

1 **H. B. 4531**

2
3 (By Delegates Canterbury and T. Campbell)
4 [Introduced February 14, 2012; referred to the
5 Committee on Pensions and Retirement then Finance.]
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10 A BILL to amend and reenact §19-23-12b of the Code of West
11 Virginia, 1931, as amended; to amend and reenact §29-22A-10 of
12 said code; and to amend and reenact §29-22C-27 of said code,
13 all relating to providing pension benefits for hotel employees
14 at racetracks for which table games licenses have been issued.

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

16 That §19-23-12b of the Code of West Virginia, 1931, as
17 amended, be amended and reenacted; that §29-22A-10 of said code be
18 amended and reenacted; and that §29-22C-27 of said code be amended
19 and reenacted, all to read as follows:

20 **CHAPTER 19. AGRICULTURE.**

21 **ARTICLE 23. HORSE AND DOG RACING.**

22 **§19-23-12b. Televised racing days; merging of pari-mutuel**
23 **wagering pools.**

1 (a) For the purposes of this section:

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

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

14 (b) A licensee conducting not less than two hundred twenty
15 live racing dates for each horse or dog race meeting may, with the
16 prior approval of the state Racing Commission, contract with any
17 legal wagering entity in this state or in any other governmental
18 jurisdiction to receive telecasts and accept wagers on races
19 conducted by the legal wagering entity: *Provided*, That at those
20 thoroughbred racetracks the licensee, in applying for racing dates,
21 shall apply for not less than two hundred ten live racing dates for
22 each horse race meeting: *Provided, however*, That at those
23 thoroughbred racetracks that have participated in the West Virginia
24 thoroughbred development fund for a period of more than four

1 consecutive calendar years prior to December 31, 1992, the licensee
2 may apply for not less than one hundred fifty-nine live racing
3 dates during the calendar year 1997. If, thereafter, for reasons
4 beyond the licensee's control, related to adverse weather
5 conditions, unforeseen casualty occurrences or a shortage of
6 thoroughbred horses eligible to compete for purses, the licensee
7 concludes that this number of racing days cannot be attained, the
8 licensee may file a request with the Racing Commission to reduce
9 the authorized live racing days. Upon receipt of the request the
10 Racing Commission shall within seventy-two hours of the receipt of
11 the request notify the licensee and the representative of a
12 majority of the owners and trainers at the requesting track and the
13 representative of the majority of the mutuel clerks at the
14 requesting track that such request has been received and that if no
15 objection to the request is received within ten days of the
16 notification the request will be approved: *Provided further,* That
17 the commission shall give consideration to whether there existed
18 available unscheduled potential live racing dates following the
19 adverse weather or casualty and prior to the end of the race
20 meeting which could be used as new live racing dates in order to
21 maintain the full live racing schedule previously approved by the
22 Racing Commission. If an objection is received by the commission
23 within the time limits, the commission shall, within thirty days of
24 receipt of such objection, set a hearing on the question of

1 reducing racing days, which hearing shall be conducted at a
2 convenient place in the county in which the requesting racetrack is
3 located. The commission shall hear from all parties concerned and,
4 based upon testimony and documentary evidence presented at the
5 hearing, shall determine the required number of live racing days:
6 *And provided further,* That the commission shall not reduce the
7 number of live racing days below one hundred eighty-five days for
8 a horse race meeting unless the licensee requesting such reduction
9 has: (i) Filed with the commission a current financial statement,
10 which shall be subject to independent audit; and (ii) met the
11 burden of proving that just cause exists for such requested
12 reduction in live racing days. The telecasts may be received and
13 wagers accepted at any location authorized by the provisions of
14 section twelve-a of this article. The contract must receive the
15 approval of the representative of the majority of the owners and
16 trainers who hold permits required by section two of this article
17 at the receiving thoroughbred racetrack.

18 (c) The commission may allow the licensee to commingle its
19 wagering pools with the wagering pools of the host racing
20 association. If the pools are commingled, the wagering at the
21 licensee's racetrack must be on tabulating equipment capable of
22 issuing pari-mutuel tickets and be electronically linked with the
23 equipment at the sending racetrack. Subject to the approval of the
24 commission, the types of betting, licensee commissions and

1 distribution of winnings on pari-mutuel pools of the sending
2 licensee racetrack are those in effect at the licensee racetrack.
3 Breakage for pari-mutuel pools on a televised racing day must be
4 calculated in accordance with the law or rules governing the
5 sending racetrack and must be distributed in a manner agreed to
6 between the licensee and the sending racetrack. For the televised
7 racing services it provides, the host racing association shall
8 receive a fee to be paid by the receiving licensee racetrack which
9 shall be in an amount to be agreed upon by the receiving licensee
10 racetrack and the host racing association.

11 (d) The commission may assign televised racing days at any
12 time. When a televised racing day is assigned, the commission
13 shall assign either a steward or an Auditor to preside over the
14 televised races at the licensee racetrack.

