

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 3450**

By Delegates Espinosa, Willis, Householder, Hardy,

Criss, Zatezalo, Storch, Clark, Fluharty,

and Shamblin

[Originating in the Committee on Finance;

February 16, 2023]



1 A BILL to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended, all  
2 relating to racetrack video lottery; providing for certain transfers to and from the Licensed  
3 Racetrack Modernization Fund; and specifying eligible purposes for recoupment of funds  
4 on deposit in facility modernization account within the Licensed Racetrack Modernization  
5 Fund.

*Be it enacted by the Legislature of West Virginia:*

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

**§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.**

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

6 (b) The gross terminal income of a licensed racetrack shall be remitted to the commission  
7 through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all  
8 information and bank authorizations required to facilitate the timely transfer of moneys to the  
9 commission. Licensed racetracks must provide the commission 30 days' advance notice of any  
10 proposed account changes in order to assure the uninterrupted electronic transfer of funds. From  
11 the gross terminal income remitted by the licensee to the commission:

12 (1) The commission shall deduct an amount sufficient to reimburse the commission for its  
13 actual costs and expenses incurred in administering racetrack video lottery at the licensed

14 racetrack and the resulting amount after the deduction is the net terminal income. The amount  
15 deducted for administrative costs and expenses of the commission may not exceed four percent of  
16 gross terminal income: *Provided*, That any amounts deducted by the commission for its actual  
17 costs and expenses that exceeds its actual costs and expenses shall be deposited into the State  
18 Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2030, the term "actual  
19 costs and expenses" may include transfers of up to \$9 million in surplus allocations for each fiscal  
20 year, as calculated by the commission when it has closed its books for the fiscal year, to the  
21 Licensed Racetrack Modernization Fund created by subdivision (2), of this subsection. For all  
22 fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of  
23 gross terminal income in excess of the amount of gross terminal income received during the fiscal  
24 year ending on June 30, 2001, but four percent of any amount of gross terminal income received in  
25 excess of the amount of gross terminal income received during the fiscal year ending on June 30,  
26 2001, shall be deposited into the fund established in §29-22-18a of this code; and

27 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all  
28 fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,  
29 2030, the commission shall deposit such amounts as are available according to subdivision (1) of  
30 this subsection into a separate facility modernization account maintained within the Licensed  
31 Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit  
32 shall be calculated in the same ratio as each racetrack's apportioned contribution to the four  
33 percent administrative costs and expenses allowance provided for in subdivision (1) of this  
34 subsection for that year. For each \$2 expended by a licensed racetrack for facility modernization  
35 improvements or capital improvements at facilities located in this state that are on or contiguous to  
36 the premises of the licensed racetrack, having a useful life of three or more years and placed in  
37 service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from its facility  
38 modernization account. If the licensed racetrack's facility modernization account contains a  
39 balance in any fiscal year, the unexpended balance from that fiscal year will be available for

40 matching for one additional fiscal year, after which time, the remaining unused balance carried  
41 forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization  
42 improvements" includes acquisitions of new and unused video lottery terminals and related  
43 equipment, and the term "capital improvements" means real property that is expected to replace or  
44 modernize buildings, equipment, machinery and other tangible property used in connection with  
45 the operation of the gaming, hospitality, or entertainment at the facility. Video lottery terminals  
46 financed through the recoupment provided in this subdivision must be retained by the licensee in  
47 its West Virginia licensed location for a period of not less than five years from the date of initial  
48 installation.

49 (c) The amount resulting after the deductions required by subsection (b) of this section  
50 constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal  
51 years beginning on or after July 1, 2001, any amount of net terminal income received in excess of  
52 the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall  
53 be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu of all  
54 lottery agent commissions and is considered to cover all costs and expenses required to be  
55 expended by the licensed racetrack in connection with video lottery operations. The division shall  
56 be made as follows:

57 (1) The commission shall receive 30 percent of net terminal income, which shall be paid  
58 into the State Lottery Fund as provided in §29-22A-10a of this code;

59 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be  
60 deposited in the special fund established by the licensee, and used for payment of regular purses  
61 in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1, 2005,  
62 the rate shall be seven percent of net terminal income;

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

65 (A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent  
66 received during the fiscal year 1999 by a county in which a racetrack is located that has  
67 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,  
68 1999, shall be divided as follows:

69 (i) The county shall receive 50 percent of the excess amount; and

70 (ii) The municipalities of the county shall receive 50 percent of the excess amount, said 50  
71 percent to be divided among the municipalities on a per capita basis as determined by the most  
72 recent decennial United States census of population; and

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

78 (i) The county shall receive 50 percent of the excess amount; and

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

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

82 (C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or  
83 (B) of this subdivision is located and where the racetrack has been located within that county since  
84 on or before January 1, 1999, and where the racetrack is not located in a municipality, the two  
85 percent of net terminal income shall be divided, if applicable, as follows:

