

**H. B. 2718**

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(By Delegates Gearheart, Butler, Hamrick, Howell, Householder,  
Westfall, Miller, Border, Cooper, Hanshaw and Ellington)

[Introduced February 12, 2015; referred to the  
Committee on Finance.]

10 A BILL to amend and reenact §17-3-1 of the Code of West Virginia, 1931, as amended; and to  
11 amend and reenact §29-22A-10 and §29-22A-10d of said code, all relating to the Racetrack  
12 Modernization Fund; transferring funds remaining in the Racetrack Modernization Fund to  
13 the State Road Fund; and closing the Racetrack Modernization Fund.

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

15 That §17-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted;  
16 and that §29-22A-10 and §29-22A-10d of said code be amended and reenacted, all to read as  
17 follows:

18 **CHAPTER 17. ROADS AND HIGHWAYS.**

19 **ARTICLE 3. STATE ROAD FUND.**

20 **§17-3-1. What constitutes fund; payments into fund; use of money in fund.**

21 (a) There shall be a State Road Fund, which shall consist of the proceeds of all state license  
22 taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees  
23 imposed upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven

1 vehicles; all sums of money which may be donated to such fund; all proceeds derived from the sale  
2 of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the  
3 "Better Roads Amendment" to the Constitution of this State, adopted in November, 1964, except  
4 that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the  
5 State Road Fund; all proceeds from the sale of state bonds issued pursuant to any resolution or act  
6 of the Legislature carrying into effect the "Safe Roads Amendment of 1996" to the Constitution of  
7 this state, adopted in the November, 1996, except that the proceeds from the sale of these bonds shall  
8 be kept in a separate and distinct account in the State Road Fund; all moneys and funds appropriated  
9 to it by the Legislature; and all moneys allotted or appropriated by the federal government to this  
10 state for road construction and maintenance pursuant to any act of the Congress of the United States;  
11 the proceeds of all taxes imposed upon and collected from any person, firm or corporation and of  
12 all taxes or charges imposed upon and collected from any county, district or municipality for the  
13 benefit of the fund; the proceeds of all judgments, decrees or awards recovered and collected from  
14 any person, firm or corporation for damages done to, or sustained by, any of the state roads or parts  
15 thereof; all moneys recovered or received by reason of the violation of any contract respecting the  
16 building, construction or maintenance of any state road; all penalties and forfeitures imposed,  
17 recovered or received by reason thereof; transfers received from the West Virginia Lottery  
18 Commission pursuant to section ten and ten-d, article twenty-two-a of chapter twenty-nine of this  
19 code; and any and all other moneys and funds appropriated to, imposed and collected for the benefit  
20 of such fund, or collected by virtue of any statute and payable to such fund: *Provided*, That  
21 notwithstanding any provisions of this code to the contrary, 50¢ of every license fee paid pursuant  
22 to the provisions of subdivision (2), subsection (a), section eight, article two, chapter seventeen-b

1 of this code shall be paid to the special fund established pursuant to the provisions of subsection (a),  
2 section twelve, article two, chapter three of this code.

3       **(b)** When any money is collected from any of the sources aforesaid, it shall be paid into the  
4 State Treasury by the officer whose duty it is to collect and account for the same, and credited to the  
5 State Road Fund, and shall be used only for the purposes named in this chapter, which are: (a) To  
6 pay the principal and interest due on all state bonds issued for the benefit of said fund, and set aside  
7 and appropriated for that purpose; (b) to pay the expenses of the administration of the road  
8 department; and (c) to pay the cost of maintenance, construction, reconstruction and improvement  
9 of all state roads.

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

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

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

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

22       (b) The gross terminal income of a licensed racetrack shall be remitted to the commission

1 through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all  
2 information and bank authorizations required to facilitate the timely transfer of moneys to the  
3 commission. Licensed racetracks must provide the commission thirty days' advance notice of any  
4 proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the  
5 gross terminal income remitted by the licensee to the commission:

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

21 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal  
22 years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, ~~2020~~ 2014,

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

17 (3) Beginning July 1, 2016, the Racetrack Modernization Fund is hereby closed, and any  
18 remaining balance shall be transferred by the Lottery Commission to the State Road Fund. For fiscal  
19 year beginning July 1, 2015, the Lottery Commission shall transfer up to \$9 million from any surplus  
20 allocation as calculated by the commission from those amounts deducted for actual costs and  
21 expenses incurred pursuant to subdivision (1) of subsection (b) in this section that would otherwise  
22 be deposited into the Racetrack Modernization Fund.