15 (e) (1) From the licensee commissions authorized by subsection
16 (c) of this section, the licensee shall pay one tenth of one
17 percent of each commission into the General Fund of the county, in
18 which the racetrack is located and at which the wagering occurred
19 and there is imposed and the licensee shall pay, for each televised
20 racing day on which the total pari-mutuel pool exceeds \$100,000,
21 the greater of either: (i) The total of the daily license tax and
22 the pari-mutuel pools tax required by section ten of this article;
23 or (ii) a daily license tax of \$1,250. For each televised racing
24 day on which the total pari-mutuel pool is \$100,000, the licensee

1 shall pay a daily license tax of \$500 plus an additional license
2 tax of \$100 for each \$10,000, or part thereof, that the pari-mutuel
3 pool exceeds \$50,000, but does not exceed \$100,000. The
4 calculation of the total pari-mutuel pool for purposes of this
5 subsection shall include only one half of all wagers placed at a
6 licensed racetrack in this state on televised races conducted at
7 another licensed racetrack within this state. Payments of the tax
8 imposed by this section are subject to the requirements of
9 subsection (e), section ten of this article.

10 (2) From the licensee commissions authorized by subsection (c)
11 of this section, after payments are made in accordance with the
12 provisions of subdivision (1) of this subsection, the licensee
13 shall pay, for each televised racing day, one fourth of one percent
14 of the total pari-mutuel pools for and on behalf of all employees
15 of the licensed racing association and including all employees of
16 any hotel located at a West Virginia racetrack for which a
17 racetrack table games license has been issued, and by making a
18 deposit into a special fund to be established by the Racing
19 Commission and to be used for payments into the pension plan for
20 all employees of the licensed racing association and including all
21 employees of any hotel located at a West Virginia racetrack for
22 which a racetrack table games license has been issued.

23 (3) From the licensee commissions authorized by subsection (c)
24 of this section, after payments are made in accordance with the

1 provisions of subdivisions (1) and (2) of this subsection,
2 thoroughbred licensees shall pay, one-half percent of net
3 simulcast income and for each televised racing day on or after July
4 1, 1997, an additional five and one-half percent of net simulcast
5 income into the West Virginia thoroughbred development fund
6 established by the Racing Commission according to section thirteen-
7 b of this article: *Provided*, That no licensee qualifying for the
8 alternate tax provisions of subsection (b), section ten of this
9 article shall be required to make the payments unless the licensee
10 has participated in the West Virginia thoroughbred development fund
11 for a period of more than four consecutive calendar years prior to
12 December 31, 1992. For the purposes of this section, the term "net
13 simulcast income" means the total commission deducted each day by
14 the licensee from the pari-mutuel pools on simulcast horse or dog
15 races, less direct simulcast expenses, including, but not limited
16 to, the cost of simulcast signals, telecommunication costs and
17 decoder costs.

18 (f) After deducting the tax and other payments required by
19 subsection (e) of this section, the amount required to be paid
20 under the terms of the contract with the host racing association
21 and the cost of transmission, the horse racing association shall
22 make a deposit equal to fifty percent of the remainder into the
23 purse fund established under the provisions of subdivision (1),
24 subsection (b), section nine of this article. After deducting the

1 tax and other payments required by subsection (e) of this section,
2 dog racetracks shall pay an amount equal to two tenths of one
3 percent of the daily simulcast pari-mutuel pool to the "West
4 Virginia Racing Commission Special Account-West Virginia Greyhound
5 Breeding Development Fund."

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

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

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

12 **§29-22A-10. Accounting and reporting; commission to provide**
13 **communications protocol data; distribution of net**
14 **terminal income; remittance through electronic**
15 **transfer of funds; establishment of accounts and**
16 **nonpayment penalties; commission control of**
17 **accounting for net terminal income; settlement of**
18 **accounts; manual reporting and payment may be**
19 **required; request for reports; examination of**
20 **accounts and records.**

21 (a) The commission shall provide to manufacturers, or
22 applicants applying for a manufacturer's permit, the protocol
23 documentation data necessary to enable the respective

1 manufacturer's video lottery terminals to communicate with the
2 commission's central computer for transmitting auditing program
3 information and for activation and disabling of video lottery
4 terminals.

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

14 (1) The commission shall deduct an amount sufficient to
15 reimburse the commission for its actual costs and expenses incurred
16 in administering racetrack video lottery at the licensed racetrack
17 and the resulting amount after the deduction is the net terminal
18 income. The amount deducted for administrative costs and expenses
19 of the commission may not exceed four percent of gross terminal
20 income: *Provided*, That any amounts deducted by the commission for
21 its actual costs and expenses that exceeds its actual costs and
22 expenses shall be deposited into the state Lottery Fund. For the
23 fiscal years ending June 30, 2011 through June 30, 2020, the term
24 "actual costs and expenses" may include transfers of\$ up to \$10