86 (i) The county shall receive one percent; and

87 (ii) The remaining one percent shall be distributed in equal shares to all municipalities  
88 located wholly within the county. Per capita population has no effect on distributions under this  
89 paragraph;

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

94 (5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of  
95 this code and the West Virginia Greyhound Breeding Development Fund created pursuant to §19-  
96 23-10 of this code shall receive an equal share of a total of not less than one and one-half percent  
97 of the net terminal income;

98 (6) The West Virginia Racing Commission shall receive one percent of the net terminal  
99 income which shall be deposited and used as provided in §19-23-13c of this code;

100 (7) A licensee shall receive 46 and one-half percent of net terminal income;

101 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive  
102 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,  
103 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three  
104 percent of the net terminal income described in this section and §29-22A-10b of this code into the  
105 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of  
106 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the  
107 Department of Administration pursuant to §5A-4-6 of this code, and \$5 million into the Tax  
108 Reduction and Federal Funding Increased Compliance Fund; and

109 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for  
110 each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the  
111 three percent of net terminal income described in §29-22a-10b(a)(8)(B) of this code shall be  
112 distributed as provided in this paragraph as follows:

113 (i) 1.375 percent of the total amount of net terminal income described in this section and  
114 §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant to  
115 §5B-2-12 of this code;

116 (ii) 0.375 percent of the total amount of net terminal income described in this section and in  
117 §29-22A-10b of this code shall be deposited into the Development Office Promotion Fund created  
118 pursuant to §5B-2-3b of this code;

119 (iii) 0.5 percent of the total amount of net terminal income described in this section and in  
120 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant  
121 to §18B-1B-10 of this code;

122 (iv) 0.6875 percent of the total amount of net terminal income described in this section and  
123 in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement Fund  
124 administered by the Department of Administration pursuant to §5A-4-6 of this code; and

125 (v) 0.0625 percent of the total amount of net terminal income described in this section and  
126 in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage  
127 Fund administered by the Department of Administration pursuant to §5A-4-5a of this code;

128 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited  
129 into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided,*  
130 That in any fiscal year when the amount of money generated by this subdivision totals \$11 million,  
131 all subsequent distributions pursuant to this subdivision shall be deposited in the special fund  
132 established by the licensee and used for the payment of regular purses in addition to the other  
133 amounts provided in §19-23-1 *et seq.* of this code;

134 (B) The deposit of the seven percent of net terminal income into the Workers'  
135 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed  
136 with respect to these funds and shall be deposited in the special fund established by the licensee  
137 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*  
138 *seq.* of this code on and after the first day of the month following the month in which the Governor  
139 certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this  
140 code have been retired or payment of the debt service provided for; and (ii) that an independent



141 certified actuary has determined that the unfunded liability of the old fund, as defined in chapter 23  
142 of this code, has been paid or provided for in its entirety; and

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

144 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive  
145 one percent of the net terminal income until sufficient moneys have been received to complete the  
146 veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The  
147 moneys shall be deposited in the State Treasury in the Division of Culture and History special fund  
148 created pursuant to §29-11-3 of this code: *Provided*, That only after sufficient moneys have been  
149 deposited in the fund to complete the veterans memorial and to pay in full the annual bonded  
150 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal  
151 income provided in this subdivision shall be deposited into a special revenue fund in the State  
152 Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be  
153 expended by the Division of Veterans Affairs to provide for the placement of markers for the graves  
154 of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate  
155 legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying the manner in  
156 which the funds are spent, determine the ability of the surviving spouse to pay for the placement of  
157 the marker and setting forth the standards to be used to determine the priority in which the  
158 veterans' grave markers will be placed in the event that there are not sufficient funds to complete  
159 the placement of veterans' grave markers in any one year, or at all. Upon payment in full of the  
160 bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net terminal  
161 income provided in this subdivision shall be deposited in the special fund in the Division of Culture  
162 and History created pursuant to §29-11-3 of this code and be expended by the Division of Culture  
163 and History to establish a West Virginia veterans memorial archives within the Cultural Center to  
164 serve as a repository for the documents and records pertaining to the veterans memorial, to  
165 restore and maintain the monuments and memorial on the capitol grounds: *Provided, however*,  
166 That \$500,000 of the one percent of net terminal income shall be deposited in the State Treasury

167 in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to  
168 be used for construction and maintenance of a parking garage on the State Capitol Complex; and  
169 the remainder of the one percent of net terminal income shall be deposited in equal amounts in the  
170 Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural  
171 Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of  
172 this code.

