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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2966

(By Mr. Speaker, Mr. Kiss, and Delegates DeLong, Swartzmiller,
Cann, Amores, Varner, Kominar, Ennis, Caputo and Yost)



Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 2966

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
DELONG, SWARTZMILLER, CANN, AMORES, VARNER,
KOMINAR, ENNIS, CAPUTO AND YOST)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §19-23-3, §19-23-9, §19-23-12b, §19-23-12c, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22A-10 and §29-22A-10b of said code, all relating to amending certain provisions of the code involving horse and dog racing and distribution of certain proceeds; providing a special fund, to be established by the Racing Commission, to be used for the payment of breeders awards, restrictive races and stakes purses; amending the definition of “fund”; deleting obsolete provisions; providing the Racing Commission deposit funds required to be withheld from an association or licensee, for purposes of retirement withholdings for employees of racing associations or licensees, into the “West Virginia Thoroughbred Fund”; deleting the stated objective for the fund to aid in the rejuvenation and development of horse tracks in the state for

capital improvements, etc.; providing that the Commission establish funds and accounts for each association and licensee rather than holding funds in deposit in one fund; deleting current provisions concerning the distribution of balances remaining in breeders/raisers, sire owners and purse supplement funds; clarifying the meaning of the phrase “sufficient horses” for purposes of pari-mutuel thoroughbred horse tracks’ provision of restricted races; providing that the “twenty percent larger” requirement for purses in restricted races is only applicable to thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years; providing the Racing Commission may transfer funds back to the general purse fund if less than seventy-five percent of the restricted races fail to receive enough entries to race; deleting the provision that prohibits associations and licensees who qualify for alternate tax provisions contained in subsection (b), section ten, article twenty-three, chapter nineteen from eligibility for treatment under the provisions of section thirteen-b, article twenty-three, chapter nineteen; providing that on January first, two thousand six, licensed racing associations must have a West Virginia Thoroughbred Racing Breeders Program; providing under provisions relating to the expenditure of racetrack video lottery funds, that the next two hundred thousand dollars deposited into the West Virginia Racing Commission Racetrack Video Lottery Account shall be used for promotional activities and purses for open stake races for the West Virginia Derby which is held at a racetrack that did not participate in the West Virginia Breeders Classic - rather than the current statutory language which designates nonparticipation in the West Virginia Thoroughbred Development Fund; substituting the breeders classic for the Thoroughbred Development Fund; and, 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, that requires 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.

Be it enacted by the Legislature of West Virginia:

That §19-23-3, §19-23-9, §19-23-12b, §19-23-12c, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22A-10 and §29-22A-10b of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-3. Definitions.

1 Unless the context in which used clearly requires a different
2 meaning, as used in this article:

3 (1) “Horse racing” means any type of horse racing, includ-
4 ing, but not limited to, thoroughbred racing and harness racing;

5 (2) “Thoroughbred racing” means flat or running type horse
6 racing in which each horse participating therein is a thorough-
7 bred and is mounted by a jockey;

8 (3) “Harness racing” means horse racing in which the
9 horses participating therein are harnessed to a sulky, carriage or
10 other vehicle and shall not include any form of horse racing in
11 which the horses are mounted by jockeys;

12 (4) “Horse race meeting” means the whole period of time
13 for which a license is required by the provisions of section one
14 of this article;

15 (5) “Dog racing” means any type of dog racing, including,
16 but not limited to, greyhound racing;

17 (6) “Purse” means any purse, stake or award for which a
18 horse or dog race is run;

19 (7) "Racing association" or "person" means any individual,
20 partnership, firm, association, corporation or other entity or
21 organization of whatever character or description;

22 (8) "Applicant" means any racing association making
23 application for a license under the provisions of this article or
24 any person making application for a permit under the provisions
25 of this article, or any person making application for a construc-
26 tion permit under the provisions of this article, as the case may
27 be;

28 (9) "License" means the license required by the provisions
29 of section one of this article;

30 (10) "Permit" means the permit required by the provisions
31 of section two of this article;

32 (11) "Construction permit" means the construction permit
33 required by the provisions of section eighteen of this article;

34 (12) "Licensee" means any racing association holding a
35 license required by the provisions of section one of this article
36 and issued under the provisions of this article;

37 (13) "Permit holder" means any person holding a permit
38 required by the provisions of section two of this article and
39 issued under the provisions of this article;

40 (14) "Construction permit holder" means any person
41 holding a construction permit required by the provisions of
42 section eighteen of this article and issued under the provisions
43 of this article;

44 (15) "Hold or conduct" includes "assist, aid or abet in
45 holding or conducting";

46 (16) “Racing commission” means the West Virginia Racing
47 Commission;

48 (17) “Stewards” means the steward or stewards represent-
49 ing the Racing Commission, the steward or stewards represent-
50 ing a licensee and any other steward or stewards, whose duty it
51 is to supervise any horse or dog race meeting, all as may be
52 provided by reasonable rules of the Racing Commission, and
53 the reasonable rules shall specify the number of stewards to be
54 appointed, the method and manner of their appointment and
55 their powers, authority and duties;

56 (18) “Pari-mutuel” means a mutuel or collective pool that
57 can be divided among those who have contributed their wagers
58 to one central agency, the odds to be reckoned in accordance to
59 the collective amounts wagered upon each contestant running
60 in a horse or dog race upon which the pool is made, but the total
61 to be divided among the first three contestants on the basis of
62 the number of wagers on these;

63 (19) “Pari-mutuel clerk” means any employee of a licensed
64 racing association who is responsible for the collection of
65 wagers, the distribution of moneys for winning pari-mutuel
66 tickets, verification of the validity of pari-mutuel tickets and
67 accounting for pari-mutuel funds;

68 (20) “Pool” means a combination of interests in a joint
69 wagering enterprise or a stake in such enterprise;

70 (21) “Legitimate breakage” is the percentage left over in the
71 division of a pool;

72 (22) “To the dime” means that wagers shall be figured and
73 paid to the dime;

74 (23) "Code" means the Code of West Virginia, one thou-
75 sand nine hundred thirty-one, as heretofore and hereinafter
76 amended;

77 (24) "Accredited thoroughbred horse" means a thorough-
78 bred horse that is: (a) Foaled in West Virginia; (b) sired by an
79 accredited West Virginia sire; or (c) as a yearling, finished
80 twelve consecutive months of verifiable residence in the state,
81 except for thirty days grace: (A) For the horse to be shipped to
82 and from horse sales where the horse is officially entered in the
83 sales catalogue of a recognized thoroughbred sales company, or
84 (B) for obtaining veterinary services, documented by veterinary
85 reports;

86 (25) "Accredited West Virginia sire" is a sire that is
87 permanently domiciled in West Virginia, stands a full season in
88 West Virginia and is registered with West Virginia Thorough-
89 bred Breeders Association;

90 (26) "Breeder of an accredited West Virginia horse" is the
91 owner of the foal at the time it was born in West Virginia;

