

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 419

BY SENATOR KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Passed February 26, 2016;

in effect from passage]

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AN ACT to amend and reenact §4-11A-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13A-3b of said code; to amend and reenact §11-13V-4 of said code; to amend and reenact §11-21-96 of said code; to amend and reenact §23-2C-3 of said code; and to amend and reenact §29-22A-10d and §29-22A-10e of said code, all relating to termination of transfers of certain personal income tax revenues to the Workers' Compensation Debt Reduction Fund; reestablishing and imposing increased severance tax on severance of timber effective July 1, 2016; termination of additional severance taxes on severance of coal, natural gas and timber on and after July 1, 2016; authorizing earlier termination date; authorizing redirection of additional severance tax revenues to the General Revenue Fund for period prior to termination date; delaying transfers of certain personal income tax revenues to the West Virginia Retiree Health Benefit Trust Fund; eliminating transfers of certain personal income tax revenues to the Post-July 1, 2010, Employee Trust Fund; authorizing redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to July 1, 2017; authorizing redirection of amounts collected from certain deposits of revenues derived from net terminal income for periods prior to July 1, 2017.

Be it enacted by the Legislature of West Virginia:

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That §4-11A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13A-3b of said code be amended and reenacted; that §11-13V-4 of said code be amended and reenacted; that §11-21-96 of said code be amended and reenacted; that §23-2C-3 of said code be amended and reenacted; and that that §29-22A-10d and §29-22A-10e of said code be amended and reenacted, all to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for

anticipated tobacco master settlement agreement proceeds to the Old Fund.

1 (a) There is hereby dedicated an annual amount of \$50,400,000 from annual collections
2 of the tax imposed by article twenty-one, chapter eleven of this code as a portion of the revenue
3 source dedicated to satisfy the Old Fund liabilities as they occur to provide a dollar for dollar
4 replacement of the first \$30 million received pursuant to section IX(c)(1) of the master settlement
5 agreement and the anticipated strategic compensation payments to be received pursuant to
6 section IX(c)(2) of the master settlement agreement as previously dedicated to the Old Fund prior
7 to the sale of state's share to the Tobacco Settlement Finance Authority. No portion of this amount
8 may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d,
9 chapter twenty-three of this code.

10 (b) Notwithstanding any other provision of this code to the contrary, beginning immediately
11 after the sale of the state's share to the Tobacco Settlement Finance Authority, \$50,400,000 from
12 collections of the tax imposed by article twenty-one, chapter eleven of this code shall be deposited
13 each calendar year to the credit of the Old Fund created in article two-d, chapter twenty-three of
14 this code in accordance with the following schedule. Each calendar month, except for July, August
15 and September each year, \$5,600,000 shall be transferred, on or before the twenty-eighth day of
16 the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter
17 twenty-three of this code. The transfers pursuant to this section are in addition to the transfers
18 pursuant to section ninety-six, article twenty-one, chapter eleven of this code.

19 (c) *Expiration.* —

20 The transfers required by this section shall cease on and after February 1, 2016. No
21 transfer pursuant to this section shall be made thereafter.

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3b. Imposition of tax on privilege of severing timber.

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the

2 business of severing timber for sale, profit or commercial use, there is hereby levied and shall be
3 collected from every person exercising such privilege an annual privilege tax.

4 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be
5 three and twenty-two hundredths percent of the gross value of the timber produced, as shown by
6 the gross proceeds derived from the sale thereof by the producer, except as otherwise provided
7 in this article: *Provided*, That as to timber produced after December 31, 2006 the rate of the tax
8 imposed in subsection (a) of this section shall be one and twenty-two hundredths percent of the
9 gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof
10 by the producer, except as otherwise provided in this article.

11 (c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all
12 persons severing timber in this state and shall be in addition to all other taxes imposed by law.

13 (d) *Discontinuation and reestablishment of tax.* — Beginning in the tax year 2010
14 and continuing until June 30, 2016, the tax imposed by this section is discontinued. On and after
15 July 1, 2016, the tax imposed by this section is reestablished and is imposed and shall apply to
16 all persons severing timber in this state at the rate of one and fifty hundredths percent of the gross
17 value of the timber produced, as shown by the gross proceeds derived from the sale thereof by
18 the producer, except as otherwise provided in this article. (e) *Termination of taxes imposed by*
19 *this section.* – The taxes imposed under this section shall cease, terminate and be of no further
20 force or effect on and after July 1, 2019. Termination of the taxes imposed under this section shall
21 not relieve any person of any liability or duty to pay tax imposed under this article with respect to
22 privileges exercised before the effective date of such termination.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

