

E N G R O S S E D  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 615**

(By Senator Kessler (Mr. President))

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[Originating in the Committee on the Judiciary;  
reported March 29, 2013.]

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A BILL to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact 29-22C-8 of said code, all relating to providing for distribution of certain amounts of gross terminal income derived from racetrack video lottery terminals; and amending the table game license renewal fee for West Virginia pari-mutuel racetracks.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-22-18f; that §29-

22A-10 of said code be amended and reenacted; and that §29-22C-8 of said code be amended and reenacted, all to read as follows:

**ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-18f. Creating the Lottery Administrative Reserve Fund;  
distribution of reserve funds.**

1           (a) A Lottery Administrative Reserve Fund is created  
2           within the Lottery Fund. For the fiscal year ending on June  
3           30, 2013, only, the commission shall deposit a total of \$4  
4           million, to be considered as part of its actual costs and  
5           expenses, in proportions determined in the sole discretion of  
6           the commission, from amounts distributed according to  
7           subsection (d), section eighteen, of this article, subdivision  
8           (1), subsection (b), section ten, article twenty-two-a of this  
9           chapter, subdivision (1), subsection (a), section 1408, article  
10          twenty-two-b of this chapter and subsection (e), section  
11          twenty-two, article twenty-five of this chapter.

12          (b) For the fiscal year beginning July 1, 2013, only, the  
13          commission shall transfer \$4 million from the Lottery

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14 Administrative Reserve Fund to the Community Based

15 Service Fund in the State Treasury.

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

**§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  
2 applicants applying for a manufacturer's permit, the protocol  
3 documentation data necessary to enable the respective  
4 manufacturer's video lottery terminals to communicate with  
5 the commission's central computer for transmitting auditing

6 program information and for activation and disabling of  
7 video lottery terminals.

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

18 (1) The commission shall deduct an amount sufficient to  
19 reimburse the commission for its actual costs and expenses  
20 incurred in administering racetrack video lottery at the  
21 licensed racetrack. The resulting amount after the deduction  
22 is the net terminal income. The amount deducted for  
23 administrative costs and expenses of the commission may not  
24 exceed four percent of gross terminal income: *Provided*, That

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25 any amounts deducted by the commission for its actual costs  
26 and expenses that exceeds its actual costs and expenses shall  
27 be deposited into the State Lottery Fund. For the fiscal years  
28 ending June 30, 2011, through June 30, 2020, the term  
29 “actual costs and expenses” may include transfers of up to  
30 \$10 million in surplus allocations for each fiscal year, as  
31 calculated by the commission when it has closed its books for  
32 the fiscal year, to the Licensed Racetrack Modernization  
33 Fund created by subdivision (2), subsection (b) of this  
34 section. For all fiscal years beginning on or after July 1,  
35 2001, the commission shall not receive an amount of gross  
36 terminal income in excess of the amount of gross terminal  
37 income received during the fiscal year ending on June 30,  
38 2001, but four percent of any amount of gross terminal  
39 income received in excess of the amount of gross terminal  
40 income received during the fiscal year ending on June 30,  
41 2001, shall be deposited into the fund established in section  
42 eighteen-a, article twenty-two of this chapter; and

43           (2) A Licensed Racetrack Modernization Fund is created  
44    within the Lottery Fund. For all fiscal years beginning on or  
45    after July 1, 2011, and ending with the fiscal year beginning  
46    July 1, 2020, the commission shall deposit such amounts as  
47    are available according to subdivision (1), subsection (b) of  
48    this section into a separate facility modernization account  
49    maintained within the Licensed Racetrack Modernization  
50    Fund for each racetrack. Each racetrack's share of each  
51    year's deposit shall be calculated in the same ratio as each  
52    racetrack's apportioned contribution to the four percent  
53    administrative costs and expenses allowance provided for in  
54    subdivision (1), subsection (b) of this section for that year.  
55    For each \$2 expended by a licensed racetrack for facility  
56    modernization improvements at the racetrack, having a useful  
57    life of three or more years and placed in service after July 1,  
58    2011, the licensed racetrack shall receive \$1 in recoupment  
59    from its facility modernization account. If the licensed  
60    racetrack's facility modernization account contains a balance  
61    in any fiscal year, the unexpended balance from that fiscal

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62 year will be available for matching for one additional fiscal  
63 year, after which time the remaining unused balance carried  
64 forward shall revert to the lottery fund. For purposes of this  
65 section, the term “facility modernization improvements”  
66 includes acquisitions of new and unused video lottery  
67 terminals and related equipment. Video lottery terminals  
68 financed through the recoupment provided in this subdivision  
69 must be retained by the licensee in its West Virginia licensed  
70 location for a period of not less than five years from the date  
71 of initial installation.

