WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 550

(SENATORS KLEMPA, KESSLER (ACTING PRESIDENT), WILLS, SNYDER, YOST, MILLER, EDGELL AND D. FACEMIRE, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; TO TAKE EFFECT JULY 1, 2011.]
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(SENATORS KLEMPA, KESSLER (ACTING PRESIDENT), WILLS, SNYDER, YOST, MILLER, EDGELL AND D. FACEMIRE, original sponsors)

[Passed March 12, 2011; to take effect July 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-23-12d; to amend and reenact §29-22A-6, §29-22A-10 and §29-22A-10c of said code; and to amend and reenact §29-25-19 and §29-25-22 of said code, all relating to all relating generally to gaming at licensed racetracks and historic resort hotels; allowing simulcast pari-mutuel racing and wagering at certain historic resort hotels; defining terms; permitting the issuing of licenses; providing for payments; setting forth conditions for out-of-state tracks and interstate pools; registering of persons conducting wagering activities; setting forth the licensee’s retainage; setting forth the amounts of payments made by a licensee and to whom they are to be paid; making reference to certain federal law; authorizing rulemaking; exempting certain pari-mutuel wagering and equipment, services and supplies from state sales and service taxes; permitting licensees at racetracks and historic resort hotels to establish minimum and maximum wager limits at video lottery terminals; authorizing
the use of video lottery terminal bill acceptors for all United States currency; directing up to $10 million each year until June 30, 2020, from racetrack video lottery gross terminal income into a new racetrack modernization fund to be used to subsidize racetrack purchases of new video lottery terminals and related equipment; reducing the required life for capital investments by licensees at racetracks to be reimbursed from the Capital Investment Fund; extending the time for recoupment of expenditures for capital improvements; and directing that two and one-half percent of the gross terminal income of certain historic resort hotels be deposited into a new historic resort hotel modernization fund to be used to subsidize certain historic resort hotel purchases.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §19-23-12d; that §29-22A-6, §29-22A-10 and §29-22A-10c of said code be amended and reenacted; and that §29-25-19 and §29-25-22 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12d. Simulcast races and pari-mutuel wagering at authorized gaming facility in historic resort hotel.

1 (a) Definitions. — In addition to the words and phrases defined in section three of this article, the words and phrases defined in subsection (b) of this section have the meanings provided in that subsection when used in this section, unless the context in which the term or phrase is used clearly indicates that a different meaning is intended.

7 (b) Defined words and phrases. —

8 (1) “Applicant” means any gaming licensee who is licensed under article twenty-five, chapter twenty-nine of this code,
applying for a license under this section to conduct pari-mutuel wagering on televised horse and dog races.

(2) “Designated pari-mutuel wagering area” means one or more specific areas of an existing historic resort hotel within which the Racing Commission has authorized the gaming licensee to offer pari-mutuel wagering to patrons of the hotel.

(3) “Gaming facility” means a designated area on the premises of an existing historic resort hotel in which pari-mutuel wagering is conducted by a gaming licensee.

(4) “Gaming licensee” means the licensed operator of a gaming facility under article twenty-five, chapter twenty-nine of this code, who is also licensed under this article to offer pari-mutuel wagering on simulcast horse or dog races or on both types of races.

(5) “Historic resort hotel” means a historic resort hotel as defined in section two, article twenty-five, chapter twenty-nine of this code.

(6) “In-state host track” means a racetrack within this state licensed to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is an in-state sending track.

(7) “In-state sending track” means a racetrack in this state licensed under this article to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is equipped to conduct simulcasting of those races and intertrack pari-mutuel wagering on those races.

(8) “In-state track” means an in-state host track or an in-state sending track.

(9) “Interstate common pool” means a pari-mutuel pool established within this state or in another state or foreign nation within which is combined comparable pari-mutuel
pools of one or more receiving legal wagering entities located
in one or more states or foreign nations upon a race at a
sending track located within or outside of this state for the
purpose of establishing payoff prices in the various jurisdic-
tions.

(10) “Intertrack wagering” means parimutuel wagering on
simulcast horse or dog races held at an in-state sending track
by patrons at a gaming facility licensed under this section
and the electronic transmission of the wagers to the in-state
sending track.

