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
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.


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

2 (1) “Horse racing” means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

3 (2) “Thoroughbred racing” means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

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

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

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

7 (6) “Purse” means any purse, stake or award for which a horse or dog race is run;
(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

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

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

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

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

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

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

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";
(16) “Racing commission” means the West Virginia Racing Commission;

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

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

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

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

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

(22) “To the dime” means that wagers shall be figured and paid to the dime;
(23) "Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

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

(25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders Association;

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

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

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

(29) The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses
(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if, such pari-mutuel wagering is conducted by the licensee within the confines of the licensee’s horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming shall not apply to the pari-mutuel system of wagering in manner and form as provided in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee’s racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:
(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission, as is mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders awards, restrictive races and stakes purses as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section shall be two percent of the pools; and (iv) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund. The remainder of the commission shall be retained by the licensee.

Each licensee that permits or conducts pari-mutuel wagering at the licensee’s thoroughbred horse racetrack shall annually pay five hundred thousand dollars from the special fund required by this section to be established by the licensee for the
payment of regular purses offered for thoroughbred racing by
the licensee into a special fund established by the Racing
Commission for transfer to a pension plan established by the
Racing Commission for all back stretch personnel, including,
but not limited to, exercise riders, trainers, grooms and stable
forepersons licensed by the Racing Commission to participate
in horse racing in this state and their dependents.

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

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

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

The commission deducted by the licensee under this subdivision may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. The reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the reduction shall be retained by the licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of this subdivision. The Racing Commission shall promulgate any reasonable rules that are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of the pari-mutuel pools for the day. Out of the commission the licensee shall pay the pari-mutuel pools tax provided in subsection (c), section ten of
this article and shall pay one tenth of one percent into the
general fund of the county commission of the county in which
the racetrack is located, except if within a municipality, then to
the Municipal General Fund. The remainder of the commission
shall be retained by the licensee.

(3) The commission deducted by any licensee from the
pari-mutuel pools on dog racing, except from dog racing
pari-mutuel pools involving what is known as multiple betting
in which the winning pari-mutuel ticket or tickets are deter-
mined by a combination of two or more winning dogs, shall not
exceed sixteen and thirty one-hundredths percent of the total of
all pari-mutuel pools for the day. The commission deducted by
any licensee from the pari-mutuel pools on dog racing involv-
ing what is known as multiple betting in which the winning
pari-mutuel ticket or tickets are determined by a combination
of two winning dogs shall not exceed nineteen percent, by a
combination of three winning dogs shall not exceed twenty
percent, and by a combination of four or more winning dogs
shall not exceed twenty-one percent of the total of such
pari-mutuel pools for the day. The foregoing commissions are
in effect for the fiscal years one thousand nine hundred ninety
and one thousand nine hundred ninety-one. Thereafter, the
commission shall be at the percentages in effect prior to the
effective date of this article unless the Legislature, after review,
determines otherwise. Out of the commissions, the licensee
shall pay the pari-mutuel pools tax provided in subsection (d),
section ten of this article and one tenth of one percent of such
pari-mutuel pools into the general fund of the county commis-
sion of the county in which the racetrack is located. In addition,
out of the commissions, if the racetrack is located within a
municipality, then the licensee shall also pay three tenths of one
percent of the pari-mutuel pools into the general fund of the
municipality; or, if the racetrack is located outside of a munici-
pality, then the licensee shall also pay three tenths of one
percent of the pari-mutuel pools into the State Road Fund for
use by the Division of Highways in accordance with the
provisions of this subdivision. The remainder of the commis-
sion shall be retained by the licensee.