92 (27) "Raiser of an accredited West Virginia horse" is the
93 owner of the yearling at the time it finished twelve consecutive
94 months of verifiable residence in the state. During the period,
95 the raiser will be granted one month of grace for his or her
96 horse to be shipped to and from thoroughbred sales where the
97 horse is officially entered in the sales catalogue of a recognized
98 thoroughbred sales company. Prior to the horse being shipped
99 out of the state for sales, the raiser must notify the Racing
100 Commission of his or her intentions;

101 (28) The "owner of an accredited West Virginia sire" is the
102 owner of record at the time the offspring is conceived;

103 (29) The "owner of an accredited West Virginia horse"
104 means the owner at the time the horse earned designated purses

105 to qualify for restricted purse supplements provided in section
106 thirteen-b of this article;

107 (30) "Registered greyhound owner" means an owner of a
108 greyhound that is registered with the National Greyhound
109 Association;

110 (31) "Fund" means the West Virginia Thoroughbred
111 Development Fund for a racing association or licensee estab-
112 lished in section thirteen-b of this article; and

113 (32) "Regular purse" means both regular purses and stakes
114 purses.

**§19-23-9. Pari-mutuel system of wagering authorized; licensee
authorized to deduct commissions from
pari-mutuel pools; retention of breakage; audit-
ing; minors.**

1 (a) The pari-mutuel system of wagering upon the results of
2 any horse or dog race at any horse or dog race meeting con-
3 ducted or held by any licensee is hereby authorized, if and only
4 if, such pari-mutuel wagering is conducted by the licensee
5 within the confines of the licensee's horse racetrack or dog
6 racetrack, and the provisions of section one, article ten, chapter
7 sixty-one of this code, relating to gaming shall not apply to the
8 pari-mutuel system of wagering in manner and form as pro-
9 vided in this article at any horse or dog race meeting within this
10 state where horse or dog racing shall be permitted for any purse
11 by any licensee. A licensee shall permit or conduct only the
12 pari-mutuel system of wagering within the confines of the
13 licensee's racetrack at which any horse or dog race meeting is
14 conducted or held.

15 (b) A licensee is hereby expressly authorized to deduct a
16 commission from the pari-mutuel pools, as follows:

17 (1) The commission deducted by any licensee from the
18 pari-mutuel pools on thoroughbred horse racing, except from
19 thoroughbred horse racing pari-mutuel pools involving what is
20 known as multiple betting in which the winning pari-mutuel
21 ticket or tickets are determined by a combination of two or
22 more winning horses, shall not exceed seventeen and one-fourth
23 percent of the total of the pari-mutuel pools for the day. Out of
24 the commission, as is mentioned in this subdivision, the
25 licensee: (i) Shall pay the pari-mutuel pools tax provided in
26 subsection (b), section ten of this article; (ii) shall make a
27 deposit into a special fund to be established by the licensee and
28 to be used for the payment of regular purses offered for
29 thoroughbred racing by the licensee, which deposits out of
30 pari-mutuel pools for each day during the months of January,
31 February, March, October, November and December shall be
32 seven and three hundred seventy-five one-thousandths percent
33 of the pari-mutuel pools and which, out of pari-mutuel pools for
34 each day during all other months, shall be six and eight hundred
35 seventy-five one-thousandths percent of the pari-mutuel pools,
36 which shall take effect beginning fiscal year one thousand nine
37 hundred ninety; (iii) shall make a deposit into a special fund to
38 be established by the racing commission and to be used for the
39 payment of breeders awards, restrictive races and stakes purses
40 as authorized by section thirteen-b of this article, which
41 deposits out of pari-mutuel pools shall from the effective date
42 of this section shall be two percent of the pools; and (iv) shall
43 pay one tenth of one percent of the pari-mutuel pools into the
44 general fund of the county commission of the county in which
45 the racetrack is located, except if within a municipality, then to
46 the Municipal General Fund. The remainder of the commission
47 shall be retained by the licensee.

48 Each licensee that permits or conducts pari-mutuel wager-
49 ing at the licensee's thoroughbred horseracetrack shall annually
50 pay five hundred thousand dollars from the special fund
51 required by this section to be established by the licensee for the

52 payment of regular purses offered for thoroughbred racing by
53 the licensee into a special fund established by the Racing
54 Commission for transfer to a pension plan established by the
55 Racing Commission for all back stretch personnel, including,
56 but not limited to, exercise riders, trainers, grooms and stable
57 forepersons licensed by the Racing Commission to participate
58 in horse racing in this state and their dependents.

59 Each thoroughbred racetrack licensee is authorized to enter
60 into an agreement with its local Horsemen's Benevolent and
61 Protective Association under which an agreed upon percentage
62 of up to two percent of purses actually paid during the preced-
63 ing month may be paid to the local Horsemen's Benevolent and
64 Protective Association from the special fund required by this
65 section for their respective medical trusts for backstretch
66 personnel and administrative fees.

67 The commission deducted by any licensee from the
68 pari-mutuel pools on thoroughbred horse racing involving what
69 is known as multiple betting in which the winning pari-mutuel
70 ticket or tickets are determined by a combination of two
71 winning horses shall not exceed nineteen percent and by a
72 combination of three or more winning horses shall not exceed
73 twenty-five percent of the total of such pari-mutuel pools for
74 the day. Out of the commission, as is mentioned in this para-
75 graph, the licensee: (i) Shall pay the pari-mutuel pools tax
76 provided in subsection (b), section ten of this article; (ii) shall
77 make a deposit into a special fund to be established by the
78 licensee and to be used for the payment of regular purses
79 offered for thoroughbred racing by the licensee, which deposits
80 out of pari-mutuel pools for each day during the months of
81 January, February, March, October, November and December,
82 for pools involving a combination of two winning horses shall
83 be eight and twenty-five one-hundredths percent and out of
84 pari-mutuel pools for each day during all other months shall be
85 seven and seventy-five one-hundredths percent of the

86 pari-mutuel pools; and involving a combination of three or
87 more winning horses for the months of January, February,
88 March, October, November and December the deposits out of
89 the fund shall be eleven and twenty-five one-hundredths percent
90 of the pari-mutuel pools; and which, out of pari-mutuel pools
91 for each day during all other months, shall be ten and sev-
92 enty-five one-hundredths percent of the pari-mutuel pools; (iii)
93 shall make a deposit into a special fund to be established by the
94 racing commission and to be used for the payment of breeder
95 awards, restrictive races and stakes purses which deposits out
96 of pari-mutuel pools shall from the effective date of this section
97 be two percent of the pools; and (iv) shall pay one tenth of one
98 percent of the pari-mutuel pools into the general fund of the
99 county commission of the county in which the racetrack is
100 located, except if within a municipality, then to the Municipal
101 General Fund. The remainder of the commission shall be
102 retained by the licensee.