(11) “License” means a license issued by the Racing
Commission pursuant to this section, including:
(A) A license to operate a gaming facility in which
pari-mutuel wagering on simulcast races will be available to
patrons;
(B) A license to be employed in connection with the
operation of a gaming facility at which pari-mutuel wagering
is offered on simulcast races; or
(C) A license to provide management services under a
contract to a gaming facility licensed under this article.

(12) “Licensed gaming facility employee” means any
individual licensed or registered to be employed by a gaming
licensee in connection with the operation of a pari-mutuel
wagering pursuant to this section.

(13) “Out-of-state host track” means a racetrack in a
jurisdiction other than this state, the operator of which is
lawfully permitted to conduct a horse or dog race meeting
and which conducts horse or dog races upon which
pari-mutuel wagers may be placed.

(14) “Out-of-state track” means an out-of-state host track
or an out-of-State sending track.

(15) “Out-of-state sending track” means a racetrack in a
jurisdiction other than the State of West Virginia which is
lawfully permitted to conduct a horse or dog race meeting
and to provide simulcast horse or dog races to a racetrack in
this state.

(16) “Participation agreement” means the written contract
that provides for the establishment or implementation of
simulcasting of horse or dog races and pari-mutuel wagering.
Each contract shall set forth the manner in which the
pari-mutuel wagering system shall be managed, operated
and capitalized, as well as how expenses and revenues shall
be allocated and distributed by and among the licensed
gaming facility under this section and the other eligible
participants in the contract.

(17) “Premises of an existing historic resort hotel” means
the historic resort hotel, attachments of the historic resort
hotel, and the traditional, immediate grounds of the historic
resort hotel.

(18) “Receiving gaming facility” means a licensed race-
track or authorized gaming facility within this state licensed
under this article which is equipped to receive simulcast
horse and dog races and to conduct intertrack or interstate
wagering on those races.

(19) “Simulcast horse or dog races” means horse or dog
races conducted at an in-state sending track or an
out-of-state sending track, as the case may be, and transmit-
ted simultaneously by picture to the authorized gaming
facility licensed under this section or other legal wagering
facility.

(20) “Simulcasting” means the simultaneous audio or
visual transmission of horse or dog races conducted at
in-state and out-of-state racetracks to the gaming facility
licensee under this section and pari-mutuel wagering on the
results of those races.

(c) Application for license. — An applicant who is licensed
under article twenty-five, chapter twenty-nine of this code
may apply to the West Virginia Racing Commission for a
license to conduct at the historic resort hotel pari-mutuel wagering on simulcast horse and dog races held at a licensed racetrack in this state, or in another jurisdiction, where pari-mutuel wagering is permitted and conducted. The application shall be submitted in the form prescribed by the commission and provide the information required by the commission.

(d) Issuance of license. — Within sixty days after an application is filed pursuant to subsection (b) of this section, the Racing Commission shall act on the application and either grant or deny the application: Provided, That issuance of the license shall not be unreasonably withheld. Once issued, the license shall expire, be renewed, revoked or suspended on the same basis as licenses issued under this article to racetracks to hold live racing and conduct pari-mutuel wagering.

(e) Transmission of races from in-state sending tracks. — An in-state sending track may transmit to a gaming licensee under this section all or some of the live races conducted at the racetrack.

(f) Receipt of simulcasts transmitted from out-of-state tracks. — The gaming licensee under this section may, in accordance with this article, and any applicable rules of the Racing Commission and with the approval of the commission, receive at the facility simulcast horse or dog races, or both, conducted at out-of-state sending tracks.

(g) Payments to sending track. — The authorized gaming facility receiving a simulcast horse or dog race from an out-of-state sending track shall pay to the out-of-state sending track for the transmission such amount, if any, as may be agreed upon by the authorized gaming facility and the out-of-state sending track. The authorized gaming facility accepting pari-mutuel wagers on a horse or dog race conducted at an out-of-state host track shall pay to the out-of-state host track such amount, if any, as provided for in the agreement, if any, between the authorized gaming facility and the out-of-state host track.
(h) Conditions for participation by out-of-state tracks; interstate common pools. —

(1) Except as provided in subdivision (2) of this subsection, the Racing Commission shall not permit an out-of-state sending track or an out-of-state host track to participate in simulcast pari-mutuel wagering or qualify as an out-of-state host track, respectively, unless the pari-mutuel pools respecting the authorized gaming facility under this article are combined with comparable pari-mutuel pools at the out-of-state track. The types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and the percentage of deposits remaining undistributed from a pari-mutuel pool after payment is made to winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-state track.

