

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

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

86 (5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b of
87 this code and the West Virginia Greyhound Breeding Development Fund created pursuant to §19-
88 23-10 of this code shall receive an equal share of a total of not less than one and one-half percent
89 of the net terminal income;

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

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

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

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

105 (i) 1.375 percent of the total amount of net terminal income described in this section and
106 §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant to
107 §5B-2-12 of this code;

108 (ii) 0.375 percent of the total amount of net terminal income described in this section and in
109 §29-22A-10b of this code shall be deposited into the Development Office Promotion Fund created
110 pursuant to §5B-2-3b of this code;

111 (iii) 0.5 percent of the total amount of net terminal income described in this section and in
112 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant
113 to §18B-1B-10 of this code;

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

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

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

126 (B) The deposit of the seven percent of net terminal income into the Workers'
127 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed
128 with respect to these funds and shall be deposited in the special fund established by the licensee
129 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*
130 *seq.* of this code on and after the first day of the month following the month in which the Governor
131 certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this
132 code have been retired or payment of the debt service provided for; and (ii) that an independent
133 certified actuary has determined that the unfunded liability of the old fund, as defined in chapter 23
134 of this code, has been paid or provided for in its entirety; and

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

136 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
137 one percent of the net terminal income until sufficient moneys have been received to complete the
138 veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The
139 moneys shall be deposited in the State Treasury in the Division of Culture and History special fund

140 created pursuant to §29-11-3 of this code: *Provided*, That only after sufficient moneys have been
141 deposited in the fund to complete the veterans memorial and to pay in full the annual bonded
142 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal
143 income provided in this subdivision shall be deposited into a special revenue fund in the State
144 Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be
145 expended by the Division of Veterans Affairs to provide for the placement of markers for the graves
146 of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate
147 legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying the manner in
148 which the funds are spent, determine the ability of the surviving spouse to pay for the placement of
149 the marker and setting forth the standards to be used to determine the priority in which the
150 veterans' grave markers will be placed in the event that there are not sufficient funds to complete
151 the placement of veterans' grave markers in any one year, or at all. Upon payment in full of the
152 bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net terminal
153 income provided in this subdivision shall be deposited in the special fund in the Division of Culture
154 and History created pursuant to §29-11-3 of this code and be expended by the Division of Culture
155 and History to establish a West Virginia veterans memorial archives within the Cultural Center to
156 serve as a repository for the documents and records pertaining to the veterans memorial, to
157 restore and maintain the monuments and memorial on the capitol grounds: *Provided*, however,
158 That \$500,000 of the one percent of net terminal income shall be deposited in the State Treasury
159 in a special fund of the Department of Administration, created pursuant to §5A-4-5 of this code, to
160 be used for construction and maintenance of a parking garage on the State Capitol Complex; and
161 the remainder of the one percent of net terminal income shall be deposited in equal amounts in the
162 Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code and Cultural
163 Facilities and Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of
164 this code.

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

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

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

178 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater than
179 the gross terminal income from its operation of video lottery machines, to be electronically
180 transferred by the commission on dates established by the commission. Upon a licensed
181 racetrack's failure to maintain this balance, the commission may disable all of a licensed
182 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall
183 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax
184 delinquency pursuant to chapter 11 of this code. The interest shall begin to accrue on the date
185 payment is due to the commission.

186 (e) The commission's central control computer shall keep accurate records of all income
187 generated by each video lottery terminal. The commission shall prepare and mail to the licensed
188 racetrack a statement reflecting the gross terminal income generated by the licensee's video
189 lottery terminals. Each licensed racetrack shall report to the commission any discrepancies
190 between the commission's statement and each terminal's mechanical and electronic meter
191 readings. The licensed racetrack is solely responsible for resolving income discrepancies between

192 actual money collected and the amount shown on the accounting meters or on the commission's
193 billing statement.

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

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

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

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

218 the accounts or records to allow examination of any of those accounts or records by the
219 commission.

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