103 The commission deducted by the licensee under this
104 subdivision may be reduced only by mutual agreement between
105 the licensee and a majority of the trainers and horse owners
106 licensed by subsection (a), section two of this article or their
107 designated representative. The reduction in licensee commis-
108 sions may be for a particular race, racing day or days or for a
109 horse race meeting. Fifty percent of the reduction shall be
110 retained by the licensee from the amounts required to be paid
111 into the special fund established by the licensee under the
112 provisions of this subdivision. The Racing Commission shall
113 promulgate any reasonable rules that are necessary to imple-
114 ment the foregoing provisions.

115 (2) The commission deducted by any licensee from the
116 pari-mutuel pools on harness racing shall not exceed seventeen
117 and one-half percent of the total of the pari-mutuel pools for the
118 day. Out of the commission the licensee shall pay the
119 pari-mutuel pools tax provided in subsection (c), section ten of

120 this article and shall pay one tenth of one percent into the
121 general fund of the county commission of the county in which
122 the racetrack is located, except if within a municipality, then to
123 the Municipal General Fund. The remainder of the commission
124 shall be retained by the licensee.

125 (3) The commission deducted by any licensee from the
126 pari-mutuel pools on dog racing, except from dog racing
127 pari-mutuel pools involving what is known as multiple betting
128 in which the winning pari-mutuel ticket or tickets are deter-
129 mined by a combination of two or more winning dogs, shall not
130 exceed sixteen and thirty one-hundredths percent of the total of
131 all pari-mutuel pools for the day. The commission deducted by
132 any licensee from the pari-mutuel pools on dog racing involv-
133 ing what is known as multiple betting in which the winning
134 pari-mutuel ticket or tickets are determined by a combination
135 of two winning dogs shall not exceed nineteen percent, by a
136 combination of three winning dogs shall not exceed twenty
137 percent, and by a combination of four or more winning dogs
138 shall not exceed twenty-one percent of the total of such
139 pari-mutuel pools for the day. The foregoing commissions are
140 in effect for the fiscal years one thousand nine hundred ninety
141 and one thousand nine hundred ninety-one. Thereafter, the
142 commission shall be at the percentages in effect prior to the
143 effective date of this article unless the Legislature, after review,
144 determines otherwise. Out of the commissions, the licensee
145 shall pay the pari-mutuel pools tax provided in subsection (d),
146 section ten of this article and one tenth of one percent of such
147 pari-mutuel pools into the general fund of the county commis-
148 sion of the county in which the racetrack is located. In addition,
149 out of the commissions, if the racetrack is located within a
150 municipality, then the licensee shall also pay three tenths of one
151 percent of the pari-mutuel pools into the general fund of the
152 municipality; or, if the racetrack is located outside of a muni-
153 cipality, then the licensee shall also pay three tenths of one
154 percent of the pari-mutuel pools into the State Road Fund for

155 use by the Division of Highways in accordance with the
156 provisions of this subdivision. The remainder of the commis-
157 sion shall be retained by the licensee.

158 For the purposes of this section, "municipality" means and
159 includes any Class I, Class II and Class III city and any Class
160 IV town or village incorporated as a municipal corporation
161 under the laws of this state prior to the first day of January, one
162 thousand nine hundred eighty-seven.

163 Each dog racing licensee, when required by the provisions
164 of this subdivision to pay a percentage of its commissions to the
165 State Road Fund for use by the Division of Highways, shall
166 transmit the required funds, in such manner and at such times
167 as the Racing Commission shall by procedural rule direct, to the
168 State Treasurer for deposit in the State Treasury to the credit of
169 the Division of Highways State Road Fund. All funds collected
170 and received in the state road fund pursuant to the provisions of
171 this subdivision shall be used by the Division of Highways in
172 accordance with the provisions of article seventeen-a, chapter
173 seventeen of this code for the acquisition of right-of-way for,
174 the construction of, the reconstruction of and the improvement
175 or repair of any interstate or other highway, secondary road,
176 bridge and toll road in the state. If on the first day of July, one
177 thousand nine hundred eighty-nine, any area encompassing a
178 dog racetrack has incorporated as a Class I, Class II or Class III
179 city or as a Class IV town or village, whereas such city, town or
180 village was not incorporated as such on the first day of January,
181 one thousand nine hundred eighty-seven, then on and after the
182 first day of July, one thousand nine hundred eighty-nine, any
183 balances in the state road fund existing as a result of payments
184 made under the provisions of this subdivision may be used by
185 the State Road Fund for any purpose for which other moneys in
186 the fund may lawfully be used, and in lieu of further payments
187 to the State Road Fund, the licensee of a racetrack which is
188 located in the municipality shall thereafter pay three tenths of

189 one percent of the pari-mutuel pools into the general fund of the
190 municipality. If, no incorporation occurs before the first day of
191 July, one thousand nine hundred eighty-nine, then payments to
192 the State Road Fund shall thereafter continue as provided for
193 under the provisions of this subdivision.

194 A dog racing licensee, before deducting the commissions
195 authorized by this subdivision, shall give written notification to
196 the Racing Commission not less than thirty days prior to any
197 change in the percentage rates for the commissions. The Racing
198 Commission shall prescribe blank forms for filing the notifica-
199 tion. The notification shall disclose the following: (A) The
200 revised commissions to be deducted from the pari-mutuel pools
201 each day on win, place and show betting and on different forms
202 of multiple bettings; (B) the dates to be included in the revised
203 betting; and (C) such other information as may be required by
204 the Racing Commission.

205 The licensee shall establish a special fund to be used only
206 for capital improvements or long-term debt amortization or
207 both: *Provided*, That any licensee, heretofore licensed for a
208 period of eight years prior to the effective date of the amend-
209 ment made to this section during the regular session of the
210 Legislature held in the year one thousand nine hundred
211 eighty-seven, shall establish the special fund to be used only for
212 capital improvements or physical plant maintenance, or both, at
213 the licensee's licensed facility or at the licensee's commonly
214 owned racing facility located within this state. Deposits made
215 into the funds shall be in an amount equal to twenty-five
216 percent of the increased rate total over and above the applicable
217 rate in effect as of the first day of January, one thousand nine
218 hundred eighty-seven, of the pari-mutuel pools for the day. Any
219 amount deposited into the funds must be expended or liability
220 therefor incurred within a period of two years from the date of
221 deposit. Any funds not expended shall be transferred immedi-

222 ately into the State General Fund after expiration of the
223 two-year period.

224 The licensee shall make a deposit into a special fund
225 established by the licensee and used for payment of regular
226 purses offered for dog racing, which deposits out of the li-
227 censee's commissions for each day shall be three and sev-
228 enty-five one-hundredths percent of the pari-mutuel pools.

229 The licensee shall further establish a special fund to be used
230 exclusively for marketing and promotion programs; the funds
231 shall be in an amount equal to five percent over and above the
232 applicable rates in effect as of the first day of January, one
233 thousand nine hundred eighty-seven of the total pari-mutuel
234 pools for the day.