1 million in surplus allocations for each fiscal year, as calculated
2 by the commission when it has closed its books for the fiscal year,
3 to the Licensed Racetrack Modernization Fund created by
4 subdivision(2), subsection (b) of this section. For all fiscal
5 years beginning on or after July 1, 2001, the commission shall not
6 receive an amount of gross terminal income in excess of the amount
7 of gross terminal income received during the fiscal year ending on
8 June 30, 2001, but four percent of any amount of gross terminal
9 income received in excess of the amount of gross terminal income
10 received during the fiscal year ending on June 30, 2001, shall be
11 deposited into the fund established in section eighteen-a, article
12 twenty-two of this chapter; and

13 (2) A Licensed Racetrack Modernization Fund is created within
14 the lottery fund. For all fiscal years beginning on or after July
15 1, 2011, and ending with the fiscal year beginning July 1, 2020,
16 the commission shall deposit such amounts as are available
17 according to subdivision (1), subsection (b) of this section into
18 a separate facility modernization account maintained within the
19 Licensed Racetrack Modernization Fund for each racetrack. Each
20 racetrack's share of each year's deposit shall be calculated in the
21 same ratio as each racetrack's apportioned contribution to the four
22 percent administrative costs and expenses allowance provided for in
23 subdivision (1), subsection (b) of this section for that year. For
24 each two dollars expended by a licensed racetrack for facility

1 modernization improvements at the racetrack, having a useful life
2 of three or more years and placed in service after July 1, 2011,
3 the licensed racetrack shall receive \$1 in recoupment from its
4 facility modernization account. If the licensed racetrack's
5 facility modernization account contains a balance in any fiscal
6 year, the unexpended balance from that fiscal year will be
7 available for matching for one additional fiscal year, after which
8 time, the remaining unused balance carried forward shall revert to
9 the lottery fund. For purposes of this section, the term "facility
10 modernization improvements" includes acquisitions of new and unused
11 video lottery terminals and related equipment. Video lottery
12 terminals financed through the recoupment provided in this
13 subdivision must be retained by the licensee in its West Virginia
14 licensed location for a period of not less than five years from the
15 date of initial installation.

16 (c) The amount resulting after the deductions required by
17 subsection (b) of this section constitutes net terminal income that
18 shall be divided as set out in this subsection. For all fiscal
19 years beginning on or after July 1, 2001, any amount of net
20 terminal income received in excess of the amount of net terminal
21 income received during the fiscal year ending on June 30, 2001,
22 shall be divided as set out in section ten-b of this article. The
23 licensed racetrack's share is in lieu of all lottery agent
24 commissions and is considered to cover all costs and expenses

1 required to be expended by the licensed racetrack in connection
2 with video lottery operations. The division shall be made as
3 follows:

4 (1) The commission shall receive thirty percent of net
5 terminal income, which shall be paid into the State Lottery Fund as
6 provided in section ten-a of this article;

7 (2) Until July 1, 2005, fourteen percent of net terminal
8 income at a licensed racetrack shall be deposited in the special
9 fund established by the licensee, and used for payment of regular
10 purses in addition to other amounts provided for in article twenty-
11 three, chapter nineteen of this code, on and after July 1, 2005,
12 the rate shall be seven percent of net terminal income;

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

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

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

23 (ii) The municipalities of the county shall receive fifty
24 percent of the excess amount, said fifty percent to be divided

1 among the municipalities on a per capita basis as determined by the
2 most recent decennial United States census of population; and

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

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

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

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

16 (4) One percent of net terminal income shall be paid for and
17 on behalf of all employees of the licensed racing association by
18 making a deposit into a special fund to be established by the
19 Racing Commission to be used for payment into the pension plan for
20 all employees of the licensed racing association and including all
21 employees of any hotel located at a West Virginia racetrack for
22 which a racetrack table games license has been issued;

23 (5) The West Virginia Thoroughbred Development Fund created
24 under section thirteen-b, article twenty-three, chapter nineteen of

1 this code and the West Virginia Greyhound Breeding Development Fund
2 created under section ten of said article shall receive an equal
3 share of a total of not less than one and one-half percent of the
4 net terminal income;

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

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

11 (8) (A) The Tourism Promotion Fund established in section
12 twelve, article two, chapter five-b of this code shall receive
13 three percent of the net terminal income: *Provided*, That for the
14 fiscal year beginning July 1, 2003, the tourism commission shall
15 transfer from the Tourism Promotion Fund \$5 million of the three
16 percent of the net terminal income described in this section and
17 section ten-b of this article into the fund administered by the
18 West Virginia Economic Development Authority pursuant to section
19 seven, article fifteen, chapter thirty-one of this code, \$5 million
20 into the Capitol Renovation and Improvement Fund administered by
21 the Department of Administration pursuant to section six, article
22 four, chapter five-a of this code and \$5 million into the Tax
23 Reduction and Federal Funding Increased Compliance Fund; and

24 (B) Notwithstanding any provision of paragraph (A) of this

1 subdivision to the contrary, for each fiscal year beginning after
2 June 30, 2004, this three percent of net terminal income and the
3 three percent of net terminal income described in paragraph (B),
4 subdivision (8), subsection (a), section ten-b of this article
5 shall be distributed as provided in this paragraph as follows:

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

10 (ii) 0.375 percent of the total amount of net terminal income
11 described in this section and in section ten-b of this article
12 shall be deposited into the Development Office Promotion Fund
13 created under section three-b, article two, chapter five-b of this
14 code;

15 (iii) 0.5 percent of the total amount of net terminal income
16 described in this section and in section ten-b of this article
17 shall be deposited into the Research Challenge Fund created under
18 section ten, article one-b, chapter eighteen-b of this code;

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

24 (v) 0.0625 percent of the total amount of net terminal income

1 described in this section and in section ten-b of this article
2 shall be deposited into the 2004 Capitol Complex Parking Garage
3 Fund administered by the Department of Administration pursuant to
4 section five-a, article four, chapter five-a of this code;

5 (9) (A) On and after July 1, 2005, seven percent of net
6 terminal income shall be deposited into the Workers' Compensation
7 Debt Reduction Fund created in section five, article two-d, chapter
8 twenty-three of this code: *Provided*, That in any fiscal year when
9 the amount of money generated by this subdivision totals \$11
10 million, all subsequent distributions under this subdivision shall
11 be deposited in the special fund established by the licensee and
12 used for the payment of regular purses in addition to the other
13 amounts provided in article twenty-three, chapter nineteen of this
14 code;

15 (B) The deposit of the seven percent of net terminal income
16 into the Worker's Compensation Debt Reduction Fund pursuant to this
17 subdivision shall expire and not be imposed with respect to these
18 funds and shall be deposited in the special fund established by the
19 licensee and used for payment of regular purses in addition to the
20 other amounts provided in article twenty-three, chapter nineteen of
21 this code, on and after the first day of the month following the
22 month in which the Governor certifies to the Legislature that: (i)
23 The revenue bonds issued pursuant to article two-d, chapter twenty-
24 three of this code, have been retired or payment of the debt

1 service provided for; and (ii) that an independent certified
2 actuary has determined that the unfunded liability of the old fund,
3 as defined in chapter twenty-three of this code, has been paid or
4 provided for in its entirety; and

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

7 (A) For the fiscal year beginning July 1, 2003, the veterans
8 memorial program shall receive one percent of the net terminal
9 income until sufficient moneys have been received to complete the
10 veterans memorial on the grounds of the State Capitol Complex in
11 Charleston, West Virginia. The moneys shall be deposited in the
12 State Treasury in the Division of Culture and History special fund
13 created under section three, article one-I, chapter twenty-nine of
14 this code: *Provided*, That only after sufficient moneys have been
15 deposited in the fund to complete the veterans memorial and to pay
16 in full the annual bonded indebtedness on the veterans memorial,
17 not more than \$20,000 of the one percent of net terminal income
18 provided in this subdivision shall be deposited into a special
19 revenue fund in the State Treasury, to be known as the "John F.
20 'Jack' Bennett Fund." The moneys in this fund shall be expended by
21 the Division of Veterans Affairs to provide for the placement of
22 markers for the graves of veterans in perpetual cemeteries in this
23 state. The Division of Veterans Affairs shall promulgate
24 legislative rules pursuant to the provisions of article three,

1 chapter twenty-nine-a of this code specifying the manner in which
2 the funds are spent, determine the ability of the surviving spouse
3 to pay for the placement of the marker and setting forth the
4 standards to be used to determine the priority in which the
5 veterans grave markers will be placed in the event that there are
6 not sufficient funds to complete the placement of veterans grave
7 markers in any one year, or at all. Upon payment in full of the
8 bonded indebtedness on the veterans memorial, \$100,000 of the one
9 percent of net terminal income provided in this subdivision shall
10 be deposited in the special fund in the Division of Culture and
11 History created under section three, article one-I, chapter twenty-
12 nine of this code and be expended by the Division of Culture and
13 History to establish a West Virginia veterans memorial archives
14 within the Cultural Center to serve as a repository for the
15 documents and records pertaining to the veterans memorial, to
16 restore and maintain the monuments and memorial on the Capitol
17 grounds: *Provided, however,* That \$500,000 of the one percent of
18 net terminal income shall be deposited in the State Treasury in a
19 special fund of the Department of Administration, created under
20 section five, article four, chapter five-a of this code, to be used
21 for construction and maintenance of a parking garage on the State
22 Capitol Complex; and the remainder of the one percent of net
23 terminal income shall be deposited in equal amounts in the Capitol
24 Dome and Improvements Fund created under section two, article four,

1 chapter five-a of this code and Cultural Facilities and Capitol
2 Resources Matching Grant Program Fund created under section three,
3 article one of this chapter.