72 (c) The amount resulting after the deductions required by  
73 subsection (b) of this section constitutes net terminal income  
74 that shall be divided as set out in this subsection. For all  
75 fiscal years beginning on or after July 1, 2001, any amount of  
76 net terminal income received in excess of the amount of net  
77 terminal income received during the fiscal year ending on  
78 June 30, 2001, shall be divided as set out in section ten-b of  
79 this article. The licensed racetrack’s share is in lieu of all  
80 lottery agent commissions and is considered to cover all costs

81 and expenses required to be expended by the licensed  
82 racetrack in connection with video lottery operations. The  
83 division shall be made as follows:

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

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

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

97 (A) Beginning July 1, 1999, and thereafter, any amount  
98 in excess of the two percent received during the fiscal year  
99 1999 by a county in which a racetrack is located that has



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100 participated in the West Virginia Thoroughbred Development  
101 Fund since on or before January 1, 1999, shall be divided as  
102 follows:

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

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

110 (B) Beginning July 1, 1999, and thereafter, any amount  
111 in excess of the two percent received during the fiscal year  
112 1999 by a county in which a racetrack other than a racetrack  
113 described in paragraph (A) of this proviso is located and  
114 where the racetrack has been located in a municipality within  
115 the county since on or before January 1, 1999, shall be  
116 divided, if applicable, as follows:

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

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

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

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

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

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

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

143           (8)(A) The Tourism Promotion Fund established in  
144 section twelve, article two, chapter five-b of this code shall  
145 receive three percent of the net terminal income: *Provided,*  
146 That for the fiscal year beginning July 1, 2003, the tourism  
147 commission shall transfer from the Tourism Promotion Fund  
148 \$5 million of the three percent of the net terminal income  
149 described in this section and section ten-b of this article into  
150 the fund administered by the West Virginia Economic  
151 Development Authority pursuant to section seven, article  
152 fifteen, chapter thirty-one of this code, \$5 million into the  
153 Capitol Renovation and Improvement Fund administered by  
154 the Department of Administration pursuant to section six,  
155 article four, chapter five-a of this code and \$5 million into the

156 Tax Reduction and Federal Funding Increased Compliance  
157 Fund; and

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

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

170 (ii) 0.375 percent of the total amount of net terminal  
171 income described in this section and in section ten-b of this  
172 article shall be deposited into the Development Office  
173 Promotion Fund created under section three-b, article two,  
174 chapter five-b of this code;

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

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

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

192       (9)(A) On and after July 1, 2005, seven percent of net  
193 terminal income shall be deposited into the Workers'

194 Compensation Debt Reduction Fund created in section five,  
195 article two-d, chapter twenty-three of this code: *Provided,*  
196 *however,* That in any fiscal year when the amount of money  
197 generated by this subdivision totals \$11 million, all  
198 subsequent distributions under this subdivision shall be  
199 deposited in the special fund established by the licensee and  
200 used for the payment of regular purses in addition to the other  
201 amounts provided in article twenty-three, chapter nineteen of  
202 this code;

203 (B) The deposit of the seven percent of net terminal  
204 income into the Worker's Compensation Debt Reduction  
205 Fund pursuant to this subdivision shall expire and not be  
206 imposed with respect to these funds and shall be deposited in  
207 the special fund established by the licensee and used for  
208 payment of regular purses in addition to the other amounts  
209 provided in article twenty-three, chapter nineteen of this  
210 code, on and after the first day of the month following the  
211 month in which the Governor certifies to the Legislature that:  
212 (i) The revenue bonds issued pursuant to article two-d,

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213 chapter twenty-three of this code, have been retired or  
214 payment of the debt service provided for; and (ii) that an  
215 independent certified actuary has determined that the  
216 unfunded liability of the old fund, as defined in chapter  
217 twenty-three of this code, has been paid or provided for in its  
218 entirety; and

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

221 (A) For the fiscal year beginning July 1, 2003, the  
222 veterans memorial program shall receive one percent of the  
223 net terminal income until sufficient moneys have been  
224 received to complete the veterans memorial on the grounds  
225 of the State Capitol Complex in Charleston, West Virginia.  
226 The moneys shall be deposited in the State Treasury in the  
227 Division of Culture and History special fund created under  
228 section three, article one-i, chapter twenty-nine of this code:  
229 *Provided*, That only after sufficient moneys have been  
230 deposited in the fund to complete the veterans memorial and  
231 to pay in full the annual bonded indebtedness on the veterans