235 The Racing Commission shall prepare and transmit
236 annually to the Governor and the Legislature a report of the
237 activities of the Racing Commission under this subdivision. The
238 report shall include a statement of: The amount of commissions
239 retained by licensees; the amount of taxes paid to the state; the
240 amounts paid to municipalities, counties and the Division of
241 Highways Dog Racing Fund; the amounts deposited by licens-
242 ees into special funds for capital improvements or long-term
243 debt amortization and a certified statement of the financial
244 condition of any licensee depositing into the fund; the amounts
245 paid by licensees into special funds and used for regular purses
246 offered for dog racing; the amounts paid by licensees into
247 special funds and used for marketing and promotion programs;
248 and such other information as the racing commission may
249 consider appropriate for review.

250 (c) In addition to any commission, a licensee of horse race
251 or dog race meetings shall also be entitled to retain the legiti-
252 mate breakage, which shall be made and calculated to the dime,
253 and from the breakage, the licensee of a horse race meeting

254 (excluding dog race meetings), shall deposit daily fifty percent
255 of the total of the breakage retained by the licensee into the
256 special fund created pursuant to the provisions of subdivision
257 (1), subsection (b) of this section for the payment of regular
258 purses.

259 (d) The director of audit, and any other auditors employed
260 by the Racing Commission who are also certified public
261 accountants or experienced public accountants, shall have free
262 access to the space or enclosure where the pari-mutuel system
263 of wagering is conducted or calculated at any horse or dog race
264 meeting for the purpose of ascertaining whether or not the
265 licensee is deducting and retaining only a commission as
266 provided in this section and is otherwise complying with the
267 provisions of this section. They shall also, for the same pur-
268 poses only, have full and free access to all records and papers
269 pertaining to the pari-mutuel system of wagering and shall
270 report to the Racing Commission in writing, under oath,
271 whether or not the licensee has deducted and retained any
272 commission in excess of that permitted under the provisions of
273 this section or has otherwise failed to comply with the provi-
274 sions of this section.

275 (e) No licensee shall permit or allow any individual under
276 the age of eighteen years to wager at any horse or dog racetrack,
277 knowing or having reason to believe that the individual is under
278 the age of eighteen years.

279 (f) Notwithstanding the foregoing provisions of subdivision
280 (1), subsection (b) of this section, to the contrary, a thorough-
281 bred licensee qualifying for and paying the alternate reduced
282 tax on pari-mutuel pools provided in section ten of this article
283 shall distribute the commission authorized to be deducted by
284 subdivision (1), subsection (b) of this section as follows: (i) The
285 licensee shall pay the alternate reduced tax provided in section
286 ten of this article; (ii) the licensee shall pay one tenth of one

287 percent of the pari-mutuel pools into the general fund of the
288 county commission of the county in which the racetrack is
289 located, except if within a municipality, then to the Municipal
290 General Fund; (iii) the licensee shall pay one half of the
291 remainder of the commission into the special fund established
292 by the licensee and to be used for the payment of regular purses
293 offered for thoroughbred racing by the licensee; and (iv) the
294 licensee shall retain the amount remaining after making the
295 payments required in this subsection.

296 (g) Each kennel which provides or races dogs owned or
297 leased by others shall furnish to the Commission a surety bond
298 in an amount to be determined by the Commission to secure the
299 payment to the owners or lessees of the dogs the portion of any
300 purse owed to the owner or lessee.

**§19-23-12b. Televised racing days; merging of pari-mutuel
wagering pools.**

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a calendar day, assigned
3 by the Commission, at a licensed racetrack on which
4 pari-mutuel betting is conducted on horse or dog races run at
5 other racetracks in this state or at racetracks outside of this state
6 which are broadcast by television at a licensed racetrack and
7 which day or days have had the prior written approval of the
8 representative of the majority of the owners and trainers who
9 hold permits required by section two of this article; and

10 (2) "Host Racing Association" means any person who,
11 pursuant to a license or other permission granted by the host
12 governmental entity, conducts the horse or dog race upon which
13 wagers are placed.

14 (b) A licensee conducting not less than two hundred twenty
15 live racing dates for each horse or dog race meeting may, with

16 the prior approval of the State Racing Commission, contract
17 with any legal wagering entity in this state or in any other
18 governmental jurisdiction to receive telecasts and accept wagers
19 on races conducted by the legal wagering entity: *Provided*, That
20 at those thoroughbred racetracks the licensee, in applying for
21 racing dates, shall apply for not less than two hundred ten live
22 racing dates for each horse race meeting. If, thereafter, for
23 reasons beyond the licensee's control, related to adverse
24 weather conditions, unforeseen casualty occurrences or a
25 shortage of thoroughbred horses eligible to compete for purses,
26 the licensee concludes that this number of racing days cannot
27 be attained, the licensee may file a request with the Racing
28 Commission to reduce the authorized live racing days. Upon
29 receipt of the request the Racing Commission shall within
30 seventy-two hours of the receipt of the request notify the
31 licensee and the representative of a majority of the owners and
32 trainers at the requesting track and the representative of the
33 majority of the mutuel clerks at the requesting track that such
34 request has been received and that if no objection to the request
35 is received within ten days of the notification the request will be
36 approved: *Provided* however, That the Commission shall give
37 consideration to whether there existed available unscheduled
38 potential live racing dates following the adverse weather or
39 casualty and prior to the end of the race meeting which could be
40 used as new live racing dates in order to maintain the full live
41 racing schedule previously approved by the Racing Commis-
42 sion. If an objection is received by the Commission within the
43 time limits, the Commission shall, within thirty days of receipt
44 of such objection, set a hearing on the question of reducing
45 racing days, which hearing shall be conducted at a convenient
46 place in the county in which the requesting racetrack is located.
47 The Commission shall hear from all parties concerned and,
48 based upon testimony and documentary evidence presented at
49 the hearing, shall determine the required number of live racing
50 days: *Provided further*, That the Commission shall not reduce
51 the number of live racing days below one hundred eighty-five

52 days for a horse race meeting unless the licensee requesting
53 such reduction has: (i) Filed with the Commission a current
54 financial statement, which shall be subject to independent audit;
55 and (ii) met the burden of proving that just cause exists for such
56 requested reduction in live racing days. The telecasts may be
57 received and wagers accepted at any location authorized by the
58 provisions of section twelve-a of this article. The contract must
59 receive the approval of the representative of the majority of the
60 owners and trainers who hold permits required by section two
61 of this article at the receiving thoroughbred racetrack.