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

Each dog racing licensee, when required by the provisions
of this subdivision to pay a percentage of its commissions to the
State Road Fund for use by the Division of Highways, shall
transmit the required funds, in such manner and at such times
as the Racing Commission shall by procedural rule direct, to the
State Treasurer for deposit in the State Treasury to the credit of
the Division of Highways State Road Fund. All funds collected
and received in the state road fund pursuant to the provisions of
this subdivision shall be used by the Division of Highways in
accordance with the provisions of article seventeen-a, chapter
seventeen of this code for the acquisition of right-of-way for,
the construction of, the reconstruction of and the improvement
or repair of any interstate or other highway, secondary road,
bridge and toll road in the state. If on the first day of July, one
thousand nine hundred eighty-nine, any area encompassing a
dog racetrack has incorporated as a Class I, Class II or Class III
city or as a Class IV town or village, whereas such city, town or
village was not incorporated as such on the first day of January,
one thousand nine hundred eighty-seven, then on and after the
first day of July, one thousand nine hundred eighty-nine, any
balances in the state road fund existing as a result of payments
made under the provisions of this subdivision may be used by
the State Road Fund for any purpose for which other moneys in
the fund may lawfully be used, and in lieu of further payments
to the State Road Fund, the licensee of a racetrack which is
located in the municipality shall thereafter pay three tenths of
one percent of the pari-mutuel pools into the general fund of the
municipality. If, no incorporation occurs before the first day of
July, one thousand nine hundred eighty-nine, then payments to
the State Road Fund shall thereafter continue as provided for
under the provisions of this subdivision.

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

The licensee shall establish a special fund to be used only
for capital improvements or long-term debt amortization or
both: Provided, That any licensee, heretofore licensed for a
period of eight years prior to the effective date of the amend-
ment made to this section during the regular session of the
Legislature held in the year one thousand nine hundred
eighty-seven, shall establish the special fund to be used only for
capital improvements or physical plant maintenance, or both, at
the licensee’s licensed facility or at the licensee’s commonly
owned racing facility located within this state. Deposits made
into the funds shall be in an amount equal to twenty-five
percent of the increased rate total over and above the applicable
rate in effect as of the first day of January, one thousand nine
hundred eighty-seven, of the pari-mutuel pools for the day. Any
amount deposited into the funds must be expended or liability
therefor incurred within a period of two years from the date of
deposit. Any funds not expended shall be transferred immedi-
The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the licensee's commissions for each day shall be three and seventy-five one-hundredths percent of the pari-mutuel pools.

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

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

(c) In addition to any commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from the breakage, the licensee of a horse race meeting
(excluding dog race meetings), shall deposit daily fifty percent of the total of the breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.

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

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

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one
percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; (iii) the licensee shall pay one half of the remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the licensee shall retain the amount remaining after making the payments required in this subsection.

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

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

(a) For the purposes of this section:

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

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

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with
the prior approval of the State Racing Commission, contract
with any legal wagering entity in this state or in any other
governmental jurisdiction to receive telecasts and accept wagers
on races conducted by the legal wagering entity: Provided, That
at those thoroughbred racetracks the licensee, in applying for
racing dates, shall apply for not less than two hundred ten live
racing dates for each horse race meeting. If, thereafter, for
reasons beyond the licensee’s control, related to adverse
weather conditions, unforeseen casualty occurrences or a
shortage of thoroughbred horses eligible to compete for purses,
the licensee concludes that this number of racing days cannot
be attained, the licensee may file a request with the Racing
Commission to reduce the authorized live racing days. Upon
receipt of the request the Racing Commission shall within
seventy-two hours of the receipt of the request notify the
licensee and the representative of a majority of the owners and
trainers at the requesting track and the representative of the
majority of the mutuel clerks at the requesting track that such
request has been received and that if no objection to the request
is received within ten days of the notification the request will be
approved: Provided however, That the Commission shall give
consideration to whether there existed available unscheduled
potential live racing dates following the adverse weather or
casualty and prior to the end of the race meeting which could be
used as new live racing dates in order to maintain the full live
racing schedule previously approved by the Racing Commis-
sion. If an objection is received by the Commission within the
time limits, the Commission shall, within thirty days of receipt
of such objection, set a hearing on the question of reducing
racing days, which hearing shall be conducted at a convenient
place in the county in which the requesting racetrack is located.
The Commission shall hear from all parties concerned and,
based upon testimony and documentary evidence presented at
the hearing, shall determine the required number of live racing
days: Provided further, That the Commission shall not reduce
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 anytime. 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.
(e) (1) From the licensee commissions authorized by subsection (c) of this section, the licensee shall pay one tenth of one percent of each commission into the general fund of the county, in which the racetrack is located and at which the wagering occurred and there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less, the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. The calculation of the total pari-mutuel pool for purposes of this subsection shall include only one half of all wagers placed at a licensed racetrack in this state on televised races conducted at another licensed racetrack within this state. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