(2) With the prior approval of the Racing Commission and the concurrence of the out-of-state track, an authorized gaming facility under this article and receiving tracks or entities in other states other than the state in which the out-of-state track is located may form an interstate common pool. With respect to such interstate common pools, the Racing Commission may approve types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and a percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders which are different from those which would otherwise be applied in this state but which are consistent for all parties to the interstate common pool.

(i) Licensing or registration of persons conducting wagering-related activities. — All persons engaged in conducting wagering-related activities at the authorized gaming facility licensed under this section, whether employed directly by the licensee or by a person or entity conducting or operating the simulcast racing and pari-mutuel wagering facility under an agreement with the licensee, shall be licensed or registered in accordance with such rules as may be promulgated by the Racing Commission. All other employees at the simulcast
racing and pari-mutuel wagering facility shall be licensed or registered in accordance with regulations of the Racing Commission: Provided, That when the employee is licensed by the Lottery Commission, that employee must register with the Racing Commission is not required to have a separate license issued by the Racing Commission. The Racing Commission shall has the authority to promulgate rules, regulations and conditions under which all such licenses are issued, or registrations made, in this state and to revoke or refuse to issue a license, or revoke or refuse to accept a registration, if in the opinion of the commission the revocation or refusal is in the public interest: Provided, That the rules, regulations and conditions are uniform in their application to both the gaming facility licensed under this section and racetracks licensed under this article to hold race meetings at which pari-mutuel wagering is conducted. The fees under this subsection may not be in excess of the fee charge for a similar occupational permit or license at a licensed racetrack.

(j) Retainage of gaming licensee. — The gaming licensee under this section shall retain from pari-mutuel wagers a basic commission of seventeen and twenty-five one-hundredths percent on horse races and a basic commission of sixteen and twenty-five one-hundredths percent on dog races. Breakage shall be calculated and distributed in the manner provided in subsection (c), section nine of this article.

(k) Payments by the licensee. — Out of the commission retained or deducted by a gaming licensee under the provisions of subsection (j) of this section, the gaming licensee shall pay:

(1) One-tenth of one percent into the General Revenue Fund of county commission of the county in which the historic resort hotel is located;

(2) Each day, the daily pari-mutuel pools tax calculated under section ten of this article; and
(3) The amount required to be paid under the terms of a contract with a host licensed racing association in this state or in another jurisdiction that permits pari-mutual wagering on horse or dog races held or conducted in that jurisdiction.

(l) After making the payments required by subsection (k) of this section, the remaining balance may be retained by the gaming licensee under this section.

(m) **Compliance with federal law.** — The federal Interstate Horseracing Act of 1978, P. L. 95-515, 15 U.S.C. §§3001-3007, is instructive as the legislative intent of this section.

(n) **Promulgation of rules.** — The Racing Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, it deems necessary to implement and efficiently administer this section: *Provided,* That the rules are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at the racetracks.

(o) **Pari-mutuel wagers and equipment exempt from sales tax.** — Notwithstanding any provision of this code to the contrary, the license tax imposed in section ten of this article shall be in lieu of payment of the tax imposed by article fifteen, chapter eleven of this code, on pari-mutuel wagering and on the purchase of equipment, services and supplies directly used in pari-mutuel wagering under this section.

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

**ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.
(a) The commission may approve video lottery terminals and in doing so shall take into account advancements in computer technology, competition from nearby states and the preservation of jobs in the West Virginia pari-mutuel racing industry. In approving video lottery terminals licensed for placement in this state, the commission shall ensure that the terminals meet the following hardware specifications:

1. Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

2. A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

3. An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

4. The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

5. A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for any legal United States currency. All coin and bill acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

6. Access to the interior of a video lottery terminal shall be controlled through a series of locks and seals.
(7) The main logic boards and all erasable programmable read-only memory chips (EPROMS) are considered to be owned by the commission and shall be located in a separate locked and sealed area within the video lottery terminal.