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

5 (i) Five hundred thousand dollars of the one percent of net
6 terminal income shall be deposited in the State Treasury in a
7 special fund of the Department of Administration, created under
8 section five, article four, chapter five-a of this code, to be used
9 for construction and maintenance of a parking garage on the State
10 Capitol Complex; and

11 (ii) The remainder of the one percent of net terminal income
12 and all of the one percent of net terminal income described in
13 paragraph (B), subdivision (9), subsection (a), section ten-b of
14 this article shall be distributed as follows: The net terminal
15 income shall be deposited in equal amounts into the Capitol Dome
16 and Capitol Improvements Fund created under section two, article
17 four, chapter five-a of this code and the Cultural Facilities and
18 Capitol Resources Matching Grant Program Fund created under section
19 three, article one, chapter twenty-nine of this code until a total
20 of \$1,500,000 is deposited into the Cultural Facilities and Capitol
21 Resources Matching Grant Program Fund; thereafter, the remainder
22 shall be deposited into the Capitol Dome and Capitol Improvements
23 Fund.

24 (d) Each licensed racetrack shall maintain in its account an

1 amount equal to or greater than the gross terminal income from its
2 operation of video lottery machines, to be electronically
3 transferred by the commission on dates established by the
4 commission. Upon a licensed racetrack's failure to maintain this
5 balance, the commission may disable all of a licensed racetrack's
6 video lottery terminals until full payment of all amounts due is
7 made. Interest shall accrue on any unpaid balance at a rate
8 consistent with the amount charged for state income tax delinquency
9 under chapter eleven of this code. The interest shall begin to
10 accrue on the date payment is due to the commission.

11 (e) The commission's central control computer shall keep
12 accurate records of all income generated by each video lottery
13 terminal. The commission shall prepare and mail to the licensed
14 racetrack a statement reflecting the gross terminal income
15 generated by the licensee's video lottery terminals. Each licensed
16 racetrack shall report to the commission any discrepancies between
17 the commission's statement and each terminal's mechanical and
18 electronic meter readings. The licensed racetrack is solely
19 responsible for resolving income discrepancies between actual money
20 collected and the amount shown on the accounting meters or on the
21 commission's billing statement.

22 (f) Until an accounting discrepancy is resolved in favor of
23 the licensed racetrack, the commission may make no credit
24 adjustments. For any video lottery terminal reflecting a

1 discrepancy, the licensed racetrack shall submit to the commission
2 the maintenance log which includes current mechanical meter
3 readings and the audit ticket which contains electronic meter
4 readings generated by the terminal's software. If the meter
5 readings and the commission's records cannot be reconciled, final
6 disposition of the matter shall be determined by the commission.
7 Any accounting discrepancies which cannot be otherwise resolved
8 shall be resolved in favor of the commission.

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

22 (h) Licensed racetracks may, upon request, receive additional
23 reports of play transactions for their respective video lottery
24 terminals and other marketing information not considered

1 confidential by the commission. The commission may charge a
2 reasonable fee for the cost of producing and mailing any report
3 other than the billing statements.

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

11 **ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.**

12 **§29-22C-27. West Virginia Lottery Racetrack Table Games Fund;**
13 **Community-Based Service Fund; State Debt Reduction**
14 **Fund; distribution of funds.**

15 (a) (1) The special fund in the State Treasury known as the
16 West Virginia Lottery Racetrack Table Games Fund is continued and
17 all tax collected under this article shall be deposited with the
18 State Treasurer and placed in the West Virginia Lottery Racetrack
19 Table Games Fund. The fund shall be an interest-bearing account
20 with all interest or other return earned on the money of the fund
21 credited to and deposited in the fund.

22 (2) Notwithstanding any provision of this article to the
23 contrary, all racetrack table games license fees received by the

1 commission pursuant to section eight of this article shall be
2 deposited into the Community-Based Service Fund which is continued
3 in the State Treasury. Moneys of the fund shall be expended by the
4 Bureau of Senior Services upon appropriation of the Legislature
5 solely for the purpose of enabling the aged and disabled citizens
6 of this state to maintain their residency in the community-based
7 setting through the provision of home and community-based services.

8 (b) From the gross amounts deposited into the Racetrack Table
9 Games Fund pursuant to subsection (a) of this section, the
10 commission shall:

11 (1) Retain an amount for the administrative expenses of the
12 commission as determined by the commission in accordance with
13 subsection (e) of this section;

14 (2) Transfer two and one-half percent of adjusted gross
15 receipts from all thoroughbred racetracks with West Virginia
16 Lottery table games to the special funds established by each
17 thoroughbred racetrack table games licensees for the payment of
18 regular racetrack purses, the amount being divided on a pro rata
19 basis between the special funds of each thoroughbred racetrack
20 table games licensee and transfer two and one-half percent of
21 adjusted gross receipts from all greyhound racetracks with West
22 Virginia Lottery table games to the special funds established by
23 each greyhound racetrack table games licensees for the payment of
24 regular racetrack purses, the amount being divided equally between

1 the special funds of each greyhound racetrack table games licensee;
2 (3) Transfer two percent of the adjusted gross receipts from
3 all licensed racetracks to the West Virginia Thoroughbred
4 Development Fund created under section thirteen-b, article twenty-
5 three, chapter nineteen of this code and the West Virginia
6 Greyhound Breeding Development Fund created under section ten,
7 article twenty-three, chapter nineteen of this code. The total
8 amount transferred under this subdivision shall be divided pro rata
9 among the development funds for each racetrack table games licensee
10 based on relative adjusted receipts from each racetrack. The
11 amounts transferred to these funds may not be used for the benefit
12 of any person or activity other than at or associated with a
13 racetrack table games licensee;