§11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing coal.* — Upon every person
2 exercising the privilege of engaging within this state in severing, extracting, reducing to

3 possession or producing coal for sale, profit or commercial use, there is hereby imposed an
4 additional annual severance tax for exercising the privilege after November 30, 2005. The tax
5 shall be 56 cents per ton and the measure of the tax is tons of clean coal severed or produced in
6 this state by the taxpayer after November 30, 2005, for sale, profit or commercial use during the
7 taxable year. When the person mining the coal sells raw coal, the measure of tax shall be ton of
8 clean coal determined in accordance with rules promulgated by the Tax Commissioner as
9 provided in article three, chapter twenty-nine-a of this code. If this rule is filed for public comment
10 before July 1, 2005, the rule may be promulgated as an emergency legislative rule. This tax shall
11 be in addition to all taxes imposed with respect to the severance and production of coal in this
12 state including, but not limited to, the taxes imposed by articles twelve-d and thirteen-a of this
13 chapter and the taxes imposed by sections eleven and thirty-two, article three, chapter twenty-
14 two of this code, if applicable.

15 (b) *Imposition of additional tax on privilege of severing natural gas.* — For the privilege of
16 engaging or continuing within this state in the business of severing natural gas for sale, profit or
17 commercial use, there is hereby levied and shall be collected from every person exercising this
18 privilege an additional annual privilege tax. The rate of this additional tax shall be 4.7 cents per
19 mcf of natural gas and the measure of the tax is natural gas produced after November 30, 2005,
20 determined at the point where the production privilege ends for purposes of the tax imposed by
21 section three-a, article thirteen-a of this chapter, and with respect to which the tax imposed by
22 section three-a of said article thirteen-a is paid. The additional tax imposed by this subsection
23 shall be collected with respect to natural gas produced after November 30, 2005.

24 (c) *Imposition of additional tax on privilege of severing timber.* — For the privilege of
25 engaging or continuing within this state in the business of severing timber for sale, profit or
26 commercial use, there is hereby levied and shall be collected from every person exercising this
27 privilege an additional annual privilege tax equal to two and seventy-eight hundredths percent of
28 the gross value of the timber produced, determined at the point where the production privilege

29 ends for purposes of the tax imposed by section three-b, article thirteen-a of this chapter and upon
30 which the tax imposed by section three-b of said article thirteen-a is paid. The additional tax
31 imposed by this subsection shall be collected with respect to timber produced after November 30,
32 2005: *Provided*, That during the period of discontinuance of the tax as provided in subsection (d),
33 section three-b, article thirteen-a of this chapter, the additional tax imposed by this subsection
34 shall be determined as provided in this subsection in the same manner as if the tax described
35 under section three-b, article thirteen-a of this chapter is being imposed and collected, subject to
36 the provisions of subsection (g) of this section.

37 (d) *No pyramiding of tax burden.* — Each ton of coal and each mcf of natural gas severed
38 in this state after the effective date of the taxes imposed by this section shall be included in the
39 measure of a tax imposed by this section only one time.

40 (e) *Effect on utility rates.* — The Public Service Commission shall, upon the application of
41 any public utility that, as of the effective date of the taxes imposed by this section, is not currently
42 making periodic adjustments to its approved rates and charges to reflect changes in its fuel costs
43 because the mechanism historically used to make such periodic adjustments is suspended by an
44 order of the commission, allow such utility to defer, for future recovery from its customers, any
45 increase in its costs attributable to the taxes imposed by this section upon: Coal and natural gas
46 severed in this state and utilized in the production of electricity generated or produced in this state
47 and sold to customers in this state; coal and natural gas severed in this state and utilized in the
48 production of electricity not generated or produced in this state that is sold to customers in this
49 state; and natural gas severed in this state that is sold to customers in this state.

50 (f) *Dedication of new taxes.* —

51 (1) Subject to the provisions of subdivision (2) of this subsection, the net amount of all
52 moneys received by the Tax Commissioner from collection of the taxes imposed by this section,
53 including any interest, additions to tax, or penalties collected with respect to these taxes pursuant
54 to article ten, chapter eleven of this code, shall be deposited in the Workers' Compensation Debt

55 Reduction Fund created in article two-d, chapter twenty-three of this code. As used in this section,
56 “net amount of all taxes received by the Tax Commissioner” means the gross amount received
57 by the Tax Commissioner less the amount of any refunds paid for overpayment of the taxes
58 imposed by this article, including the amount of any interest on the overpayment amount due the
59 taxpayer under the provisions of section fourteen, article ten of this chapter.