(8) The cash compartment shall be located in a separate locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal's graphic routines, speed of play, sound and other purely cosmetic features may be approved by the commission.

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission: Provided, That such printing mechanism is optional on any video lottery terminal which is designed and equipped exclusively for coin or token payouts. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:
(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols.

A video lottery terminal may allow the amounts of minimum and maximum wagers on a single game to be determined by licensee or permit holder in the exercise of its business judgment subject to the approval of the commission. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior approval of the commission.

(13) Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission’s central computer system by use of a communications protocol provided by the commission to each permitted manufacturer, which protocol shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.

(b) Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games.
A selection process is random if it meets the following statistical criteria:

1. **Chi-square test.** — Each symbol or number shall satisfy the ninety-nine percent confidence level using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

2. **Runs test.** — Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the runs test for the existence of recurring patterns within a set of data.

3. **Correlation test.** — Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

4. **Serial correlation test.** — Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the terminal:

1. **Video lottery games** shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

2. Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement
in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval shall be obtained prior to applying for testing of the high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:

(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

(2) Number of credits wagered;

(3) Number of total credits, coins and tokens won;

(4) Number of credits paid out by a printed ticket;

(5) Number of coins or tokens won, if applicable;

(6) Number of times the logic area was accessed;

(7) Number of times the cash door was accessed;
(8) Number of credits wagered in the current game;

(9) Number of credits won in the last complete video lottery game; and

(10) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall, directly or through a contract with a third-party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

§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 re-
quired to facilitate the timely transfer of moneys to the
commission. Licensed racetracks must provide the commis-
sion 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:

(1) The commission shall deduct an amount sufficient to
reimburse the commission for its actual costs and expenses
incurred in administering racetrack video lottery at the
licensed racetrack and the resulting amount after the
deduction is the net terminal income. The amount deducted
for administrative costs and expenses of the commission may
not exceed four percent of gross terminal income: Provided,
That any amounts deducted by the commission for its actual
costs and expenses that exceeds its actual costs and expenses
shall be deposited into the State Lottery Fund. For the fiscal
years ending June 30, 2011 through June 30, 2020, the term
“actual costs and expenses” may include transfers of up to
$10 million in surplus allocations for each fiscal year, as
calculated by the commission when it has closed its books for
the fiscal year, to the Licensed Racetrack Modernization
Fund created by subdivision(2), subsection (b) of this section.
For all fiscal years beginning on or after July 1, 2001, the
commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter; and

(2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2020, the commission shall deposit such amounts as are available according to subdivision (1), subsection (b) of this section into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack’s share of each year’s deposit shall be calculated in the same ratio as each racetrack’s apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1), subsection (b) of this section for that year. For each two dollars expended by a licensed racetrack for facility modernization improvements at the racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive $1 in recoupment from its facility modernization account. If the licensed racetrack’s facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term “facility modernization improvements” includes acquisitions of new and unused video lottery terminals and related equipment. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by
subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in 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 July 1, 2005, 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 July 1, 2005, the rate shall be seven percent of net terminal income;

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

Provided, That:

(A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999 shall be divided as follows:

(i) The county shall receive 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 July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999 shall be divided, if applicable, as follows:

(i) The county shall receive 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 percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

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

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

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

(8)(A) The Tourism Promotion Fund established in section
twelve, article two, chapter five-b of this code shall receive
three percent of the net terminal income: \textit{Provided,} That for
the fiscal year beginning July 1, 2003, the tourism commis-
sion shall transfer from the Tourism Promotion Fund $5
million 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, $5 million 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 $5 million into
the Tax Reduction and Federal Funding Increased Compli-
ance Fund; and

(B) Notwithstanding any provision of paragraph (A) of this
subdivision to the contrary, for each fiscal year beginning
after June 30, 2004, this three percent of net terminal income
and the three percent of net terminal income described in
paragraph (B), subdivision (8), subsection (a), section ten-b
of this article shall be distributed as provided in this para-
graph as follows:

