

**WEST VIRGINIA LEGISLATURE**

**2017 FIRST EXTRAORDINARY SESSION**

**Introduced**

**House Bill 119**

BY DELEGATES FRICH, SOBONYA, OVERINGTON, DEEM,  
SYPOLT, BUTLER, FAST, HOLLEN AND KESSINGER

[Introduced June 5, 2017; Referred  
to the Committee on Finance.]

1 A BILL to amend and reenact §19-23-3, §19-23-7, §19-23-10, §19-23-12b, §19-23-13 and §19-  
2 23-13c of the Code of West Virginia, 1931, as amended; to amend said code by adding  
3 thereto a new section, designated §19-23-10a; to amend and reenact §29-22-18a of said  
4 code; to amend and reenact §29-22A-3, §29-22A-7, §29-22A-10, §29-22A-10b, §29-22A-  
5 10d, §29-22A-10e and §29-22A-12 of said code; and to amend and reenact §29-22C-3,  
6 §29-22C-8, §29-22C-10, §29-22C-27 and §29-22C-27a of said code, all relating generally  
7 to horse and dog racing lottery; modifying certain definitions; discontinuing the West  
8 Virginia Racing Commission special account known as the West Virginia Greyhound  
9 Breeding Development Fund; transferring all moneys in the West Virginia Greyhound  
10 Breeding Development Fund to the state Excess Lottery Revenue Fund for appropriation  
11 by the Legislature; requiring that upon transfer of moneys from the West Virginia  
12 Greyhound Breeding Development Fund to the state Excess Lottery Revenue Fund, a  
13 certain amount be withheld and deposited in the special account known as the  
14 Administration, Promotion, Education, Capital Improvement and Greyhound Adoption  
15 Programs to include Spaying and Neutering Account; requiring that all moneys previously  
16 required to be directed to the West Virginia Greyhound Breeding Development Fund be  
17 redirected to the state Excess Lottery Revenue Fund for appropriation by the Legislature;  
18 requiring that all moneys previously required to be directed into any fund or paid for the  
19 purpose of funding purses, awards or providing any other funding for greyhound races be  
20 redirected to the state Excess Lottery Revenue Fund for appropriation by the Legislature;  
21 eliminating the requirement that an applicant for a dog racing license race a minimum  
22 number of dates to qualify for such license; eliminating the requirement that an applicant  
23 for a dog racing license race a minimum number of dates to contract to receive telecasts  
24 and accept wagers; providing that a dog racetrack is required to hold a racing license to  
25 conduct simulcast racing regardless of whether the racetrack continues to conduct live  
26 dog racing; authorizing the West Virginia Racing Commission to promulgate rules,

27 including emergency rules, regarding licensure of dog racetracks conducting only  
28 simulcast racing; eliminating the requirement that a video lottery licensee at a dog track  
29 must hold a racing license to renew a video lottery license or racetrack table games  
30 license; requiring the Lottery Commission to transfer a percentage of gross terminal  
31 revenue derived from racetrack video lottery at thoroughbred racetracks, and deducted  
32 for administrative costs and expenses, to the Racing Commission's General  
33 Administrative Account; eliminating the requirement that an applicant for a video lottery  
34 license or license renewal at a dog racetrack must provide evidence of the existence of  
35 an agreement regarding proceeds from video lottery terminals with certain parties;  
36 providing that a percentage of net terminal income originating at dog racetracks will be  
37 deposited in the state Excess Lottery Revenue Fund; providing that a percentage of net  
38 terminal income originating at thoroughbred racetracks will be deposited in the West  
39 Virginia Thoroughbred Development Fund; permitting a dog racetrack to continue to  
40 operate operational video lottery and racetrack table games in a location where live racing  
41 was previously conducted or in an alternate location within the county as approved by the  
42 Lottery Commission; and eliminating the requirement that a racetrack table games  
43 licensee at a dog racetrack must race a minimum number of dates.