1 (c) The amount resulting after the deductions required by subsection (b) of this section  
2 constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years  
3 beginning on or after July 1, 2001, any amount of net terminal income received in excess of the  
4 amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be  
5 divided as set out in section ten-b of this article. The licensed racetrack's share is in lieu of all lottery  
6 agent commissions and is considered to cover all costs and expenses required to be expended by the  
7 licensed racetrack in connection with video lottery operations. The division shall be made as follows:

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

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

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

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

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

21 (ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty  
22 percent to be divided among the municipalities on a per capita basis as determined by the most recent

1 decennial United States census of population; and

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

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

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

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

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

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

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

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

22 (8) (A) The Tourism Promotion Fund established in section twelve, article two, chapter five-b

1 of this code shall receive three percent of the net terminal income: *Provided*, That for the fiscal year  
2 beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund \$5  
3 million of the three percent of the net terminal income described in this section and section ten-b of  
4 this article into the fund administered by the West Virginia Economic Development Authority  
5 pursuant to section seven, article fifteen, chapter thirty-one of this code, \$5 million into the Capitol  
6 Renovation and Improvement Fund administered by the Department of Administration pursuant to  
7 section six, article four, chapter five-a of this code and \$5 million into the Tax Reduction and Federal  
8 Funding Increased Compliance Fund; and

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

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

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

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

22 (iv) 0.6875 percent of the total amount of net terminal income described in this section and



1 in section ten-b of this article shall be deposited into the Capitol Renovation and Improvement Fund  
2 administered by the Department of Administration pursuant to section six, article four, chapter five-a  
3 of this code; and

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

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

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

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

2 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive  
3 one percent of the net terminal income until sufficient moneys have been received to complete the  
4 veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The  
5 moneys shall be deposited in the State Treasury in the Division of Culture and History special fund  
6 created under section three, article one-i, chapter twenty-nine of this code: *Provided*, That only after  
7 sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in  
8 full the annual bonded indebtedness on the veterans memorial, not more than \$20,000 of the one  
9 percent of net terminal income provided in this subdivision shall be deposited into a special revenue  
10 fund in the State Treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this  
11 fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers  
12 for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall  
13 promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this  
14 code specifying the manner in which the funds are spent, determine the ability of the surviving spouse  
15 to pay for the placement of the marker and setting forth the standards to be used to determine the  
16 priority in which the veterans grave markers will be placed in the event that there are not sufficient  
17 funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment  
18 in full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net  
19 terminal income provided in this subdivision shall be deposited in the special fund in the Division  
20 of Culture and History created under section three, article one-i, chapter twenty-nine of this code and  
21 be expended by the Division of Culture and History to establish a West Virginia veterans memorial  
22 archives within the Cultural Center to serve as a repository for the documents and records pertaining

1 to the veterans memorial, to restore and maintain the monuments and memorial on the capitol  
2 grounds: *Provided, however,* That \$500,000 of the one percent of net terminal income shall be  
3 deposited in the State Treasury in a special fund of the Department of Administration, created under  
4 section five, article four, chapter five-a of this code, to be used for construction and maintenance of  
5 a parking garage on the state Capitol Complex; and the remainder of the one percent of net terminal  
6 income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created  
7 under section two, article four, chapter five-a of this code and Cultural Facilities and Capitol  
8 Resources Matching Grant Program Fund created under section three, article one of this chapter.

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

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

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

22 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater than

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

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

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

21 (g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not  
22 operational or the commission notifies licensed racetracks that remittance by this method is required.

1 The licensed racetracks shall report an amount equal to the total amount of cash inserted into each  
2 video lottery terminal operated by a licensee, minus the total value of game credits which are cleared  
3 from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as  
4 generated from its terminals during the reporting period. The remittance shall be sealed in a properly  
5 addressed and stamped envelope and deposited in the United States mail no later than noon on the  
6 day when the payment would otherwise be completed through electronic funds transfer.

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

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

15 **§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery**  
16 **fund.**

17 (a) Notwithstanding any provision of subsection (b), section ten of this article to the contrary,  
18 for the fiscal year beginning July 1, 2014, ~~and each fiscal year thereafter,~~ the commission may transfer  
19 up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

20 (b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary,  
21 for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except  
22 those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c),

1 section ten of this article, shall be reduced by one hundred percent. Payments shall not be made  
2 pursuant to section ten of this article, other than those excepted by this subsection, and are made in  
3 lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue  
4 Fund.

5 (c) The total amount of reductions resulting from subsection (b) of this section shall be paid  
6 into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-two of this  
7 chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to  
8 be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this article shall be  
9 reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State  
10 Excess Lottery Revenue Fund.

11 (d) Notwithstanding any other provision of this code to the contrary, for the fiscal year  
12 beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery  
13 Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with  
14 appropriations.

15 (e) Prior to payment of any appropriation made pursuant to this section, debt service payments  
16 payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of  
17 sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority  
18 as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

19 (f) Notwithstanding any other provision of this code to the contrary, after payment of debt  
20 service from the State Excess Lottery Revenue Fund, all other distributions required by section  
21 eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this  
22 section shall be paid on a pro rata basis.

1 (g) Notwithstanding the provisions of paragraph (B), subdivision (9), subsection (c), section  
2 ten of this article, upon certification of the Governor to the Legislature that an independent actuary  
3 has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this  
4 code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation  
5 Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this  
6 article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to  
7 appropriation.

NOTE: The purpose of this bill is to transfer funds remaining in the Racetrack Modernization Fund to the State Road Fund and closing the Racetrack Modernization Fund.

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