62 (c) The Commission may allow the licensee to commingle
63 its wagering pools with the wagering pools of the host racing
64 association. If the pools are commingled, the wagering at the
65 licensee's racetrack must be on tabulating equipment capable
66 of issuing pari-mutuel tickets and be electronically linked with
67 the equipment at the sending racetrack. Subject to the approval
68 of the Commission, the types of betting, licensee commissions
69 and distribution of winnings on pari-mutuel pools of the
70 sending licensee racetrack are those in effect at the licensee
71 racetrack. Breakage for pari-mutuel pools on a televised racing
72 day must be calculated in accordance with the law or rules
73 governing the sending racetrack and must be distributed in a
74 manner agreed to between the licensee and the sending race-
75 track. For the televised racing services it provides, the host
76 racing association shall receive a fee to be paid by the receiving
77 licensee racetrack which shall be in an amount to be agreed
78 upon by the receiving licensee racetrack and the host racing
79 association.

80 (d) The Commission may assign televised racing days at
81 any time. When a televised racing day is assigned, the Commis-
82 sion shall assign either a steward or an auditor to preside over
83 the televised races at the licensee racetrack.

84 (e) (1) From the licensee commissions authorized by
85 subsection (c) of this section, the licensee shall pay one tenth of
86 one percent of each commission into the general fund of the
87 county, in which the racetrack is located and at which the
88 wagering occurred and there is imposed and the licensee shall
89 pay, for each televised racing day on which the total
90 pari-mutuel pool exceeds one hundred thousand dollars, the
91 greater of either: (i) The total of the daily license tax and the
92 pari-mutuel pools tax required by section ten of this article; or
93 (ii) a daily license tax of one thousand two hundred fifty
94 dollars. For each televised racing day on which the total
95 pari-mutuel pool is one hundred thousand dollars or less, the
96 licensee shall pay a daily license tax of five hundred dollars
97 plus an additional license tax of one hundred dollars for each
98 ten thousand dollars, or part thereof, that the pari-mutuel pool
99 exceeds fifty thousand dollars, but does not exceed one hundred
100 thousand dollars. The calculation of the total pari-mutuel pool
101 for purposes of this subsection shall include only one half of all
102 wagers placed at a licensed racetrack in this state on televised
103 races conducted at another licensed racetrack within this state.
104 Payments of the tax imposed by this section are subject to the
105 requirements of subsection (e), section ten of this article.

106 (2) From the licensee commissions authorized by subsec-
107 tion (c) of this section, after payments are made in accordance
108 with the provisions of subdivision (1) of this subsection, the
109 licensee shall pay, for each televised racing day, one fourth of
110 one percent of the total pari-mutuel pools for and on behalf of
111 all employees of the licensed racing association by making a
112 deposit into a special fund to be established by the Racing
113 Commission and to be used for payments into the pension plan
114 for all employees of the licensed racing association.

115 (3) From the licensee commissions authorized by subsec-
116 tion (c) of this section, after payments are made in accordance
117 with the provisions of subdivisions (1) and (2) of this subsec-

118 tion, thoroughbred licensees shall pay, one-half percent of net
119 simulcast income and for each televised racing day on or after
120 the first day of July, one thousand nine hundred ninety-seven,
121 an additional five and one-half percent of net simulcast income
122 into the West Virginia Thoroughbred Development Fund
123 established by the Racing Commission according to section
124 thirteen-b of this article. For the purposes of this section, the
125 term “net simulcast income” means the total commission
126 deducted each day by the licensee from the pari-mutuel pools
127 on simulcast horse or dog races, less direct simulcast expenses,
128 including, but not limited to, the cost of simulcast signals,
129 telecommunication costs and decoder costs.

130 (f) After deducting the tax and other payments required by
131 subsection (e) of this section, the amount required to be paid
132 under the terms of the contract with the host racing association
133 and the cost of transmission, the horse racing association shall
134 make a deposit equal to fifty percent of the remainder into the
135 purse fund established under the provisions of subdivision (1),
136 subsection (b), section nine of this article. After deducting the
137 tax and other payments required by subsection (e) of this
138 section, dog racetracks shall pay an amount equal to two tenths
139 of one percent of the daily simulcast pari-mutuel pool to the
140 “West Virginia Racing Commission Special Account-West
141 Virginia Greyhound Breeding Development Fund”.

142 (g) The provisions of the “Federal Interstate Horseracing
143 Act of 1978”, also known as Public Law 95-515, Section
144 3001-3007 of Title 15, U.S. Code, as amended, controls in
145 determining the intent of this section.

§19-23-12c. Interstate simulcasts by licensed racetracks.

1 (a) Any licensed racing association may be authorized by
2 the Commission to transmit broadcasts of races conducted at its
3 racetrack to legal wagering entities located outside this state,

4 which legal wagering entities located outside this state shall not
5 be subject to the provisions of subsection (e), section twelve-b
6 of this article: *Provided*, That as consideration for the televised
7 racing services it provides, the host racing association shall
8 receive a signal transmission fee to be paid by the receiving
9 legal wagering entity which shall be in an amount agreed upon
10 by the receiving legal wagering entity and the host racing
11 association. All broadcasts of horse races shall be in accordance
12 with all of the provisions of the “Federal Interstate Horseracing
13 Act of 1978,” also known as Public Law 95-515, Section
14 3001-3007 of Title 15 of the United States Code.

15 (b) One percent of the total signal transmission fee provided
16 in subsection (a) of this section shall be paid into a special fund
17 to be established by the Racing Commission for and on behalf
18 of all employees of the licensed racing association to be used
19 for payments into the pension plan for all employees of the
20 licensed racing association, and a thoroughbred horse racetrack
21 shall pay seven and one-half percent of the signal transmission
22 fee into the West Virginia Thoroughbred Development Fund
23 established by the Racing Commission according to section
24 thirteen-b of this article. After deducting: (i) The amounts
25 required to be placed into the pension plan for all employees of
26 the licensed racing association under this section; (ii) the
27 amounts, if any, required to be paid into the West Virginia
28 Thoroughbred Development Fund under this section; and (iii)
29 the direct costs necessary to send a live audio and visual signal
30 of horse races or dog races from any racetrack licensed under
31 the provisions of section one of this article to any legal wager-
32 ing entities outside this state for the purpose of pari-mutuel
33 wagering, which direct costs shall include the cost of satellite
34 equipment necessary to transmit the signal, a satellite operator
35 and the satellite time necessary to broadcast the signal and the
36 cost of telecommunication and facsimile services needed to
37 communicate necessary information to all legal wagering

38 entities for the purpose of pari-mutuel wagering, thoroughbred
39 horse racing associations shall make a deposit equal to fifty
40 percent of the remainder into the purse fund established under
41 the provisions of subdivision (1), subsection (b), section nine of
42 this article: *Provided*, That the funds deposited in the purse
43 fund pursuant to this section may be used for the payment of
44 regular purses or, upon agreement between the horse racing
45 association and the representative of the majority of owners and
46 trainers at a particular thoroughbred racetrack, may be used for
47 capital improvements supporting simulcast operations.