232 memorial, not more than \$20,000 of the one percent of net  
233 terminal income provided in this subdivision shall be  
234 deposited into a special revenue fund in the State Treasury,  
235 to be known as the John F. "Jack" Bennett Fund. The  
236 moneys in this fund shall be expended by the ~~Division of~~  
237 ~~Veterans Affairs~~ Department of Veterans' Assistance to  
238 provide for the placement of markers for the graves of  
239 veterans in perpetual cemeteries in this state. ~~The Division~~  
240 ~~of Veterans Affairs~~ Department of Veterans' Assistance shall  
241 promulgate legislative rules pursuant to the provisions of  
242 article three, chapter twenty-nine-a of this code specifying  
243 the manner in which the funds are spent, determine the ability  
244 of the surviving spouse to pay for the placement of the  
245 marker and setting forth the standards to be used to determine  
246 the priority in which the veterans grave markers will be  
247 placed in the event that there are not sufficient funds to  
248 complete the placement of veterans grave markers in any one  
249 year, or at all. Upon payment in full of the bonded  
250 indebtedness on the veterans memorial, \$100,000 of the one



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251 percent of net terminal income provided in this subdivision  
252 shall be deposited in the special fund in the Division of  
253 Culture and History created under section three, article one-i,  
254 chapter twenty-nine of this code and be expended by the  
255 Division of Culture and History to establish a West Virginia  
256 veterans memorial archives within the Cultural Center to  
257 serve as a repository for the documents and records  
258 pertaining to the veterans memorial, to restore and maintain  
259 the monuments and memorial on the Capitol grounds:  
260 *Provided, however,* That \$500,000 of the one percent of net  
261 terminal income shall be deposited in the State Treasury in a  
262 special fund of the Department of Administration, created  
263 under section five, article four, chapter five-a of this code, to  
264 be used for construction and maintenance of a parking garage  
265 on the State Capitol Complex; and the remainder of the one  
266 percent of net terminal income shall be deposited in equal  
267 amounts in the Capitol Dome and Improvements Fund  
268 created under section two, article four, chapter five-a of this  
269 code and Cultural Facilities and Capitol Resources Matching

270 Grant Program Fund created under section three, article one  
271 of this chapter.

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

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

279 (ii) The remainder of the one percent of net terminal  
280 income and all of the one percent of net terminal income  
281 described in paragraph (B), subdivision ~~(9)~~ (10), subsection  
282 (a), section ten-b of this article shall be distributed as follows:

283 The net terminal income shall be deposited in equal amounts  
284 into the Capitol Dome and Capitol Improvements Fund  
285 created under section two, article four, chapter five-a of this  
286 code and the Cultural Facilities and Capitol Resources  
287 Matching Grant Program Fund created under section three,  
288 article one, chapter twenty-nine of this code until a total of

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289 \$1,500,000 is deposited into the Cultural Facilities and  
290 Capitol Resources Matching Grant Program Fund; thereafter,  
291 the remainder shall be deposited into the Capitol Dome and  
292 Capitol Improvements Fund.

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

305 (e) The commission's central control computer shall keep  
306 accurate records of all income generated by each video  
307 lottery terminal. The commission shall prepare and mail to

308 the licensed racetrack a statement reflecting the gross  
309 terminal income generated by the licensee's video lottery  
310 terminals. Each licensed racetrack shall report to the  
311 commission any discrepancies between the commission's  
312 statement and each terminal's mechanical and electronic  
313 meter readings. The licensed racetrack is solely responsible  
314 for resolving income discrepancies between actual money  
315 collected and the amount shown on the accounting meters or  
316 on the commission's billing statement.

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

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327 accounting discrepancies which cannot be otherwise resolved  
328 shall be resolved in favor of the commission.

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

343 (h) Licensed racetracks may, upon request, receive  
344 additional reports of play transactions for their respective  
345 video lottery terminals and other marketing information not

346 considered confidential by the commission. The commission  
347 may charge a reasonable fee for the cost of producing and  
348 mailing any report other than the billing statements.