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

(ii) 0.375 percent of the total amount of net terminal
income described in this section and in section ten-b of this
article shall be deposited into the Development Office
Promotion Fund created under section three-b, article two,
chapter five-b of this code;
(iii) 0.5 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Research Challenge Fund created under section ten, article one-b, chapter eighteen-b of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to section six, article four, chapter five-a of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the 2004 Capitol Complex Parking Garage Fund administered by the Department of Administration pursuant to section five-a, article four, chapter five-a of this code;

(9)(A) On and after July 1, 2005, 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 $11 million, 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 in article twenty-three, chapter nineteen of this code;

(B) The deposit of the seven percent of net terminal income into the Worker's Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided 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 July 1, 2003, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created 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 $20,000 of the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the “John F. ‘Jack’ Bennett Fund”. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of 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, $100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created 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 $500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created 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 June 30, 2004:

(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created 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 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 $1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency 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 discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

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

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

(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-10c. Surcharge; Capital Reinvestment Fund.

(a) For all fiscal years beginning on or after July 1, 2001, there shall be imposed a surcharge of ten percent against the excess of total net terminal income generated from a licensed
racetrack for that fiscal year over total net terminal income from that licensed racetrack for the fiscal year ending June 30, 2001.

(b) A Capital Reinvestment Fund is hereby created within the Lottery Fund. Forty-two percent of the surcharge amount attributable to each racetrack shall be retained by the commission and deposited into a separate Capital Reinvestment Account for that licensed racetrack. For each dollar expended by a licensed racetrack for capital improvements at the racetrack, at the location of any amenity associated with the licensed racetrack's destination resort facility operations, or at adjacent facilities owned by the licensee, having a useful life of three or more years and placed in service after April 1, 2001, the licensed racetrack shall receive $1 in recoupment from its Capital Reinvestment Fund Account: Provided, That in the case of thoroughbred horse tracks, four cents of every dollar in recoupment shall be reserved into a separate account, which shall only be spent on capital improvements and upgrading to facilities used for the housing and care of horses, facilities located inside the perimeter of the racing surface, including the surface thereof, facilities used for housing persons responsible for the care of horses, and that any such capital improvements and upgrading shall be subject to recoupment under this section only if they have been approved by the Horsemen's Benevolent and Protective Association acting on behalf of the horsemen: Provided, however, That in the case of greyhound race tracks, four cents of every dollar in recoupment shall be spent on capital improvements and upgrading in the kennel area or other areas at the track. If a licensed racetrack's unrecouped capital improvements exceed its capital reinvestment fund account at the end of any fiscal year, the excess improvements may be carried forward to fifteen subsequent fiscal years.

(c) Fifty-eight percent of the surcharge amount plus any moneys remaining in a racetrack's Capital Reinvestment Fund Account at the end of any fiscal year shall be deposited
in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.

(a) Consent to presence of law-enforcement officers. — Any individual entering the gaming facility shall be advised by the posting of a notice or other suitable means of the possible presence of state, county or municipal law-enforcement officers and by entering the gaming facility impliedly consents to the presence of the law-enforcement officers.

(b) Commission discretion in gaming operations. — Video lottery terminals operated at the gaming facility may allow minimum and maximum wagers on a single game the amounts determined by the license in the exercise of its business judgment subject to the approval of the commission.

(1) Subject to the approval of the commission, the gaming facility licensee shall, with respect to West Virginia Lottery table games, establish the following:

(A) Maximum and minimum wagers;

(B) Advertising and promotional activities;

(C) Hours of operation;

(D) The days during which games may be played; and

(2) The commission may consider multiple factors, including, but not limited to, industry standards, outside competition and any other factors as determined by the commission to be relevant in its decision to approve the gaming facility’s determination of those items listed in subdivision (1) of this subsection.
(c) Setting of operations. — Notwithstanding anything to
the contrary contained elsewhere in this chapter, the
commission may establish the following parameters for
commission regulated lottery games of any kind which is
played at a licensed gaming facility:

(1) Minimum and maximum payout percentages;

(2) Any probability limits of obtaining the maximum
payout for a particular play; and

(3) Limitations on the types and amounts of financial
transactions, including extension of credit to a patron, which
a gaming facility can enter into with its patrons.