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

(3) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivisions (1) and (2) of this subsec-
tion, thoroughbred licensees shall pay, one-half percent of net simulcast income and for each televised racing day on or after the first day of July, one thousand nine hundred ninety-seven, an additional five and one-half percent of net simulcast income into the West Virginia Thoroughbred Development Fund established by the Racing Commission according to section thirteen-b of this article. For the purposes of this section, the term “net simulcast income” means the total commission deducted each day by the licensee from the pari-mutuel pools on simulcast horse or dog races, less direct simulcast expenses, including, but not limited to, the cost of simulcast signals, telecommunication costs and decoder costs.

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

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

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

(a) Any licensed racing association may be authorized by the Commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state,
which legal wagering entities located outside this state shall not be subject to the provisions of subsection (e), section twelve-b of this article: Provided, That as consideration for the televised racing services it provides, the host racing association shall receive a signal transmission fee to be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the receiving legal wagering entity and the host racing association. All broadcasts of horse races shall be in accordance with all of the provisions of the “Federal Interstate Horseracing Act of 1978,” also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

(b) One percent of the total signal transmission fee provided in subsection (a) of this section shall be paid into a special fund to be established by the Racing Commission for and on behalf of all employees of the licensed racing association to be used for payments into the pension plan for all employees of the licensed racing association, and a thoroughbred horse racetrack shall pay seven and one-half percent of the signal transmission fee into the West Virginia Thoroughbred Development Fund established by the Racing Commission according to section thirteen-b of this article. After deducting: (i) The amounts required to be placed into the pension plan for all employees of the licensed racing association under this section; (ii) the amounts, if any, required to be paid into the West Virginia Thoroughbred Development Fund under this section; and (iii) the direct costs necessary to send a live audio and visual signal of horse races or dog races from any racetrack licensed under the provisions of section one of this article to any legal wagering entities outside this state for the purpose of pari-mutuel wagering, which direct costs shall include the cost of satellite equipment necessary to transmit the signal, a satellite operator and the satellite time necessary to broadcast the signal and the cost of telecommunication and facsimile services needed to communicate necessary information to all legal wagering
entities for the purpose of pari-mutuel wagering, thoroughbred
horse racing associations shall make a deposit equal to fifty
percent of the remainder into the purse fund established under
the provisions of subdivision (1), subsection (b), section nine of
this article: Provided, That the funds deposited in the purse
fund pursuant to this section may be used for the payment of
regular purses or, upon agreement between the horse racing
association and the representative of the majority of owners and
trainers at a particular thoroughbred racetrack, may be used for
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.

(a) The Racing Commission shall deposit moneys required
to be withheld by an association or licensee in subsection (b),
section nine of this article in a banking institution of its choice
in a special account to be known as “West Virginia Racing
Commission Special Account — West Virginia Thoroughbred
Development Fund:” Provided, That notwithstanding any other
provision of this code to the contrary, beginning the first day of
October, two thousand five, the Racing Commission shall
deposit moneys required to be withheld from an association or
licensee under the provisions of subsection (b), section nine of
this article, subdivision three, subsection (e), section twelve-b
of this article, subsection (b), section twelve-c of this article,
paragraph (B), subdivision (3), subsection (b), section thirteen-c
of this article and section ten-b, article twenty-two-a, chapter
twenty-nine of this code for deposit in the “West Virginia
Racing Commission Special Account – West Virginia Thor-
oughbred Development Fund” with a banking institution of its
choice in a separate account for each association or licensee.
Each separate account shall be a special account to be known as
“West Virginia Racing Commission Special Account – West
Virginia Thoroughbred Development Fund” and shall name the Racing Commission or licensee from which the funds deposited in the account have been withheld. Notice of the amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the State Treasury called the “Administration and Promotion Account.”

(b) The Racing Commission is authorized to expend the moneys deposited in the administration and promotion account at times and in amounts as the Commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the Commission anticipates spending any money from the account, the Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The Commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.

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

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

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers’ awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the participating races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers’ awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse’s breeder and raiser qualify for the same award on the same horse, they will each be
awarded one half of the proceeds. The bonus referred to in this subdivision (1) may only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess of the first one hundred thousand dollars.