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

1 That §19-23-3, §19-23-7, §19-23-10, §19-23-12b, §19-23-13 and §19-23-13c of the Code  
2 of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by  
3 adding thereto a new section, designated §19-23-10a; that §29-22-18a of said code be amended  
4 and reenacted; that §29-22A-3, §29-22A-7, §29-22A-10, §29-22A-10b, §29-22A-10d, §29-22A-  
5 10e and §29-22A-12 of said code be amended and reenacted; and that §29-22C-3, §29-22C-8,  
6 §29-22C-10, §29-22C-27 and §29-22C-27a of said code be amended and reenacted, all to read  
7 as follows:

## CHAPTER 19. AGRICULTURE.

### PART V. LICENSE AND PERMIT PROCEDURES.

#### ARTICLE 23. HORSE AND DOG RACING.

##### §19-23-3. Definitions.

Unless the context clearly requires a different meaning, as used in this article:

(1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

(2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating is a thoroughbred and mounted by a jockey;

(3) "Harness racing" means horse racing in which the horses participating are harnessed to a sulky, carriage or other vehicle and does not include any form of horse racing in which the horses are mounted by jockeys;

(4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;

(5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;

(6) "Purse" means any purse, stake or award for which a horse or dog race is run;

(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article or any person making application for a construction permit under the provisions of this article;

(9) "License" means the license required by the provisions of section one of this article or the license required to conduct televised racing pursuant to section twelve-b of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing Commission" means the West Virginia Racing Commission;

(17) "Stewards" means the steward or stewards representing the Racing Commission, the steward or stewards representing a licensee and any other steward or stewards whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the Racing Commission which rules shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) "Legitimate breakage" is the percentage left over in the division of a pool;

(22) "To the dime" means that wagers shall be figured and paid to the dime;

(23) "Code" means the Code of West Virginia, 1931, as heretofore and hereinafter amended;

(24) "Accredited thoroughbred horse" means a thoroughbred horse that is registered with the West Virginia Thoroughbred Breeders Association and that is:

(A) Foaled in West Virginia; or

(B) Sired by an accredited West Virginia sire; or

(C) As a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days' grace:

(i) For the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company; or

(ii) For obtaining veterinary services, documented by veterinary reports;

(25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders Association;

(26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;

(27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. In the event the yearling was born in another state and transported to this state, this definition does not apply after the December 31, 2007, to any pari-mutuel racing facility located in Jefferson County nor shall it apply after the December 31, 2012, and thereafter to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out

of the state for sales, the raiser must notify the Racing Commission of his or her intentions;

(28) The “owner of an accredited West Virginia sire” is the owner of record at the time the offspring is conceived;

(29) The “owner of an accredited West Virginia horse” means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided in section thirteen-b of this article;

(30) “Registered greyhound owner” means an owner of a greyhound that is registered with the National Greyhound Association;

(31) “Fund” means the West Virginia Thoroughbred Development Fund established in section thirteen-b of this article; and

(32) “Regular purse” means both regular purses and stakes purses.

**§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.**

(a) Any racing association desiring to hold or conduct a horse or dog race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the Racing Commission an application for a license to hold or conduct such horse or dog race meeting. A separate application shall be filed for each separate license sought for each horse or dog race meeting which such applicant proposes to hold or conduct. The Racing Commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the Racing Commission and shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post office

14 address, the full name and address of each officer and director thereof, and if a foreign  
15 corporation, whether it is qualified to do business in this state;

16 (4) The dates, totaling not less than two hundred, such applicant intends to hold or conduct  
17 such horse or dog race meeting (which may be on any day including Sundays): Provided, That  
18 effective July 1, 2017, and thereafter, an applicant is not required to race any minimum number  
19 of dates in order to qualify for a license to hold a dog race meeting;

20 (5) The location of the horse or dog racetrack, place or enclosure where such applicant  
21 proposes to hold or conduct such horse or dog race meeting;

22 (6) Whether the applicant, any partner, member, officer or director has previously applied  
23 for a license under the provisions of this article or for a similar license in this or any other state,  
24 and if so, whether such license was issued or refused, and, if issued, whether it was ever  
25 suspended or revoked; and

26 (7) Such other information as the Racing Commission may reasonably require which may  
27 include information relating to any criminal record of the applicant, if an individual, or of each  
28 partner or member, if a partnership, firm or association, or of each officer and director, if a  
29 corporation.