60 (2) If the budget shortfall, as determined by the state Budget Office as of December 1,
61 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect deposits
62 of revenues derived from taxes imposed under this article, for any period commencing after
63 February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to
64 the funds otherwise mandated in this article, in article two-d, chapter twenty-three of this code or
65 in any other provision of this code.

66 (g) *Termination of taxes imposed by this article.* – The taxes imposed under this article
67 shall cease, terminate and be of no further force or effect on and after July 1, 2016: *Provided,*
68 That the Governor may, by Executive Order, cause the tax to terminate before July 1, 2016.
69 Termination of the taxes imposed under this article shall not relieve any person of any liability or
70 duty to pay tax imposed under this article with respect to privileges exercised before the effective
71 date of such termination.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.

1 (a) There is hereby dedicated an annual amount of \$45 million from annual collections of
2 the tax imposed by this article for payment of the unfunded liability of the current Workers’
3 Compensation Fund. No portion of this amount may be pledged for payment of debt service on
4 revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

5 (b) Notwithstanding any other provision of this code to the contrary, beginning in January
6 of 2006, \$45 million from collections of the tax imposed by this article shall be deposited each
7 calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this

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8 code, in accordance with the following schedule. Each calendar month, except for July, August
9 and September each year, \$5 million shall be transferred, on or before the twenty-eighth day of
10 the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter
11 twenty-three of this code.

(c) The transfers required by subsection (b) of this section shall cease on and after February 1, 2016. For fiscal years beginning on and after July 1, 2016, an annual amount of \$30 million from annual collections of the tax imposed by this article shall be dedicated for payment of the unfunded liability of the West Virginia Retiree Health Benefit Trust Fund. The \$30 million transferred pursuant to this subsection shall be transferred into the West Virginia Retiree Health Benefit Trust Fund by transferring \$5 million each month for the following months of each year: October, November, December, January, February and March, until the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later: *Provided*, That no transfer shall be made under this subdivision in the months of February and March of fiscal year 2016. Transfers shall thereafter resume and be made in October, November, December, January, February and March of fiscal year 2017 and thereafter. No transfer into the West Virginia Retiree Health Benefit Trust Fund pursuant to this subdivision shall be made after the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

1 (a) (1) On or before July 1, 2005, the executive director may take such actions as are
2 necessary to establish an employers' mutual insurance company as a domestic, private,
3 nonstock, corporation to:

4 (A) Insure employers against liability for injuries and occupational diseases for which their
5 employees may be entitled to receive compensation pursuant to this chapter and federal
6 Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901, *et seq.*;

7 (B) Provide employer's liability insurance incidental to and provided in connection with the
8 insurance specified in paragraph (A) of this subdivision, including coal workers' pneumoconiosis
9 coverage and employer excess liability coverage as provided in this chapter; and

10 (C) Transact other kinds of property and casualty insurance for which the company is
11 otherwise qualified under the provisions of this code.

12 (2) The company may not sell, assign or transfer substantial assets or ownership of the
13 company.

14 (b) If the executive director establishes a domestic mutual insurance company pursuant
15 to subsection (a) of this section:

16 (1) As soon as practical, the company established pursuant to the provisions of this article
17 shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws
18 with the Insurance Commissioner and apply for a license with the Insurance Commissioner to
19 transact insurance in this state. Notwithstanding any other provision of this code, the Insurance
20 Commissioner shall act on the documents within fifteen days of the filing by the company.

21 (2) In recognition of the workers' compensation insurance liability insurance crisis in this
22 state at the time of enactment of this article and the critical need to expedite the initial operation

23 of the company, the Legislature authorizes the Insurance Commissioner to review the
24 documentation submitted by the company and to determine the initial capital and surplus
25 requirements of the company, notwithstanding the provisions of section five-b, article three,
26 chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all
27 information and cooperate in all respects necessary for the Insurance Commissioner to perform
28 the duties set forth in this section and in other provisions of this chapter and chapter thirty-three
29 of this code. The Insurance Commissioner shall monitor the economic viability of the company
30 during its initial operation on not less than a monthly basis, until the commissioner, in his or her
31 discretion, determines that monthly reporting is not necessary. In all other respects the company
32 shall comply with the applicable provisions of chapter thirty-three of this code.