**§19-23-13b. West Virginia Thoroughbred Development Fund;
distribution; restricted races; nonrestricted purse
supplements; preference for West Virginia ac-
credited thoroughbreds.**

1 (a) The Racing Commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection (b),
3 section nine of this article in a banking institution of its choice
4 in a special account to be known as “West Virginia Racing
5 Commission Special Account — West Virginia Thoroughbred
6 Development Fund.” *Provided*, That notwithstanding any other
7 provision of this code to the contrary, beginning the first day of
8 October, two thousand five, the Racing Commission shall
9 deposit moneys required to be withheld from an association or
10 licensee under the provisions of subsection (b), section nine of
11 this article, subdivision three, subsection (e), section twelve-b
12 of this article, subsection (b), section twelve-c of this article,
13 paragraph (B), subdivision (3), subsection (b), section thirteen-c
14 of this article and section ten-b, article twenty-two-a, chapter
15 twenty-nine of this code for deposit in the “West Virginia
16 Racing Commission Special Account – West Virginia Thor-
17 oughbred Development Fund” with a banking institution of its
18 choice in a separate account for each association or licensee.
19 Each separate account shall be a special account to be known as
20 “West Virginia Racing Commission Special Account – West

21 Virginia Thoroughbred Development Fund” and shall name the
22 Racing Commission or licensee from which the funds deposited
23 in the account have been withheld. Notice of the amount, date
24 and place of the deposits shall be given by the Racing Commis-
25 sion, in writing, to the State Treasurer. The purpose of the funds
26 is to promote better breeding and racing of thoroughbred horses
27 in the state through awards and purses for accredited breed-
28 ers/raisers, sire owners and thoroughbred race horse owners:
29 *Provided*, That five percent of the deposits required to be
30 withheld by an association or licensee in subsection (b), section
31 nine of this article shall be placed in a special revenue account
32 hereby created in the State Treasury called the “Administration
33 and Promotion Account.”

34 (b) The Racing Commission is authorized to expend the
35 moneys deposited in the administration and promotion account
36 at times and in amounts as the Commission determines to be
37 necessary for purposes of administering and promoting the
38 thoroughbred development program: *Provided*, That during any
39 fiscal year in which the Commission anticipates spending any
40 money from the account, the Commission shall submit to the
41 executive department during the budget preparation period prior
42 to the Legislature convening before that fiscal year for inclusion
43 in the executive budget document and budget bill the recom-
44 mended expenditures, as well as requests of appropriations for
45 the purpose of administration and promotion of the program.
46 The Commission shall make an annual report to the Legislature
47 on the status of the administration and promotion account,
48 including the previous year’s expenditures and projected
49 expenditures for the next year.

50 (c) The fund or funds and the account or accounts estab-
51 lished in subsection (a) of this section shall operate on an
52 annual basis.

53 (d) Funds in the Thoroughbred Development Fund or funds
54 shall be expended for awards and purses except as otherwise
55 provided in this section. Annually, the first three hundred
56 thousand dollars of each fund shall be available for distribution
57 for stakes races at a racetrack which has participated in the
58 West Virginia Thoroughbred Development Fund for a period of
59 more than four consecutive calendar years prior to the thirty
60 first day of December, nine hundred ninety-two. One of the
61 stakes races shall be the West Virginia Futurity and the second
62 shall be the Frank Gall Memorial Stakes. For the purpose of
63 participating in the West Virginia Futurity only, all mares,
64 starting with the breeding season beginning the first day of
65 February through the thirty-first day of July, two thousand four,
66 and each successive breeding season thereafter shall be bred
67 back that year to an accredited West Virginia stallion only
68 which is registered with the West Virginia Thoroughbred
69 Breeders Association. The remaining races may be chosen by
70 the committee set forth in subsection(f) of this section.

71 (e) Awards and purses shall be distributed as follows:

72 (1) The breeders/raisers of accredited thoroughbred horses
73 that earn a purse at a participating West Virginia meet shall
74 receive a bonus award calculated at the end of the year as a
75 percentage of the fund dedicated to the breeders/raisers, which
76 shall be sixty percent of the fund available for distribution in
77 any one year. The total amount available for the breed-
78 ers'/raisers' awards shall be distributed according to the ratio of
79 purses earned by an accredited race horse to the total amount
80 earned in the participating races by all accredited race horses
81 for that year as a percentage of the fund dedicated to the
82 breeders/raisers. However, no breeder/raiser may receive from
83 the fund dedicated to breeders'/raisers' awards an amount in
84 excess of the earnings of the accredited horse at West Virginia
85 meets. In addition, should a horse's breeder and raiser qualify
86 for the same award on the same horse, they will each be

87 awarded one half of the proceeds. The bonus referred to in this
88 subdivision (1) may only be paid on the first one hundred
89 thousand dollars of any purse, and not on any amounts in excess
90 of the first one hundred thousand dollars.

91 (2) The owner of a West Virginia sire of an accredited
92 thoroughbred horse that earns a purse in any race at a participat-
93 ing West Virginia meet shall receive a bonus award calculated
94 at the end of the year as a percentage of the fund dedicated to
95 sire owners, which shall be fifteen percent of the fund available
96 for distribution in any one year. The total amount available for
97 the sire owners' awards shall be distributed according to the
98 ratio of purses earned by the progeny of accredited West
99 Virginia stallions in the participating races for a particular
100 stallion to the total purses earned by the progeny of all accred-
101 ited West Virginia stallions in the participating races. However,
102 no sire owner may receive from the fund dedicated to sire
103 owners an amount in excess of thirty-five percent of the
104 accredited earnings for each sire. The bonus referred to in this
105 subdivision (2) shall only be paid on the first one hundred
106 thousand dollars of any purse, and not on any amounts in excess
107 of the first one hundred thousand dollars.

108 (3) The owner of an accredited thoroughbred horse that
109 earns a purse in any participating race at a West Virginia meet
110 shall receive a restricted purse supplement award calculated at
111 the end of the year, which shall be twenty-five percent of the
112 fund available for distribution in any one year, based on the
113 ratio of the earnings in the races of a particular race horse to the
114 total amount earned by all accredited race horses in the partici-
115 pating races during that year as a percentage of the fund
116 dedicated to purse supplements. However, the owners may not
117 receive from the fund dedicated to purse supplements an
118 amount in excess of thirty-five percent of the total accredited
119 earnings for each accredited race horse. The bonus referred to
120 in this subdivision shall only be paid on the first one hundred

121 thousand dollars of any purse, and not on any amounts in excess
122 of the first one hundred thousand dollars.

123 (4) In no event may purses earned at a meet held at a track
124 which did not make a contribution to the Thoroughbred
125 Development Fund out of the daily pool on the day the meet
126 was held qualify or count toward eligibility for an award under
127 this subsection.

128 (5) Any balance in the breeders/raisers, sire owners and
129 purse supplement funds after yearly distributions shall first be
130 used to fund the races established in subsection(f) of this
131 section. Any amount not so used shall revert into the general
132 account of the Thoroughbred Development Fund for each
133 racing association or licensee for distribution in the next year.