30 (b) Such application shall be verified by the oath or affirmation of the applicant for such  
31 license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a  
32 partner, member or officer thereof, as the case may be. When required by the Racing  
33 Commission, an applicant for a license shall also furnish evidence satisfactory to the Racing  
34 Commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials  
35 and other expenses incident to the horse or dog race meeting for which a license is sought. In the  
36 event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to  
37 pay such expenses and fees, the Racing Commission may require bond or other adequate  
38 security before the requested license is issued.

39 (c) Any person desiring to obtain a permit, as required by the provisions of section two of



40 this article, shall make application therefor on a form prescribed by the Racing Commission. The  
41 application for any such permit shall be accompanied by the fee prescribed therefor by the Racing  
42 Commission. Each applicant for a permit shall set forth in the application such information as the  
43 Racing Commission shall reasonably require.

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION  
OF REVENUES.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.**

1 (a) Any racing association conducting thoroughbred racing at any horse racetrack in this  
2 state shall pay each day upon which horse races are run a daily license tax of \$250. Any racing  
3 association conducting harness racing at any horse racetrack in this state shall pay each day  
4 upon which horse races are run a daily license tax of \$150. Any racing association conducting  
5 dog races shall pay each day upon which dog races are run a daily license tax of \$150. In the  
6 event thoroughbred racing, harness racing, dog racing or any combination of the foregoing are  
7 conducted on the same day at the same racetrack by the same racing association, only one daily  
8 license tax in the amount of \$250 shall be paid for that day. Any daily license tax shall not apply  
9 to any local, county or state fair, horse show or agricultural or livestock exposition at which horse  
10 racing is conducted for not more than six days.

11 (b) Any racing association licensed by the Racing Commission to conduct thoroughbred  
12 racing and permitting and conducting pari-mutuel wagering under the provisions of this article  
13 shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the Racing  
14 Commission, from the commission deducted each day by the licensee from the pari-mutuel pools  
15 on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools  
16 conducted or made at any and every thoroughbred race meeting of the licensee licensed under  
17 the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during  
18 the months of January, February, March, October, November and December, shall be calculated

at four-tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at one and four-tenths percent of the pool: *Provided*, That out of the amount realized from the three-tenths of one percent decrease in the tax effective for fiscal year 1991 and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate:

(i) One half of the realized amount for capital improvements in its barn area at the track, subject to the Racing Commission's prior approval of the plans for the improvements; and (ii) the remaining one half of the realized amount for capital improvements as the licensee may determine appropriate at the track. The term "capital improvement" shall be as defined by the Internal Revenue Code: *Provided, however*, That any racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of \$280,000 or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding \$300,000 the daily pari-mutuel pool tax shall be \$1,000 plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of \$300,000: *Provided further*, That upon the effective date of the reduction of the daily pari-mutuel pool tax to \$1,000 from the former \$2,000, the association or licensee shall daily deposit \$500 into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: *And provided further*, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to thirteen races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: *And provided further*, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: *And provided further*, That this exclusion shall not apply to any thoroughbred racetrack at which the

licensee has participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years prior to December 31, 1992.

(c) Any racing association licensed by the Racing Commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first \$100,000 wagered, or any part thereof; four percent of the next \$150,000; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the Racing Commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first \$50,000 or any part thereof of the pari-mutuel pools, five percent of the next \$50,000 of the pari-mutuel pools, six percent of the next \$100,000 of the pari-mutuel pools, seven percent of the next \$150,000 of the pari-mutuel pools, and eight percent of all over \$350,000 wagered each day: *Provided*, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one-tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year 1990; fifteen-hundredths of one percent in fiscal year 1991; two-tenths of one percent in fiscal year 1992; one quarter of one percent in fiscal year 1993; and three-tenths of one percent in fiscal year 1994 and every fiscal year thereafter. The amounts deducted shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund: *Provided*, That effective July 1, 2017, and thereafter, the amounts deducted and any other moneys required by this section