33 (3) Subject to the provisions of subdivision (4) of this subsection, the Insurance
34 Commissioner may waive other requirements imposed on mutual insurance companies by the
35 provisions of chapter thirty-three of this code the Insurance Commissioner determines are
36 necessary to enable the company to begin insuring employers in this state at the earliest possible
37 date.

38 (4) Within forty months of the date of the issuance of its license to transact insurance, the
39 company shall comply with the capital and surplus requirements set forth in subsection (a),
40 section five-b, article three, chapter thirty-three of this code in effect on the effective date of this
41 enactment, unless the deadline is extended by the Insurance Commissioner.

42 (c) For the duration of its existence, the company is not a department, unit, agency or
43 instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the
44 company, whenever incurred, are the debts, claims, obligations and liabilities of the company only
45 and not of the state or of any department, unit, agency, instrumentality, officer or employee of the
46 state.

47 (d) The moneys of the company are not part of the General Revenue Fund of the state.
48 The debts, claims, obligations and liabilities of the company are not a debt of the state or a pledge
49 of the credit of the state.

50 (e) The company is not subject to provisions of article nine-a, chapter six of this code; the
51 provisions of article two, chapter six-c of this code; the provisions of chapter twenty-nine-b of this
52 code; the provisions of article three, chapter five-a of this code; the provisions of article six,
53 chapter twenty-nine of this code; or the provisions of chapter twelve of this code.

54 (f) If the commission has been terminated, effective upon the termination, private carriers,
55 including the company, are not subject to payment of premium taxes, surcharges and credits
56 contained in article three, chapter thirty-three of this code on premiums received for coverage
57 under this chapter. In lieu thereof, the workers' compensation insurance market is subject to the
58 following:

59 (1) (A) Each fiscal year, the Insurance Commissioner shall calculate a percentage
60 surcharge to be collected by each private carrier from its policyholders. The surcharge percentage
61 shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible
62 payments by all employers into the portion of the Insurance Commissioner's budget amount
63 attributable to regulation of the private carrier market. This resulting percentage shall be applied
64 to each policyholder's premium payment and deductible payments as a surcharge and remitted
65 to the Insurance Commissioner. Said surcharge shall be remitted within ninety days of receipt of
66 premium payments;

67 (B) With respect to fiscal years beginning on and after July 1, 2008, in lieu of the surcharge
68 set forth in the preceding paragraph, each private carrier shall collect a surcharge in the amount
69 of five and five-tenths percent of the premium collected plus the total of all premium discounts
70 based on deductible provisions that were applied: *Provided*, That prior to June 30, 2013, and

71 every five years thereafter, the commissioner shall review the percentage surcharge and
72 determine a new percentage as he or she deems necessary.

73 (C) The amounts required to be collected under paragraph (B) of this subdivision shall be
74 remitted to the Insurance Commissioner on or before the twenty-fifth day of the month succeeding
75 the end of the quarter in which they are collected, except for the fourth quarter for which the
76 surcharge shall be remitted on or before March 1 of the succeeding year.

77 (2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge
78 to be remitted on a quarterly basis by self-insured employers and said percentage shall be
79 calculated by dividing previous year's self-insured payroll in the state into the portion of the
80 Insurance Commissioner's budget amount attributable to regulation of the self-insured employer
81 market. This resulting percentage shall be applied to each self-insured employer's payroll and the
82 resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The
83 Industrial Council may promulgate a rule for implementation of this section. The company, all
84 other private carriers and all self-insured employers shall furnish the Insurance Commissioner
85 with all required information and cooperate in all respects necessary for the Insurance
86 Commissioner to perform the duties set forth in this section and in other provisions of this chapter
87 and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the
88 costs associated with the administration of this chapter and the funds raised shall not be used for
89 any other purpose except as set forth in subdivision (4) of this subsection;

90 (3) (A) Each private carrier shall collect a premiums surcharge from its policyholders as
91 annually determined, by May 1 of each year, by the Insurance Commissioner to produce \$45
92 million annually, of each policyholder's periodic premium amount for workers' compensation
93 insurance: *Provided*, That the surcharge rate on policies issued or renewed on or after July 1,
94 2008, shall be nine percent of the premium collected plus the total of all premium discounts based

95 on deductible provisions that were applied.