134 Distribution shall be made on the fifteenth day of each
135 February for the preceding year's achievements.

136 (f) (1) Each pari-mutuel thoroughbred horse track shall
137 provide at least one restricted race per racing day: *Provided*,
138 That sufficient horses and funds are available. For purposes of
139 this subsection, there are sufficient horses if there are at least
140 seven single betting interests received for the race. The re-
141 stricted race required by this section must be included in the
142 first nine races written in the condition book for that racing day.

143 (2) The restricted races established in this subsection shall
144 be administered by a three-member committee at each track
145 consisting of:

146 (A) The racing secretary;

147 (B) A member appointed by the authorized representative
148 of a majority of the owners and trainers at the thoroughbred
149 track; and

150 (C) A member appointed by the West Virginia Thorough-
151 bred Breeders Association.

152 (3) The purses for the restricted races established in this
153 subsection shall be twenty percent larger than the purses for
154 similar type races at each track or equal to or of greater value
155 than a comparable race: *Provided*, That sufficient funds are
156 available: *Provided, however*, That the twenty percent require-
157 ment is applicable only to a thoroughbred racetrack which has
158 participated in the West Virginia Thoroughbred Development
159 Fund for a period of more than four consecutive calendar years
160 prior to the thirty-first day of December, one thousand nine
161 hundred ninety-two.

162 (4) Restricted races shall be funded by each racing associa-
163 tion from:

164 (A) Moneys placed in the general purse fund up to a
165 maximum of three hundred fifty thousand dollars per year.

166 (B) Moneys as provided in subdivision (5), subsection (e)
167 of this section, which shall be placed in a special fund called the
168 "West Virginia Accredited Race Fund."

169 (5) The racing schedules, purse amounts and types of races
170 are subject to the approval of the West Virginia Racing Com-
171 mission.

172 (6) If less than seventy-five percent of the restricted races
173 required by this subsection fail to receive enough entries to
174 race, the Racing Commission shall, on a quarterly basis,
175 dedicate funds in each fund back to the general purse fund of
176 the racing association or licensee: *Provided*, That no moneys
177 may be dedicated back to a general purse fund if the dedication
178 would leave less than two hundred fifty thousand dollars in the
179 fund.

180 (g) As used in this section, "West Virginia bred-foal"
181 means a horse that was born in the State of West Virginia.

182 (h) To qualify for the West Virginia Accredited Race Fund,
183 the breeder must qualify under one of the following:

184 (1) The breeder of the West Virginia bred-foal is a West
185 Virginia resident;

186 (2) The breeder of the West Virginia bred-foal is not a West
187 Virginia resident, but keeps his or her breeding stock in West
188 Virginia year round; or

189 (3) The breeder of the West Virginia bred-foal is not a West
190 Virginia resident and does not qualify under subdivision (2) of
191 this subsection, but either the sire of the West Virginia
192 bred-foal is a West Virginia stallion, or the mare is covered by
193 a West Virginia stallion following the birth of that West
194 Virginia bred-foal.

195 (i) From the first day of July, two thousand one, West
196 Virginia accredited thoroughbred horses have preference for
197 entry in all accredited races at a thoroughbred race track at
198 which the licensee participates in the West Virginia Thorough-
199 bred Development Fund.

200 (j) Beginning the first day of July, two thousand six, any
201 racing association licensed by the Racing Commission to
202 conduct thoroughbred racing and permitting and conducting
203 pari-mutuel wagering under the provisions of this article must
204 have a West Virginia Thoroughbred Racing Breeders Program.

§19-23-13c. Expenditure of racetrack video lottery distribution.

1 (a) Funds received by the Racing Commission pursuant to
2 subdivision (6), subsection (c), section ten, article
3 twenty-two-a, chapter twenty-nine of this code, and subdivision

4 (5), subsection (a), section ten-b, article twenty-two-a, chapter
5 twenty-nine of this code, after the effective date of this section
6 together with the balance in the bank account previously
7 established by the Commission to receive those funds shall be
8 deposited in a banking institution of its choice in a special
9 account to be known as "West Virginia Racing Commission
10 Racetrack Video Lottery Account." Notice of the amount, date
11 and place of each deposit shall be given by the Racing Commis-
12 sion, in writing, to the State Treasurer.

13 (b) Funds in this account shall be allocated and expended
14 as follows:

15 (1) For each fiscal year, the first eight hundred thousand
16 dollars deposited in the separate account plus the amount then
17 remaining of the June thirtieth, one thousand nine hundred
18 ninety-seven, balance in the separate account previously
19 established for the West Virginia breeders classic under section
20 thirteen of this article, shall be used by the Commission for
21 promotional activities, advertising, administrative costs and
22 purses for the West Virginia Thoroughbred Breeders Classic,
23 which shall give equal consideration to all horses qualifying
24 under the West Virginia breeders program for each stake race,
25 based solely on the horses' sex, age and earnings.

26 (2) For each fiscal year, the next two hundred thousand
27 dollars deposited into the separate account shall be used by the
28 Commission for promotional activities and purses for open
29 stake races for a race event to be known as the West Virginia
30 Derby to be held at a thoroughbred racetrack which does not
31 participate in the West Virginia Breeders Classic.

32 (3) For each fiscal year, once the amounts provided in
33 subdivisions (1) and (2) of this subsection (b) have been
34 deposited into separate bank accounts for use in connection
35 with the West Virginia Thoroughbred Breeders Classics and the

36 West Virginia Derby, the Commission shall return to each
37 racetrack all additional amounts deposited which originate
38 during that fiscal year from each respective racetrack pursuant
39 to subdivision (6), subsection (c), section ten, article
40 twenty-two-a, chapter twenty-nine of this code, which returned
41 excess funds shall be used as follows:

42 (A) For each dog racetrack, one half of the returned excess
43 funds shall be used for capital improvements at the racetrack
44 and one half of the returned excess funds shall be deposited into
45 the West Virginia Racing Commission Special Account - West
46 Virginia Greyhound Breeding Development Fund.

47 (B) At those thoroughbred racetracks that have participated
48 in the West Virginia Thoroughbred Development Fund for a
49 period of more than four consecutive calendar years prior to the
50 thirty-first day of December, one thousand nine hundred
51 ninety-two, one half of the returned excess funds shall be used
52 for capital improvements at the licensee's racetrack and one
53 half of the returned excess funds shall be equally divided
54 between the West Virginia Thoroughbred Breeders Classic and
55 the West Virginia Thoroughbred Development Fund.

56 (C) At those thoroughbred horse racetracks which do not
57 participate in the West Virginia Breeders Classic, one half of
58 the returned excess funds shall be used for capital improve-
59 ments at the licensee's racetrack and one half of the returned
60 excess funds shall be used for purses for the open stakes race
61 event known as the West Virginia Derby.

62 (c) All expenditures that are funded under this section must
63 be approved in writing by the West Virginia Racing Commis-
64 sion before the funds are expended for any of the purposes
65 authorized by this section.

**CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.**

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 thirty days' 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 half of one percent of net terminal income shall be
92 paid for and on behalf of all employees of the licensed racing
93 association by making a deposit into a special fund to be
94 established by the racing commission to be used for payment
95 into the pension plan for all employees of the licensed racing
96 association;

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

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

107 (7) A licensee shall receive forty-seven percent of net
108 terminal income.

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

117 economic development authority pursuant to section seven,
118 article fifteen, chapter thirty-one of this code, five million
119 dollars into the capitol renovation and improvement fund
120 administered by the department of administration pursuant to
121 section six, article four, chapter five-a of this code and five
122 million dollars into the tax reduction and federal funding
123 increased compliance fund; and

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

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

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

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

144 (iv) 0.6875 percent of the total amount of net terminal
145 income described in this section and in section ten-b of this
146 article shall be deposited into the capitol renovation and
147 improvement fund administered by the department of adminis-

148 tration pursuant to section six, article four, chapter five-a of this
149 code; and

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

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

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

180 three of this code, has been paid or provided for in its entirety;
181 and

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

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

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

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

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

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

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

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

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

277 (f) Until an accounting discrepancy is resolved in favor of
278 the licensed racetrack, the commission may make no credit
279 adjustments. For any video lottery terminal reflecting a discrep-

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

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

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

308 (i) The commission has the right to examine all accounts,
309 bank accounts, financial statements and records in a licensed
310 racetrack's possession, under its control or in which it has an
311 interest and the licensed racetrack shall authorize all third
312 parties in possession or in control of the accounts or records to

313 allow examination of any of those accounts or records by the
314 commission.

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

1 (a) For all years beginning on or after the first day of July,
2 two thousand one, any amount of net terminal income generated
3 annually by a licensed racetrack in excess of the sum of the
4 amount of net terminal income generated by that licensed
5 racetrack during the fiscal year ending on the thirtieth day of
6 June, two thousand one, plus, an amount equal to the amount
7 transferred into the workers' compensation debt reduction fund
8 pursuant to section ten of this article, shall be divided as
9 follows:

10 (1) The commission shall receive forty-one percent of net
11 terminal income, which the commission shall deposit in the
12 state excess lottery revenue fund created in section eighteen-a,
13 article twenty-two of this chapter;

14 (2) Until the first day of July, two thousand five, eight
15 percent of net terminal income at a licensed racetrack shall be
16 deposited in the special fund established by the licensee and
17 used for payment of regular purses in addition to other amounts
18 provided for in article twenty-three, chapter nineteen of this
19 code; on and after the first day of July, two thousand five, the
20 rate shall be four percent of net terminal income;

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

24 (A) Any amount by which the total amount under this
25 section and subdivision (3), subsection (c), section ten of this
26 article is in excess of the two percent received during fiscal year
27 one thousand nine hundred ninety-nine by a county in which a
28 racetrack is located that has participated in the West Virginia

29 thoroughbred development fund since on or before the first day
30 of January, one thousand nine hundred ninety-nine, shall be
31 divided as follows:

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

34 (ii) The municipalities of the county shall receive fifty
35 percent of the excess amount, the fifty percent to be divided
36 among the municipalities on a per capita basis as determined by
37 the most recent decennial United States census of population;
38 and

39 (B) Any amount by which the total amount under this
40 section and subdivision (3), subsection (c), section ten of this
41 article is in excess of the two percent received during fiscal year
42 one thousand nine hundred ninety-nine by a county in which a
43 racetrack other than a racetrack described in paragraph (A) of
44 this proviso is located and where the racetrack has been located
45 in a municipality within the county since on or before the first
46 day of January, one thousand nine hundred ninety-nine, shall be
47 divided, if applicable, as follows:

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

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

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

55 (4) One half of one percent of net terminal income shall be
56 paid for and on behalf of all employees of the licensed racing
57 association by making a deposit into a special fund to be
58 established by the racing commission to be used for payment

59 into the pension plan for all employees of the licensed racing
60 association;

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

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

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

74 (8) The tourism promotion fund established in section
75 twelve, article two, chapter five-b of this code shall receive
76 three percent of the net terminal income: *Provided*, That for
77 each fiscal year beginning after the thirtieth day of June, two
78 thousand four, this three percent of net terminal income shall be
79 distributed pursuant to the provisions of paragraph (B), subdivi-
80 sion (8), subsection (c), section ten of this article;

81 (9) (A) On and after the first day of July, two thousand five,
82 four percent of net terminal income shall be deposited into the
83 workers' compensation debt reduction fund created in section
84 five, article two-d, chapter twenty-three of this code: *Provided*,
85 That in any fiscal year when the amount of money generated by
86 this subdivision together with the total allocation transferred by
87 the operation of subdivision (9), subsection (c), section ten of
88 this article totals eleven million dollars, all subsequent distribu-
89 tions under this subdivision (9) shall be deposited in the special
90 fund established by the licensee, and used for payment of

91 regular purses in addition to other amounts provided for in
92 article twenty-three, chapter nineteen of this code;

93 (B) The deposit of the four percent of net terminal income
94 into the worker's compensation debt reduction fund pursuant to
95 this subdivision shall expire and not be imposed with respect to
96 these funds and shall be deposited in the special fund estab-
97 lished by the licensee and used for payment of regular purses in
98 addition to the other amounts provided for in article twenty-
99 three, chapter nineteen of this code, on and after the first day of
100 the month following the month in which the governor certifies
101 to the legislature that: (i) The revenue bonds issued pursuant to
102 article two-d, chapter twenty-three of this code, have been
103 retired or payment of the debt service is provided for, and (ii)
104 that an independent certified actuary has determined that the
105 unfunded liability of the old fund, as defined in chapter twenty-
106 three of this code, has been paid or provided for in its entirety;
107 and

108 (10) (A) One percent of the net terminal income shall be
109 deposited in equal amounts in the capitol dome and improve-
110 ments fund created under section two, article four, chapter five-
111 a of this code and cultural facilities and capitol resources
112 matching grant program fund created under section three,
113 article one of this chapter; and

114 (B) Notwithstanding any provision of paragraph (A) of this
115 subdivision to the contrary, for each fiscal year beginning after
116 the thirtieth day of June, two thousand four, this one percent of
117 net terminal income shall be distributed pursuant to the provi-
118 sions of subparagraph (ii), paragraph (B), subdivision (9),
119 subsection (c), section ten of this article.

120 (b) The commission may establish orderly and effective
121 procedures for the collection and distribution of funds under
122 this section in accordance with the provisions of this section
123 and section ten of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles White

Chairman Senate Committee

H. Richman Brown

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell E. Holmes

Clerk of the Senate

Bryce M. Boy

Clerk of the House of Delegates

Carl Ray Tomblin

President of the Senate

Robert D. ...

Speaker of the House of Delegates

The within *is disapproved* this the *4th*
day of *May*, 2005.

[Signature]

Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 4:35 pm