71 to be deposited in the West Virginia Greyhound Breeding Development Fund shall instead be  
72 deposited into the state Excess Lottery Revenue Fund pursuant to section ten-a of this article:  
73 Provided, however, That effective July 1, 2017, and thereafter, any expenditures from the West  
74 Virginia Greyhound Breeding Development Fund required by this section shall be discontinued:  
75 Provided further, That effective July 1, 2017, and thereafter, all amounts required by this section  
76 to be deposited into any fund or paid for the purpose of funding purses, awards or provide any  
77 other funding for dog races shall be discontinued pursuant to section ten-a of this article. The  
78 purpose of the West Virginia Greyhound Breeding Development Fund is to promote better  
79 breeding, training track facilities and racing of greyhounds in the state through awards and purses  
80 to bona fide resident registered greyhound owners of accredited West Virginia whelped  
81 greyhounds. In order to participate and be eligible to receive an award or purse through the fund,  
82 the registered greyhound owner must have an appropriate license from the Racing Commission  
83 to race in West Virginia. The registered greyhound dam at the time of breeding must be wholly or  
84 solely owned or leased by a bona fide resident or residents of West Virginia. The accredited West  
85 Virginia whelped greyhound must be wholly or solely owned by a bona fide resident or residents  
86 of this state. To qualify as a bona fide resident of West Virginia, a registered greyhound owner  
87 may not claim residency in any other state. A registered greyhound owner must prove bona fide  
88 residency by providing to the commission personal income tax returns filed in the State of West  
89 Virginia for the most recent tax year and the three previous tax years, has real or personal property  
90 in this state on which the owner has paid real or personal property taxes during the most recent  
91 tax year and the previous three tax years and an affidavit stating that the owner claims no other  
92 state of residency. The Racing Commission shall maintain a registry for West Virginia bred  
93 greyhounds. The moneys shall be expended by the Racing Commission for purses for stake  
94 races, training track facilities, supplemental purse awards, administration, promotion, education  
95 and greyhound adoption programs involving West Virginia whelped dogs, owned by residents of  
96 this state under rules promulgated by the Racing Commission. The Racing Commission shall pay

97 out of the greyhound breeding development fund to each of the licensed dog racing tracks the  
98 sum of \$75,000 for the fiscal year ending June 30, 1994. The licensee shall deposit the sum into  
99 the special fund for regular purses established under the provisions of section nine of this article.  
100 The funds shall be expended solely for the purpose of supplementing regular purses under rules  
101 promulgated by the Racing Commission.

102 Supplemental purse awards will be distributed as follows: Supplemental purses shall be  
103 paid directly to the registered greyhound owner of an accredited greyhound.

104 The registered greyhound owner of accredited West Virginia whelped greyhounds that  
105 earn points at any West Virginia meet will receive a bonus award calculated at the end of each  
106 month as a percentage of the fund dedicated to the owners as purse supplements, which shall be  
107 a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound  
108 Breeding Development Fund monthly.

109 The total amount of the fund available for the owners' awards shall be distributed  
110 according to the ratio of points earned by an accredited greyhound to the total amount earned in  
111 races by all accredited West Virginia whelped greyhounds for that month as a percentage of the  
112 funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall  
113 be the same as approved by the Racing Commission to be effective April 1, 2007. The West  
114 Virginia Greyhound Owners and Breeders Association shall submit a list of any additions or  
115 deletions to the registry of accredited West Virginia whelped greyhounds on the first of each  
116 month. The Racing Commission shall not require anyone to be a member of a particular  
117 association in order to participate in the West Virginia Greyhound Breeding Development Fund.

118 The registered greyhound owner of an accredited West Virginia whelped greyhound shall  
119 file a purse distribution form with the Racing Commission for a percentage of his or her dog's  
120 earnings to be paid directly to the registered greyhound owner or owners of the greyhound.  
121 Distribution shall be made on the fifteenth day of each month for the preceding month's  
122 achievements.