96 (B) By May 1 each year, the self-insured employer community shall be assessed a
97 cumulative total of \$9 million. The methodology for the assessment shall be fair and equitable and
98 determined by exempt legislative rule issued by the Industrial Council. The amount collected
99 pursuant to this subdivision shall be remitted to the Insurance Commissioner for deposit in the
100 Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter:
101 *Provided*, That notwithstanding any provision of this subdivision or any other provision of this code
102 to the contrary, if the budget shortfall, as determined by the state Budget Office as of December
103 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order, redirect
104 deposits of the amount collected pursuant to this subdivision, for any period commencing after
105 February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to
106 the fund otherwise mandated in this subdivision, in article two-d, chapter twenty-three of this code
107 or in any other provision of this code: *Provided, however*, That notwithstanding any provision of
108 this subdivision or any other provision of this code to the contrary, the Governor may, by Executive
109 Order, redirect one-half of the deposits of the amount collected pursuant to this subdivision, for
110 any period commencing after June 30, 2016, and ending before July 1, 2017, to the General
111 Revenue Fund, instead of to the funds otherwise mandated in this subdivision, in article two-d,
112 chapter twenty-three of this code or in any other provision of this code, until certification of the
113 Governor to the Legislature that an independent actuary has determined that the unfunded liability
114 of the Old Fund, as defined in chapter twenty three of this code, has been paid or provided for in
115 its entirety.

116 (4) On or before July 1, 2009, the Insurance Commissioner shall make a one-time lump
117 sum transfer of \$40 million generated from the surcharges assessed pursuant to paragraph (B),
118 subdivision (1) of this subsection and subdivision (2) of this subsection to the Bureau of

119 Employment Programs' Commissioner for deposit with the Secretary of the Treasury of the United
120 States as a credit of this state in the Unemployment Trust Fund Account maintained pursuant to
121 section four, article eight, chapter twenty-one-a of this code.

122 (g) The new premiums surcharge imposed by paragraphs (A) and (B), subdivision (3),
123 subsection (f) of this section sunset and are not collectible with respect to workers' compensation
124 insurance premiums paid when the policy is renewed on or after the first day of the month
125 following the month in which the Governor certifies to the Legislature that the revenue bonds
126 issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of
127 the Old Fund has been paid or has been provided for in its entirety, whichever occurs last.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

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

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

5 (b) Notwithstanding any provision of subsection (c), section ten of this article to the
6 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each
7 distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5)
8 and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent.
9 Payments shall not be made pursuant to section ten of this article, other than those excepted by
10 this subsection, and are made in lieu thereof in an amount to be determined by appropriation from
11 the State Excess Lottery Revenue Fund.

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

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

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

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

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

38 to appropriation.

39 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
40 of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision
41 of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of
42 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,
43 redirect deposits of revenues derived from net terminal income imposed under this article, for any
44 period commencing after February 29, 2016 and ending before July 1, 2016, to the General
45 Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter
46 twenty-three of this code or in any other provision of this code.

47 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
48 paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of
49 this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits
50 of revenues derived from net terminal income imposed under this article, for any period
51 commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund,
52 instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of
53 this code or in any other provision of this code, until certification of the Governor to the Legislature
54 that an independent actuary has determined that the unfunded liability of the Old Fund, as defined
55 in chapter twenty three of this code, has been paid or provided for in its entirety.

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

56 (a) Notwithstanding any provision of subsection (a), section ten-b of this article to the
57 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each
58 distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5)
59 and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent.
60 Payments shall not be made pursuant to section ten-b of this article, other than those excepted
61 by this subsection, and are made in lieu thereof in an amount to be determined by appropriation

62 from the State Excess Lottery Revenue Fund.

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

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

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

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

82 (f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
83 provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon
84 certification of the Governor to the Legislature that an independent actuary has determined that
85 the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been
86 paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt

87 Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this
88 article shall expire and those funds shall remain in the State Excess Lottery Revenue Fund subject
89 to appropriation.

90 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
91 of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision
92 of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of
93 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,
94 redirect deposits of revenues derived from net terminal income imposed under this article, for any
95 period commencing after February 29, 2016 and ending before July 1, 2016, to the General
96 Revenue Fund, instead of to the funds otherwise mandated in this article, in article two-d, chapter
97 twenty-three of this code or in any other provision of this code.

98 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
99 paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision
100 of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the
101 deposits of revenues derived from net terminal income imposed under this article, for any period
102 commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund,
103 instead of to the funds otherwise mandated in this article, in article two-d, chapter twenty-three of
104 this code or in any other provision of this code, until certification of the Governor to the Legislature
105 that an independent actuary has determined that the unfunded liability of the Old Fund, as defined
106 in chapter twenty three of this code, has been paid or provided for in its entirety.