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

**ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK**

**TABLE GAMES ACT.**

**§29-22C-8. License to operate a racetrack with West Virginia**

**Lottery table games.**

1 (a) *Racetrack table games licenses.* – The commission  
2 may issue up to four racetrack table games licenses to operate  
3 West Virginia Lottery table games in accordance with the  
4 provisions of this article. The Legislature intends that no  
5 more than four licenses to operate a racetrack with West

6 Virginia Lottery table games in this state shall be permitted  
7 in any event.

8 (b) *Grant of license.* – Upon the passage of a local option  
9 election in a county in accordance with the provisions of  
10 section seven of this article, the commission shall  
11 immediately grant a West Virginia Lottery table games  
12 license, and a license for the right to conduct West Virginia  
13 Lottery table games as assignee to the intellectual property  
14 rights of the state, to allow the licensee to conduct West  
15 Virginia table games at the licensed pari-mutuel racetrack  
16 identified on the local option election ballot, provided that  
17 racetrack holds a valid racetrack video lottery license issued  
18 by the commission pursuant to article twenty-two-a of this  
19 chapter and a valid racing license granted by the West  
20 Virginia Racing Commission pursuant to the provision of  
21 article twenty-three, chapter nineteen of this code and has  
22 otherwise met the requirements for licensure under the  
23 provisions of this article and the rules of the commission.

24           (c) *Location.* – A racetrack table games license authorizes  
25   the operation of West Virginia Lottery table games on the  
26   grounds of the particular licensed facility identified in the  
27   racetrack video lottery license issued pursuant to article  
28   twenty-two-a and the license to conduct horse or dog racing  
29   issued pursuant to article twenty-three, chapter nineteen of  
30   this code.

31           (d) *Floor plan submission requirement.* – Prior to  
32   commencing the operation of any table games in a designated  
33   gaming area, a racetrack table games licensee shall submit to  
34   the commission for its approval a detailed floor plan  
35   depicting the location of the designated gaming area in which  
36   table games gaming equipment will be located and its  
37   proposed arrangement of the table games gaming equipment.  
38   Any floor plan submission that satisfies the requirements of  
39   the rules promulgated by the commission shall be considered  
40   approved by the commission unless the racetrack table games  
41   licensee is notified in writing to the contrary within one  
42   month of filing a detailed floor plan.



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43       (e) *Management service contracts.* –

44       (1) *Approval.* – A racetrack table games licensee may not  
45 enter into any management service contract that would permit  
46 any person other than the licensee to act as the commission’s  
47 agent in operating West Virginia Lottery table games unless  
48 the management service contract is: (A) With a person  
49 licensed under this article to provide management services;  
50 (B) is in writing; and (C) the contract has been approved by  
51 the commission.

52       (2) *Material change.* – The licensed racetrack table  
53 games licensee shall submit any material change in a  
54 management service contract previously approved by the  
55 commission to the commission for its approval or rejection  
56 before the material change may take effect.

57       (3) *Prohibition on assignment or transfer.* – A  
58 management services contract may not be assigned or  
59 transferred to a third party.

60       (4) *Other commission approvals and licenses.* – The  
61 duties and responsibilities of a management services provider

62 under a management services contract may not be assigned,  
63 delegated, subcontracted or transferred to a third party to  
64 perform without the prior approval of the commission. Third  
65 parties must be licensed under this article before providing  
66 service. The commission may by rule clarify application of  
67 this subdivision and provide exceptions to its application.  
68 The commission shall license and require the display of West  
69 Virginia Lottery game logos on appropriate game surfaces  
70 and other gaming items and locations as the commission  
71 considers appropriate.

72 (f) *Coordination of licensed activities.* – In order to  
73 coordinate various licensed activities within racetrack  
74 facilities, the following provisions apply to licensed racetrack  
75 facilities:

76 (1) The provisions of this article and of article twenty-  
77 two-a of this chapter shall be interpreted to allow West  
78 Virginia Lottery table games and racetrack video lottery  
79 operations under those articles to be harmoniously conducted  
80 in the same designated gaming area.

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81           (2) On the effective date of this article, the provisions of  
82 section twenty-three of this article apply to all video lottery  
83 games conducted within a racetrack facility, notwithstanding  
84 any inconsistent provisions contained in article twenty-two-a  
85 of this chapter to the contrary.

86           (3) On and after the effective date of this article, vacation  
87 of the premises after service of beverages ceases is not  
88 required, notwithstanding to the contrary any inconsistent  
89 provisions of this code or inconsistent rules promulgated by  
90 the Alcohol Beverage Control Commissioner with respect to  
91 hours of sale of those beverages, or required vacation of the  
92 premises.

93           (g) *Fees, expiration date and renewal.* –

94           (1) An initial racetrack table games license fee of  
95 \$1,500,000 shall be paid to the commission at the time of  
96 issuance of the racetrack table games license, regardless of  
97 the number of months remaining in the license year for which  
98 it is issued. All licenses expire at the end of the day on June  
99 30 each year.