14 (4) Transfer one percent of the adjusted gross receipts from
15 each licensed racetrack to the county commissions of the counties
16 where racetracks with West Virginia Lottery table games are
17 located. County commissions may pledge this money to make payments
18 on lottery revenue bonds issued pursuant to article two-h, chapter
19 thirteen of this code. The one percent transferred under this
20 subdivision shall be divided pro rata among the counties with a
21 racetrack with West Virginia Lottery table games based on relative
22 adjusted gross receipts from each county's racetrack: *Provided,*
23 That the county board of education of a growth county, as that term
24 is defined in section three, article twenty, chapter seven of this

1 code, which has enacted the Local Powers Act, and in which county
2 a racetrack is located that has participated in the West Virginia
3 Thoroughbred Development Fund since on or before January 1, 1991,
4 shall receive the one percent of adjusted gross receipts as
5 provided in this subdivision for the purpose of public projects, as
6 defined in section two, article two-h, chapter thirteen of this
7 code or to make payments on lottery revenue bonds issued to finance
8 public projects;

9 (5) Transfer two percent of the adjusted gross receipts from
10 each licensed racetrack to the governing bodies of municipalities
11 within counties where racetracks with West Virginia Lottery table
12 games are located. Municipalities may pledge the money to make
13 payments on lottery revenue bonds issued pursuant to article two-h,
14 chapter thirteen of this code. This money shall be allocated as
15 follows:

16 (A) One half of the amounts transferred under this subdivision
17 shall be allocated to the municipalities within each county having
18 a racetrack table games licensee, based on relative adjusted gross
19 receipts from West Virginia Lottery table games from those
20 racetracks and the total amount allocated to the municipalities
21 within a county shall be divided pro rata among the municipalities
22 based on each municipality's population determined at the most
23 recent United States decennial census of population: *Provided,*
24 That: (i) For each allocation, when a municipality is physically

1 located in two or more counties, only that portion of its
2 population residing in the county where the authorized table games
3 are located shall be considered; (ii) a single municipality in a
4 county where West Virginia Lottery racetrack table games are played
5 may not receive a total share under this paragraph that is in
6 excess of seventy-five percent of the total distribution under this
7 paragraph for the county in which the municipality is located; and
8 (iii) a municipality receiving moneys under this paragraph may not
9 receive an amount which is less than that received by a
10 municipality under provisions of subdivision (4), subsection (d) of
11 this section; and

12 (B) One half of the amounts transferred under this subdivision
13 shall be allocated pro rata to the municipalities within all the
14 counties, having a racetrack table games licensee based on each
15 municipality's population determined at the most recent United
16 States decennial census of population: *Provided, That:* (i) A
17 municipality which received funds above its pro rata share pursuant
18 to subpart (iii), paragraph (A) of this subdivision may not receive
19 an allocation under this paragraph; (ii) for each allocation, when
20 a municipality is physically located in two or more counties, only
21 that portion of its population residing in the county where the
22 authorized table games are located shall be considered; and (iii)
23 a single municipality in a county where West Virginia Lottery
24 racetrack games are played may not receive a total share under this

1 paragraph that is in excess of twenty-five percent of the total
2 transfers under this paragraph: *Provided, however,* That the county
3 board of education of a growth county, as that term is defined in
4 section three, article twenty, chapter seven of this code, which
5 has enacted the Local Powers Act, and in which county a racetrack
6 is located that has participated in the West Virginia Thoroughbred
7 Development Fund since on or before January 1, 1991, shall receive
8 the two percent of adjusted gross receipts as provided in this
9 subdivision for the purpose of public projects, as defined in
10 section two, article two-h, chapter thirteen of this code, or to
11 make payments on lottery revenue bonds issued to finance the public
12 projects;

13 (6) Transfer one half of one percent of the adjusted gross
14 receipts to the governing bodies of municipalities in which a
15 racetrack table games licensee is located. The municipalities
16 shall each receive an equal share of the total amount allocated
17 under this subdivision: *Provided,* That distribution under this
18 subdivision may not be made to any municipality which did not have
19 a licensed racetrack within its municipal boundaries as they
20 existed on January 1, 2007: *Provided, however,* That if no
21 racetrack table games licensee is located within a municipality, a
22 transfer may not be made under this subdivision. The municipality
23 may pledge this money to make payments on lottery revenue bonds
24 issued pursuant to article two-h, chapter thirteen of this code;

1 and

2 (7) Distribute the remaining amounts, hereinafter referred to
3 as the net amounts in the Racetrack Table Games Funds, in
4 accordance with the provisions of subsection (d) of this section.