123 In no event shall points earned at a meet held at a track which did not make contributions  
124 to the West Virginia Greyhound Breeding Development Fund out of the daily pool on the day the  
125 meet was held qualify or count toward eligibility for supplemental purse awards.

126 Any balance in the purse supplement funds after all distributions have been made for the  
127 year revert to the general account of the fund for distribution in the following year: *Provided*, That  
128 not more than \$2 million from the balance in the purse supplemental fund shall be used for the  
129 construction and maintenance of two dog training track facilities if such be approved by the Racing  
130 Commission: *Provided, however*, That not more than \$1 million may be allocated for the  
131 construction and maintenance of each training track: *Provided further*, That both training track  
132 facilities must be located in West Virginia. The West Virginia Racing Commission shall be  
133 authorized to promulgate rules governing dog training tracks: *And provided further*, That the  
134 Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the  
135 construction or maintenance, or both, of the training tracks; and (2) set standards to assure that  
136 only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

137 In an effort to further promote the breeding of quality West Virginia whelped greyhounds,  
138 a bonus purse supplement shall be established in the amount of \$50,000 per annum, to be paid  
139 in equal quarterly installments of \$12,500 per quarter using the same method to calculate and  
140 distribute these funds as the regular supplemental purse awards. This bonus purse supplement  
141 is for three years only, commencing on July 1, 1993, and ending June 30, 1996. This money  
142 would come from the current existing balance in the greyhound development fund.

143 Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia  
144 whelped greyhounds: *Provided*, That each pari-mutuel track shall have one juvenile and one open  
145 stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for  
146 accredited West Virginia whelped greyhounds per race card: *Provided, however*, That sufficient  
147 dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an  
148 opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West

Virginia Racing Commission by July 1, each year shall establish and announce the minimum number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West Virginia dog tracks must have on their racing active list during the calendar year following such action. The minimum number may vary from dog track to dog track. The minimum number shall be established after consultation with the West Virginia Greyhound Owners and Breeders Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel's racing license. The Racing Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the Greyhound Breeding Development Fund beginning July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account. The Racing Commission is authorized to expend the moneys deposited in the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account at such times and in such amounts as the commission determines to be necessary for purposes of administering and

175 promoting the greyhound development program: *Provided*, That beginning with fiscal year 1995  
176 and in each fiscal year thereafter in which the commission anticipates spending any money from  
177 the account, the commission shall submit to the executive department during the budget  
178 preparation period prior to the Legislature convening before that fiscal year for inclusion in the  
179 Executive Budget Document and Budget Bill, the recommended expenditures, as well as requests  
180 of appropriations for the purpose of administration, promotion, education, capital improvement  
181 and greyhound adoption programs to include spaying and neutering. The commission shall make  
182 an annual report to the Legislature on the status of the Administration, Promotion, Education,  
183 Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering  
184 Account, including the previous year's expenditures and projected expenditures for the next year.

185 The Racing Commission, for the fiscal year 1994 only, may expend up to \$35,000 from  
186 the West Virginia Greyhound Breeding Development Fund to accomplish the purposes of this  
187 section without strictly following the requirements in the previous paragraph.

188 (e) All daily license and pari-mutuel pools tax payments required under the provisions of  
189 this section shall be made to the Racing Commission or its agent after the last race of each day  
190 of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from  
191 all contributions to all pari-mutuel pools to each and every race of the day.

192 (f) Every association or licensee subject to the provisions of this article, including the  
193 changed provisions of sections nine and ten of this article, shall annually submit to the Racing  
194 Commission and the Legislature financial statements, including a balance sheet, income  
195 statement, statement of change in financial position and an audit of any electronic data system  
196 used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing  
197 standards, as certified by an experienced public accountant or a certified public accountant.

