragraph as follows:

130 (i) 1.375 percent of the total amount of net terminal income  
131 described in this section and in section ten-b of this article shall  
132 be deposited into the tourism promotion fund created under  
133 section twelve, article two, chapter five-b of this code;

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

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

143 (iv) 0.6875 percent of the total amount of net terminal  
144 income described in this section and in section ten-b of this

145 article shall be deposited into the capitol renovation and  
146 improvement fund administered by the department of adminis-  
147 tration pursuant to section six, article four, chapter five-a of this  
148 code; and

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

155 (9) (A) On and after the first day of July, two thousand five,  
156 seven percent of net terminal income shall be deposited into the  
157 workers' compensation debt reduction fund created in section  
158 five, article two-d, chapter twenty-three of this code: *Provided,*  
159 That in any fiscal year when the amount of money generated by  
160 this subdivision totals eleven million dollars, all subsequent  
161 distributions under this subdivision shall be deposited in the  
162 special fund established by the licensee and used for the  
163 payment of regular purses in addition to the other amounts  
164 provided for in article twenty-three, chapter nineteen of this  
165 code;

166 (B) The deposit of the seven percent of net terminal income  
167 into the worker's compensation debt reduction fund pursuant to  
168 this subdivision shall expire and not be imposed with respect to  
169 these funds and shall be deposited in the special fund estab-  
170 lished by the licensee and used for payment of regular purses in  
171 addition to the other amounts provided for in article twenty-  
172 three, chapter nineteen of this code, on and after the first day of  
173 the month following the month in which the governor certifies  
174 to the legislature that: (i) The revenue bonds issued pursuant to  
175 article two-d, chapter twenty-three of this code, have been  
176 retired or payment of the debt service provided for, and (ii) that  
177 an independent certified actuary has determined that the

178 unfunded liability of the old fund, as defined in chapter twenty-  
179 three of this code, has been paid or provided for in its entirety;  
180 and

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

183 (A) For the fiscal year beginning the first day of July, two  
184 thousand three, the veterans memorial program shall receive  
185 one percent of the net terminal income until sufficient moneys  
186 have been received to complete the veterans memorial on the  
187 grounds of the state capitol complex in Charleston, West  
188 Virginia. The moneys shall be deposited in the state treasury in  
189 the division of culture and history special fund created under  
190 section three, article one-i, chapter twenty-nine of this code:  
191 *Provided*, That only after sufficient moneys have been depos-  
192 ited in the fund to complete the veterans memorial and to pay  
193 in full the annual bonded indebtedness on the veterans memo-  
194 rial, not more than twenty thousand dollars of the one percent  
195 of net terminal income provided for in this subdivision shall be  
196 deposited into a special revenue fund in the state treasury, to be  
197 known as the "John F. 'Jack' Bennett Fund". The moneys in  
198 this fund shall be expended by the division of veterans affairs  
199 to provide for the placement of markers for the graves of  
200 veterans in perpetual cemeteries in this state. The division of  
201 veterans affairs shall promulgate legislative rules pursuant to  
202 the provisions of article three, chapter twenty-nine-a of this  
203 code specifying the manner in which the funds are spent,  
204 determine the ability of the surviving spouse to pay for the  
205 placement of the marker and setting forth the standards to be  
206 used to determine the priority in which the veterans grave  
207 markers will be placed in the event that there are not sufficient  
208 funds to complete the placement of veterans grave markers in  
209 any one year, or at all. Upon payment in full of the bonded  
210 indebtedness on the veterans memorial, one hundred thousand  
211 dollars of the one percent of net terminal income provided for

212 in this subdivision shall be deposited in the special fund in the  
213 division of culture and history created under section three,  
214 article one-i, chapter twenty-nine of this code and be expended  
215 by the division of culture and history to establish a West  
216 Virginia veterans memorial archives within the cultural center  
217 to serve as a repository for the documents and records pertain-  
218 ing to the veterans memorial, to restore and maintain the  
219 monuments and memorial on the capitol grounds: *Provided,*  
220 *however,* That five hundred thousand dollars of the one percent  
221 of net terminal income shall be deposited in the state treasury  
222 in a special fund of the department of administration, created  
223 under section five, article four, chapter five-a of this code, to be  
224 used for construction and maintenance of a parking garage on  
225 the state capitol complex; and the remainder of the one percent  
226 of net terminal income shall be deposited in equal amounts in  
227 the capitol dome and improvements fund created under section  
228 two, article four, chapter five-a of this code and cultural  
229 facilities and capitol resources matching grant program fund  
230 created under section three, article one of this chapter.

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

233 (i) Five hundred thousand dollars of the one percent of net  
234 terminal income shall be deposited in the state treasury in a  
235 special fund of the department of administration, created under  
236 section five, article four, chapter five-a of this code, to be used  
237 for construction and maintenance of a parking garage on the  
238 state capitol complex; and

239 (ii) The remainder of the one percent of net terminal  
240 income and all of the one percent of net terminal income  
241 described in paragraph (B), subdivision (9), subsection (a),  
242 section ten-b of this article twenty-two-a shall be distributed as  
243 follows: The net terminal income shall be deposited in equal  
244 amounts into the capitol dome and capitol improvements fund

245 created under section two, article four, chapter five-a of this  
246 code and the cultural facilities and capitol resources matching  
247 grant program fund created under section three, article one,  
248 chapter twenty-nine of this code until a total of one million five  
249 hundred thousand dollars is deposited into the cultural facilities  
250 and capitol resources matching grant program fund; thereafter,  
251 the remainder shall be deposited into the capitol dome and  
252 capitol improvements fund.

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

265 (e) The commission's central control computer shall keep  
266 accurate records of all income generated by each video lottery  
267 terminal. The commission shall prepare and mail to the licensed  
268 racetrack a statement reflecting the gross terminal income  
269 generated by the licensee's video lottery terminals. Each  
270 licensed racetrack shall report to the commission any discrepan-  
271 cies between the commission's statement and each terminal's  
272 mechanical and electronic meter readings. The licensed  
273 racetrack is solely responsible for resolving income discrepan-  
274 cies between actual money collected and the amount shown on  
275 the accounting meters or on the commission's billing statement.

276 (f) Until an accounting discrepancy is resolved in favor of  
277 the licensed racetrack, the commission may make no credit

278 adjustments. For any video lottery terminal reflecting a discrep-  
279 ancy, the licensed racetrack shall submit to the commission the  
280 maintenance log which includes current mechanical meter  
281 readings and the audit ticket which contains electronic meter  
282 readings generated by the terminal's software. If the meter  
283 readings and the commission's records cannot be reconciled,  
284 final disposition of the matter shall be determined by the  
285 commission. Any accounting discrepancies which cannot be  
286 otherwise resolved shall be resolved in favor of the commis-  
287 sion.

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

301 (h) Licensed racetracks may, upon request, receive addi-  
302 tional reports of play transactions for their respective video  
303 lottery terminals and other marketing information not consid-  
304 ered confidential by the commission. The commission may  
305 charge a reasonable fee for the cost of producing and mailing  
306 any report other than the billing statements.

307 (i) The commission has the right to examine all accounts,  
308 bank accounts, financial statements and records in a licensed  
309 racetrack's possession, under its control or in which it has an  
310 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.

*Chandy White*  
Chairman Senate Committee

*D. Ruffin*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage

*Barrett E. Holmes*  
Clerk of the Senate

*Suzanne M. Day*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

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

*[Signature]*  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 4:00 pm