(d) Posting of betting limits. — A gaming facility shall
conspicuously post a sign at each West Virginia Lottery table
game indicating the permissible minimum and maximum
wagers pertaining at that table. A gaming facility licensee
may not require any wager to be greater than the stated
minimum or less than the stated maximum. However, any
wager actually made by a patron and not rejected by a
gaming facility licensee prior to the commencement of play
shall be treated as a valid wager.

§29-25-22. Historic Resort Hotel Fund; allocation of adjusted
gross receipts; disposition of license fees.

(a) There is hereby created a special fund in the State
Treasury which shall be designated and known as the
Historic Resort Hotel Fund. Thirty-six percent of the gross
terminal income received by the commission under section
twenty of this article and thirty percent of the adjusted gross
receipts received by the commission under section
twenty-one of this article shall be deposited with the State
Treasurer and placed in the Historic Resort Hotel Fund. The
fund shall be an interest-bearing account with interest to be
credited to and deposited in the Historic Resort Hotel Fund.
(b) All expenses of the commission shall be paid from the Historic Resort Hotel Fund, including reimbursement of the State Police for activities performed at the request of the commission in connection with background investigations or enforcement activities pursuant to this article. At no time may the commission’s expenses under this article exceed fifteen percent of the total of the annual revenue received from the licensee under this article, including all license fees, taxes or other amounts required to be deposited in the Historic Resort Hotel Fund.

(c) A Historic Resort Hotel Modernization Fund is hereby created within the Historic Resort Hotel Fund. For all fiscal years beginning on or after July 1, 2011, the commission shall deduct two and one-half percent from gross terminal income received by the commission under section twenty of this article for the fiscal year and deposit these amounts into a separate facility modernization account maintained within the Historic Resort Hotel Modernization Fund for each historic resort hotel. For each dollar expended by a historic resort hotel for video lottery or table gaming facility modernization improvements at the historic resort hotel, having a useful life of three or more years and placed in service after April 1, 2011, the historic resort hotel shall receive $1 in recoupment from its facility modernization account. For purposes of this section, the term “video lottery or table gaming facility modernization improvements” include acquisition of computer hardware and software, communications and Internet access equipment, security and surveillance equipment, video lottery terminals and other electronic equipment or other equipment designed to modernize the facility.

(d) The balance of the Historic Resort Hotel Fund shall become net income and shall be divided as follows:

(1) Sixty-four percent of the Historic Resort Hotel Fund net income shall be paid into the General Revenue Fund to be appropriated by the Legislature;
(2) Nineteen percent of the Historic Resort Hotel Fund net income shall be paid into the State Debt Reduction Fund established in section twenty-seven, article twenty-two-c of this chapter to be appropriated by the Legislature;

(3) The Tourism Promotion Fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the Historic Resort Hotel Fund net income;

(4) The county where the gaming facility is located shall receive four percent of the Historic Resort Hotel Fund net income;

(5) The municipality where the gaming facility is located or the municipality closest to the gaming facility by paved road access as of the effective date of the reenactment of this section by the 2009 regular session of the Legislature shall receive two and one-half percent of the Historic Resort Hotel Fund net income;

(6) The municipalities within the county where the gaming facility is located, except for the municipality receiving funds under subdivision (5) of this subsection, shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income;

(7) Each county commission in the state that is not eligible to receive a distribution under subdivision (4) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to the county commission under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements; and

(8) The governing body of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to
municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements.

(e) Notwithstanding any provision of this article to the contrary, all limited gaming facility license fees and license renewal fees received by the commission pursuant to section nine of this article shall be deposited into the Community-Based Service Fund created in section twenty-seven, article twenty-two-c of this chapter.

(f) With the exception of the license fees and license renewal fees received by the commission pursuant to section nine of this article, all revenues received from licensees and license applicants under this article shall be retained by the commission as reimbursement for the licensing process.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2011.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the Day of , 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 23 2011

Time 3:45 pm