**§19-23-10a. West Virginia Greyhound Breeding Development Fund; transfer of current  
funds and future deposits.**

1 (a) Notwithstanding any other provision of this code, effective July 1, 2017, the West



Virginia Greyhound Breeding Development Fund created in section ten of this article is discontinued. On or before July 1, 2017, all amounts remaining in the West Virginia Greyhound Breeding Development Fund shall be transferred to the state Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two, chapter twenty-nine of this code for appropriation by the Legislature: *Provided*, That \$1 million shall be withheld by the Racing Commission and placed in the special revenue account called the Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account created in subsection (d), section ten of this article, to be allocated specifically to facilitate care for and adoption of, or placement in, no-kill animal shelters of accredited West Virginia whelped greyhounds actively running at each West Virginia dog track.

(b) Notwithstanding any other provision of this code, effective July 1, 2017, and thereafter, all amounts required to be deposited into the West Virginia Greyhound Breeding Development Fund prior to the enactment of this section shall, in lieu thereof, be deposited into the state Excess Lottery Revenue Fund for appropriation by the Legislature: *Provided*, That net terminal lottery income shall be distributed as provided in subdivision (5), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code and subdivision (5), subsection (a), section ten-b of said article.

(c) Notwithstanding any other provision of this code, effective July 1, 2017, and thereafter, all amounts required to be deposited into any fund or paid for the purpose of funding purses, awards or providing any other funding for greyhound races shall, in lieu thereof, be deposited into the state Excess Lottery Fund for appropriation by the Legislature.

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

(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at other racetracks in this state or at racetracks outside of this state which are broadcast by television at

5 a licensed racetrack and which day or days have had the prior written approval of the  
6 representative of the majority of the owners and trainers who hold permits required by section two  
7 of this article; and

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

11 (b) (1) A licensee conducting not less than two hundred twenty live racing dates for each  
12 horse or dog race meeting may, with the prior approval of the state Racing Commission, contract  
13 with any legal wagering entity in this state or in any other governmental jurisdiction to receive  
14 telecasts and accept wagers on races conducted by the legal wagering entity: Provided, That  
15 effective July 1, 2017, and thereafter, a licensee that was licensed prior to January 1, 1994, to  
16 conduct dog racing is not required to conduct a minimum number of live racing dates to contract  
17 with a legal wagering entity in this state or in any other governmental jurisdiction to receive  
18 telecasts and accept wagers on dog and horse races: Provided, however, That at those  
19 thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less than  
20 two hundred ten live racing dates for each horse race meeting: Provided however further, That at  
21 those thoroughbred racetracks that have participated in the West Virginia Thoroughbred  
22 Development Fund for a period of more than four consecutive calendar years prior to December  
23 31, 1992, the licensee may apply for not less than one hundred fifty-nine live racing dates during  
24 the calendar year 1997. If, thereafter, for reasons beyond the licensee's control, related to adverse  
25 weather conditions, unforeseen casualty occurrences or a shortage of thoroughbred horses  
26 eligible to compete for purses, the licensee concludes that this number of racing days cannot be  
27 attained, the licensee may file a request with the Racing Commission to reduce the authorized  
28 live racing days. Upon receipt of the request the Racing Commission shall within seventy-two  
29 hours of the receipt of the request notify the licensee and the representative of a majority of the  
30 owners and trainers at the requesting track and the representative of the majority of the mutuel

31 clerks at the requesting track that such request has been received and that if no objection to the  
32 request is received within ten days of the notification the request will be approved: *And provided*  
33 *further*, That the commission shall give consideration to whether there existed available  
34 unscheduled potential live racing dates following the adverse weather or casualty and prior to the  
35 end of the race meeting which could be used as new live racing dates in order to maintain the full  
36 live racing schedule previously approved by the Racing Commission. If an objection is received  
37 by the commission within the time limits, the commission shall, within thirty days of receipt of such  
38 objection, set a hearing on the question of reducing racing days, which hearing shall be conducted  
39 at a convenient place in the county in which the requesting racetrack is located. The commission  
40 shall hear from all parties concerned and, based upon testimony and documentary evidence  
41 presented at the hearing, shall determine the required number of live racing days: *And provided*  
42 *further*, That the commission shall not reduce the number of live racing days below one hundred  
43 eighty-five days for a horse race meeting unless the licensee requesting such reduction has: (i)  
44 Filed with the commission a current financial statement, which shall be subject to independent  
45 audit; and (ii) met the burden of proving that just cause exists for such requested reduction in live  
46 racing days. The telecasts may be received and wagers accepted at any location authorized by  
47 the provisions of section twelve-a of this article. The contract must receive the approval of the  
48 representative of the majority of the owners and trainers who hold permits required by section two  
49 of this article at the receiving thoroughbred racetrack.