173 (B) For each fiscal year beginning after June 30, 2004:

174 (i) Five hundred thousand dollars of the one percent of net terminal income shall be  
175 deposited in the State Treasury in a special fund of the Department of Administration, created  
176 pursuant to §5A-4-5 of this code, to be used for construction and maintenance of a parking garage  
177 on the State Capitol Complex; and

178 (ii) The remainder of the one percent of net terminal income and all of the one percent of  
179 net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows:  
180 The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol  
181 Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and  
182 Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a  
183 total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant  
184 Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol  
185 Improvements Fund.

186 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater than  
187 the gross terminal income from its operation of video lottery machines, to be electronically  
188 transferred by the commission on dates established by the commission. Upon a licensed  
189 racetrack's failure to maintain this balance, the commission may disable all of a licensed  
190 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall  
191 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax

192 delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date  
193 payment is due to the commission.

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

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

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

217 later than noon on the day when the payment would otherwise be completed through electronic  
218 funds transfer.

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

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

227 (j) If a court of competent jurisdiction finds that the provisions of this section as amended  
228 and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be  
229 harmonized, the provisions of §29-22A-10d of this code shall control.

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

1 (a) For all years beginning on or after July 1, 2001, any amount of net terminal income  
2 generated annually by a licensed racetrack in excess of the amount of net terminal income  
3 generated by that licensed racetrack during the fiscal year ending on June 30, 2001, shall be  
4 divided as follows:

5 (1) The Commission shall receive forty-one percent of net terminal income, which the  
6 Commission shall deposit in the state Excess Lottery Revenue Fund created in §29-22-18a of this  
7 code;

8 (2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be  
9 deposited in the special fund established by the licensee and used for payment of regular purses  
10 in addition to other amounts provided in §19-23-1 *et seq.* of this code; on and after July 1, 2005,  
11 the rate shall be four percent of net terminal income;

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

14 (A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this  
15 code is in excess of the two percent received during fiscal year 1999 by a county in which a  
16 racetrack is located that has participated in the West Virginia Thoroughbred Development Fund  
17 since on or before January 1, 1999, shall be divided as follows:

18 (i) The county shall receive 50 percent of the excess amount; and

19 (ii) The municipalities of the county shall receive 50 percent of the excess amount, the 50  
20 percent to be divided among the municipalities on a per capita basis as determined by the most  
21 recent decennial United States census of population; and

22 (B) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this  
23 code is in excess of the two percent received during fiscal year 1999 by a county in which a  
24 racetrack other than a racetrack described in paragraph (A) of this proviso is located and where  
25 the racetrack has been located in a municipality within the county since on or before January 1,  
26 1999, shall be divided, if applicable, as follows:

27 (i) The county shall receive 50 percent of the excess amount; and

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

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

31 (C) In a county in which a racetrack other than a racetrack described in paragraphs (A) or  
32 (B) of this subdivision is located and where the racetrack has been located within that county since  
33 on or before January 1, 1999, and where the racetrack is not located in a municipality, the two  
34 percent of net terminal income shall be divided, if applicable, as follows:

35 (i) The county shall receive one percent; and

36           (ii) The remaining one percent shall be distributed in equal shares to all municipalities  
37 located wholly within the county. Per capita population has no effect on distributions under this  
38 paragraph;

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

43           (5) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this  
44 code and the West Virginia greyhound breeding development fund created under §19-23-10 of  
45 this code shall receive an equal share of a total of not less than one and one-half percent of the net  
46 terminal income.

47           (6) The West Virginia Racing Commission shall receive one percent of the net terminal  
48 income which shall be deposited and used as provided in §19-23-13c of this code;

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

50           (8) The tourism promotion fund established in §5B-2-12 of this code shall receive three  
51 percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30,  
52 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of  
53 §29-22A-10(c)(8)(B) of this code;

54           (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited  
55 into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*,  
56 That in any fiscal year when the amount of money generated by this subdivision together with the  
57 total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals \$11 million, all  
58 subsequent distributions under this subdivision (9) during that fiscal year shall be deposited in the  
59 special fund established by the licensee and used for payment of regular purses in addition to  
60 other amounts provided in §19-23-1 *et seq.* of this code;

61 (B) The deposit of the four percent of net terminal income into the Worker's Compensation  
62 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to  
63 these funds, which shall be deposited in the special fund established by the licensee and used for  
64 payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this  
65 code on and after the first day of the month following the month in which the Governor certifies to  
66 the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have  
67 been retired or payment of the debt service is provided for; and (ii) that an independent certified  
68 actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-  
69 three of this code, has been paid or provided in its entirety; and

70 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in the  
71 capitol dome and improvements fund created under §5A-4-2 of this code and cultural facilities and  
72 capitol resources matching grant program fund created under §29-1-3 of this code; and

73 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for  
74 each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be  
75 distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

76 (b) The Commission may establish orderly and effective procedures for the collection and  
77 distribution of funds under this section in accordance with the provisions of this section and §29-  
78 22A-10 of this code.