5 (c) Beginning with the fiscal year following the licensing of
6 every licensed racetrack to offer West Virginia Lottery racetrack
7 table games under this article, subsection (b) of this section
8 shall be superseded and replaced by this subsection for
9 distribution of the balances in the fund established by subsection
10 (a) of this section. From the gross amounts deposited into the
11 fund, the commission shall:

12 (1) Retain an amount for the administrative expenses of the
13 commission as determined by the commission in accordance with
14 subsection(e) of this section;

15 (2) Transfer two and one-half percent of adjusted gross
16 receipts from all thoroughbred racetracks with West Virginia
17 Lottery table games to the special funds established by each
18 thoroughbred racetrack table games licensee for the payment of
19 regular racetrack purses, the amount being divided on a pro rata
20 basis between the special funds of each thoroughbred racetrack
21 table games licensee and transfer two and one-half percent of
22 adjusted gross receipts from all greyhound racetracks with West
23 Virginia Lottery table games to the special funds established by
24 each greyhound racetrack table games licensee for the payment of

1 regular racetrack purses, the amount being divided equally between
2 the special funds of each greyhound racetrack table games licensee;

3 (3) Transfer two percent of the adjusted gross receipts from
4 all licensed racetracks to the West Virginia Thoroughbred
5 Development Fund created under section thirteen-b, article twenty-
6 three, chapter nineteen of this code and the West Virginia
7 Greyhound Breeding Development Fund created under section ten,
8 article twenty-three, chapter nineteen of this code. The total
9 amount transferred under this subdivision shall be divided pro rata
10 among the development funds for each racetrack table games licensee
11 based on relative adjusted receipts from each racetrack. The
12 amounts transferred to these funds may not be used for the benefit
13 of any person or activity other than at or associated with a
14 racetrack table games licensee;

15 (4) Transfer two percent of the adjusted gross receipts from
16 each licensed racetrack to the county commissions of the counties
17 where racetracks with West Virginia Lottery table games are
18 located. The money transferred under this subdivision shall be
19 divided pro rata among the counties with a racetrack with West
20 Virginia Lottery table games based on relative adjusted gross
21 receipts from each county's racetrack: *Provided*, That the county
22 board of education of a growth county, as that term is defined in
23 section three, article twenty, chapter seven of this code, which
24 has enacted the Local Powers Act, and in which a racetrack is

1 located that has participated in the West Virginia Thoroughbred
2 Development Fund since on or before January 1, 1991, shall receive
3 one half of that county's share of adjusted gross receipts as
4 provided in this subdivision for the purpose of capital
5 improvements;

6 (5) Transfer three percent of the adjusted gross receipts from
7 each licensed racetrack to the governing bodies of municipalities
8 within counties where racetracks with West Virginia Lottery table
9 games are located, which shall be allocated as follows:

10 (A) One half of the money transferred by this subdivision
11 shall be allocated to the municipalities within each county, other
12 than a county described in paragraph (C) of this subdivision,
13 having a racetrack table games licensee based on relative adjusted
14 gross receipts from West Virginia Lottery table games from those
15 racetracks and the total amount allocated to the municipalities
16 within a county shall be divided pro rata among the municipalities
17 based on each municipality's population determined at the most
18 recent United States decennial census of population: *Provided,*
19 *That:* (i) For each allocation, when a municipality is physically
20 located in two or more counties, only that portion of its
21 population residing in the county where the authorized table games
22 are located shall be considered; (ii) a single municipality in a
23 county where West Virginia Lottery racetrack table games are played
24 may not receive a total share under this paragraph that is in

1 excess of seventy-five percent of the total distribution under this
2 paragraph for the county in which the municipality is located; and
3 (iii) a municipality receiving moneys under this paragraph may not
4 receive an amount which is less than that received by a
5 municipality under provisions of subdivision (4), subsection (d) of
6 this section.

7 (B) One half of the money transferred under this subdivision
8 shall be allocated pro rata to the municipalities within all the
9 counties, other than a county described in paragraph (C) of this
10 subdivision, having a racetrack table games licensee based on each
11 municipality's population determined at the most recent United
12 States decennial census of population: *Provided, That:* (i) A
13 municipality which received funds above its pro rata share pursuant
14 to subparagraph (iii), paragraph (A) of this subdivision shall not
15 receive an allocation under this paragraph; (ii) for each
16 allocation, when a municipality is physically located in two or
17 more counties, only that portion of its population residing in the
18 county where the authorized table games are located shall be
19 considered; and (iii) a single municipality in a county where West
20 Virginia Lottery racetrack games are played may not receive a total
21 share under this paragraph that is in excess of twenty-five percent
22 of the total transfers under this paragraph.