100           (2) The commission shall annually renew a racetrack  
101 table games license as of July 1, of each year provided the  
102 licensee:

103           (A) Successfully renews its racetrack video lottery  
104 license under article twenty-two-a of this chapter before July  
105 1;

106           (B) Pays to the commission the annual license renewal  
107 fee of \$2,500,000 required by this section at the time it files  
108 its application for renewal of its license under article twenty-  
109 two-a of this chapter: Provided, That only for the license year  
110 beginning July 1, 2013, the annual license renewal fee shall  
111 be \$1,500,000; and

112           (C) During the current license year, the licensee complied  
113 with all provisions of this article, all rules adopted by the  
114 commission and all final orders of the commission applicable  
115 to the licensee.

116           (3) *Annual license surcharge for failure to construct hotel*  
117 *on premises.* – It is the intent of the Legislature that each  
118 racetrack for which a racetrack table games license has been

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119 issued be or become a destination tourism resort facility. To  
120 that end, it is important that each racetrack for which a  
121 racetrack table games license has been issued operate a hotel  
122 with significant amenities. Therefore, in addition to all other  
123 taxes and fees required by the provisions of this article, there  
124 is hereby imposed, upon each racetrack for which a racetrack  
125 table games license has been issued an annual license  
126 surcharge, payable to the commission in the amount of  
127 \$2,500,000 if that racetrack does not operate a hotel on its  
128 racing property that contains at least one hundred fifty guest  
129 rooms with significant amenities within three years of the  
130 passage of the local option election in its county authorizing  
131 table games at the racetrack, provided the time for  
132 completion of the hotel shall be extended by the same  
133 number of days as the completion of the hotel is delayed by  
134 a force majeure events or conditions beyond the reasonable  
135 control of the racetrack licensee. The surcharge shall be paid  
136 upon each renewal of its racetrack table games license made  
137 after the expiration of the three year period, and may be

138 extended by the above force majeure events or conditions,  
139 until the racetrack opens a qualifying hotel.

140 (4) If the licensee fails to apply to renew its license under  
141 article twenty-three, chapter nineteen and article twenty-two-  
142 a, chapter twenty-nine of this code until after the license  
143 expires, the commission shall renew its license under this  
144 article at the time it renews its license under article twenty-  
145 two-a of this chapter provided the licensee has paid the  
146 annual license fee required by this section and during the  
147 preceding license year the licensee complied with all  
148 provisions of this article, all rules adopted by the commission  
149 and all final orders of the commission applicable to the  
150 licensee.

151 (h) *Facility qualifications.* – A racetrack table games  
152 licensee shall demonstrate that the racetrack with West  
153 Virginia Lottery table games will: (1) Be accessible to  
154 disabled individuals in accordance with applicable federal  
155 and state laws; (2) be licensed in accordance with this article,  
156 and all other applicable federal, state and local laws; and (3)

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157 meet any other qualifications specified in rules adopted by  
158 the commission.

159 (i) *Surety bond.* – A racetrack table games licensee shall  
160 execute a surety bond to be given to the state to guarantee the  
161 licensee faithfully makes all payments in accordance with the  
162 provisions of this article and rules promulgated by the  
163 commission. The surety bond shall be:

164 (1) In the amount determined by the commission to be  
165 adequate to protect the state against nonpayment by the  
166 licensee of amounts due the state under this article;

167 (2) In a form approved by the commission; and

168 (3) With a surety approved by the commission who is  
169 licensed to write surety insurance in this state. The bond  
170 shall remain in effect during the term of the license and may  
171 not be canceled by a surety on less than thirty-days' notice in  
172 writing to the commission. The total and aggregate liability  
173 of the surety on the bond is limited to the amount specified in  
174 the bond.

175           (j) *Authorization.* – A racetrack table games license  
176   authorizes the licensee act as an agent of the commission in  
177   operating an unlimited amount of West Virginia Lottery table  
178   games while the license is active, subject to subsection (d) of  
179   this section. A racetrack table games license is not  
180   transferable or assignable and cannot be sold or pledged as  
181   collateral.

182           (k) *Audits.* – When applying for a license and annually  
183   thereafter prior to license renewal, a racetrack table games  
184   licensee shall submit to the commission an annual audit, by  
185   a certified public accountant, of the financial transactions and  
186   condition of the licensee's total operations. The audit shall  
187   be made in accordance with generally accepted accounting  
188   principles and applicable federal and state laws.

189           (l) *Commission office space.* – A racetrack table games  
190   licensee shall provide to the commission, at no cost to the  
191   commission, suitable office space at the racetrack facility for  
192   the commission to perform the duties required of it by this  
193   article and the rules of the commission.