(2) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners’ awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the participating races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the participating races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision (2) shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess of the first one hundred thousand dollars.

(3) The owner of an accredited thoroughbred horse that earns a purse in any participating race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the participating races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars.
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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
(C) A member appointed by the West Virginia Thoroughbred Breeders Association.

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

(4) Restricted races shall be funded by each racing association from:

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

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

(5) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia Racing Commission.

(6) If less than seventy-five percent of the restricted races required by this subsection fail to receive enough entries to race, the Racing Commission shall, on a quarterly basis, dedicate funds in each fund back to the general purse fund of the racing association or licensee: Provided, That no moneys may be dedicated back to a general purse fund if the dedication would leave less than two hundred fifty thousand dollars in the fund.
As used in this section, "West Virginia bred-foal" means a horse that was born in the State of West Virginia.

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

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

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

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

(i) From the first day of July, two thousand one, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred race track at which the licensee participates in the West Virginia Thoroughbred Development Fund.

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

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

(a) Funds received by the Racing Commission pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, and subdivision
(5), subsection (a), section ten-b, article twenty-two-a, chapter twenty-nine of this code, after the effective date of this section together with the balance in the bank account previously established by the Commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Racetrack Video Lottery Account.” Notice of the amount, date and place of each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

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

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

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

(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection (b) have been deposited into separate bank accounts for use in connection with the West Virginia Thoroughbred Breeders Classics and the
West Virginia Derby, the Commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:

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

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

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia Breeders Classic, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia Derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia Racing Commission before the funds are expended for any of the purposes 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.

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

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days’ advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and
expenses of the commission may not exceed four percent of
gross terminal income: *Provided,* That any amounts deducted
by the commission for its actual costs and expenses that
exceeds its actual costs and expenses shall be deposited into the
state lottery fund. For all fiscal years beginning on or after the
first day of July, two thousand one, the commission shall not
receive an amount of gross terminal income in excess of the
amount of gross terminal income received during the fiscal year
ending on the thirtieth day of June, two thousand one, but four
percent of any amount of gross terminal income received in
excess of the amount of gross terminal income received during
the fiscal year ending on the thirtieth day of June, two thousand
one, shall be deposited into the fund established in section
eighteen-a, article twenty-two of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) For the fiscal year beginning the first day of July, two thousand three, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code:

Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the “John F. ‘Jack’ Bennett Fund”. The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the
division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: Provided, however, That five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code, to be used for construction and maintenance of a parking garage on the state capitol complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter.

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

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

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in paragraph (B), subdivision (9), subsection (a), section ten-b of this article twenty-two-a shall be distributed as follows: The net terminal income shall be deposited in equal amounts into the capitol dome and capitol improvements fund created under section two, article four, chapter five-a of this
code and the cultural facilities and capitol resources matching
grant program fund created under section three, article one,
chapter twenty-nine of this code until a total of one million five
hundred thousand dollars is deposited into the cultural facilities
and capitol resources matching grant program fund; thereafter,
the remainder shall be deposited into the capitol dome and
capitol improvements fund.

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

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

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

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

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

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

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

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

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

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

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

(A) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia
thoroughbred development fund since on or before the first day
of January, one thousand nine hundred ninety-nine, shall be
divided as follows:

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

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

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

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

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

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

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

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

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

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

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

81 (9) (A) On and after the first day of July, two thousand five, four percent of net terminal income shall be deposited into the workers’ compensation debt reduction fund created in section five, article two-d, chapter twenty-three of this code: Provided, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of subdivision (9), subsection (c), section ten of this article totals eleven million dollars, all subsequent distributions under this subdivision (9) shall be deposited in the special fund established by the licensee, and used for payment of
(B) The deposit of the four percent of net terminal income into the worker’s compensation debt reduction fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided for in article twenty-three, chapter nineteen of this code, on and after the first day of the month following the month in which the governor certifies to the legislature that: (i) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired or payment of the debt service is provided for, and (ii) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety; and

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

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

(b) The commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and section ten of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill was passed by this the 4th day of May, 2005.

Governor