23 (C) Notwithstanding the provisions of paragraphs (A) and (B)
24 of this subdivision, when a racetrack is located in a growth

1 county, as that term is defined in section three, article twenty,
2 chapter seven of this code, which has enacted the Local Powers Act,
3 and in which county a racetrack is located that has participated in
4 the West Virginia Thoroughbred Development Fund since on or before
5 January 1, 1991, the county board of education shall receive two
6 thirds of the share of adjusted gross receipts from West Virginia
7 Lottery table games from the racetrack in the county as provided in
8 this subdivision and the municipalities within the county shall
9 share the remaining one third of the total amount allocated as
10 provided in this paragraph. The municipal one-third share shall be
11 divided pro rata among the municipalities based on each
12 municipality's population determined at the most recent United
13 States decennial census of population. All money transferred under
14 this paragraph shall be used by the county board of education and
15 by the municipalities for the purpose of capital improvements;

16 (6) Transfer one half of one percent of the adjusted gross
17 receipts to the governing bodies of municipalities in which a
18 racetrack table games licensee is located. The municipalities
19 shall each receive an equal share of the total amount allocated
20 under this subdivision: *Provided*, That distribution under this
21 subdivision may not be made to any municipality that did not have
22 a licensed racetrack within its municipal boundaries as they
23 existed on January 1, 2007: *Provided, however*, That if no
24 racetrack table games licensee is located within a municipality, a

1 transfer may not be made under this subdivision; and

2 (7) Distribute the remaining amounts, hereinafter referred to
3 as the net amounts in the Racetrack Table Games Funds, in
4 accordance with the provisions of subsection (d) of this section.

5 (d) From the net amounts in the Racetrack Table Games Fund,
6 the commission shall:

7 (1) Transfer seventy-six percent to the State Debt Reduction
8 Fund which is hereby continued in the State Treasury. Moneys of
9 the fund shall be expended solely for the purpose of accelerating
10 the reduction of existing unfunded liabilities and existing bond
11 indebtedness of the state and shall be expended or transferred only
12 upon appropriation of the Legislature;

13 (2) Transfer four percent, divided pro rata based on relative
14 adjusted gross receipts from the individual licensed racetracks for
15 and on behalf of all employees of each licensed racing association
16 and including all employees of any hotel located at a West Virginia
17 racetrack for which a racetrack table games license has been
18 issued, into a special fund to be established by the Racing
19 Commission to be used for payment into the pension plan for all
20 employees of each licensed racing association and including all
21 employees of any hotel located at a West Virginia racetrack for
22 which a racetrack table games license has been issued;

23 (3) Transfer ten percent, to be divided and paid in equal
24 shares, to each county commission in the state that is not eligible

1 to receive a distribution under subdivision (4), subsection (b) of
2 this section: *Provided*, That funds transferred to county
3 commissions under this subdivision shall be used only to pay
4 regional jail expenses and the costs of infrastructure improvements
5 and other capital improvements: *Provided, however*, That up to
6 fifty percent of these funds may be pledged to make payments on
7 lottery revenue bonds issued pursuant to article two-h, chapter
8 thirteen of this code; and

9 (4) Transfer ten percent, to be divided and paid in equal
10 shares, to the governing bodies of each municipality in the state
11 that is not eligible to receive a distribution under subdivisions
12 (5) and (6), subsection (b) of this section: *Provided*, That funds
13 transferred to municipalities under this subdivision shall be used
14 only to pay for debt reduction in municipal police and fire pension
15 funds and the costs of infrastructure improvements and other
16 capital improvements: *Provided, however*, That up to fifty percent
17 of these funds may be pledged to make payments on lottery revenue
18 bonds issued pursuant to article two-h, chapter thirteen of this
19 code.

20 (e) All expenses of the commission incurred in the
21 administration and enforcement of this article shall be paid from
22 the Racetrack Table Games Fund, including reimbursement of state
23 law-enforcement agencies for services performed at the request of
24 the commission pursuant to this article. The commission's expenses

1 associated with a particular racetrack with authorized table games
2 under this article may not exceed three percent of the total annual
3 adjusted gross receipts received from that licensee's operation of
4 table games under this article, including, but not limited to, all
5 license fees or other amounts attributable to the licensee's
6 operation of table games under this article, except as provided in
7 subdivision (2), subsection (a) of this section. However, for the
8 fiscal year following the licensing of every licensed racetrack to
9 offer West Virginia lottery racetrack table games under this
10 article and for the fiscal year thereafter, the commission's
11 expenses associated with a particular racetrack with authorized
12 table games under this article may not exceed four percent of the
13 total annual adjusted gross receipts received from that licensee's
14 operation of table games under this article, including, but not
15 limited to, all license fees or other amounts attributable to the
16 licensee's operation of table games under this article, except as
17 provided in subdivision (2), subsection (a) of this section. These
18 expenses shall either be allocated to the racetrack with West
19 Virginia Lottery table games for which the expense is incurred, if
20 practicable, or be treated as general expenses related to all
21 racetrack table games facilities and be allocated pro rata among
22 the racetrack table games facilities based on the ratio that annual
23 adjusted gross receipts from operation of table games at each
24 racetrack with West Virginia Lottery table games bears to total

1 annual adjusted gross receipts from operation of table games at all
2 racetracks with West Virginia Lottery table games during the fiscal
3 year of the state. From this allowance, the commission shall
4 transfer at least \$100,000 but not more than \$500,000 into the
5 Compulsive Gambling Treatment Fund created in section nineteen,
6 article twenty-two-a of this chapter.

NOTE: The purpose of this bill is to include employees of hotels located at race tracks for which table games licenses have been issued into the pension plan established for racing association employees.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.