50 (2) A facility that was licensed prior to January 1, 1994, to conduct dog racing is required  
51 to hold a racing license to receive telecasts and accept wagers on dog and horse races,  
52 regardless of whether the facility continues to conduct live dog racing.

53 (3) The commission shall have authority to promulgate rules, including emergency rules,  
54 in accordance with article three, chapter twenty-nine-a of this code, as it deems necessary to  
55 implement and efficiently administer the requirement of subdivision (2) of this subsection:  
56 Provided, That the rules are to be consistent with the rules promulgated for pari-mutuel wagering

57 on televised races at live racetracks.

58 (c) The commission may allow the licensee to commingle its wagering pools with the  
59 wagering pools of the host racing association. If the pools are commingled, the wagering at the  
60 licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and  
61 be electronically linked with the equipment at the sending racetrack. Subject to the approval of  
62 the commission, the types of betting, licensee commissions and distribution of winnings on pari-  
63 mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack.  
64 Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with  
65 the law or rules governing the sending racetrack and must be distributed in a manner agreed to  
66 between the licensee and the sending racetrack. For the televised racing services it provides, the  
67 host racing association shall receive a fee to be paid by the receiving licensee racetrack which  
68 shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing  
69 association.

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

73 (e) (1) From the licensee commissions authorized by subsection (c) of this section, the  
74 licensee shall pay one tenth of one percent of each commission into the General Fund of the  
75 county, in which the racetrack is located and at which the wagering occurred and there is imposed  
76 and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool  
77 exceeds \$100,000, the greater of either: (i) The total of the daily license tax and the pari-mutuel  
78 pools tax required by section ten of this article; or (ii) a daily license tax of \$1,250. For each  
79 televised racing day on which the total pari-mutuel pool is \$100,000 or less, the licensee shall pay  
80 a daily license tax of \$500 plus an additional license tax of \$100 for each \$10,000, or part thereof,  
81 that the pari-mutuel pool exceeds \$50,000, but does not exceed \$100,000. The calculation of the  
82 total pari-mutuel pool for purposes of this subsection shall include only one half of all wagers

placed at a licensed racetrack in this state on televised races conducted at another licensed racetrack within this state. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(2) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivision (1) of this subsection, the licensee shall pay, for each televised racing day, one-fourth of one percent of the total pari-mutuel pools for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission and to be used for payments into the pension plan for all employees of the licensed racing association.

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

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

subsection (b), section nine of this article. After deducting the tax and other payments required by subsection (e) of this section, dog racetracks shall pay an amount equal to two-tenths of one percent of the daily simulcast pari-mutuel pool to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund: Provided, That effective July 1, 2017, and thereafter, the amount required to be paid to the West Virginia Greyhound Breeding Development Fund by this subsection shall instead be paid to the state Excess Lottery Revenue Fund pursuant to section ten-a of this article.

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

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS; IRREDEEMABLE TICKETS; AWARDS.

**§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.**

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the Racing Commission within fifteen days after the expiration of the ninety-day period, and the licensee shall give any information required by the Racing Commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets. Notice of the amount, date and place of each deposit shall be given by the Racing Commission, in writing, to the State Treasurer. The Racing Commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying

12 them to present their unredeemed tickets for payment at the principal office of the Racing  
13 Commission within ninety days from the date of the publication of the notice. The notice shall be  
14 published within fifteen days following the receipt of the outstanding and unredeemed pari-mutuel  
15 ticket moneys by the commission from the licensee as a Class I legal advertisement in compliance  
16 with the provisions of article three, chapter fifty-nine of this code, and the publication area for the  
17 publication shall be the county in which the horse or dog race meeting was held and the county  
18 in which the televised racing day wagering was conducted in this state.

19 (b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for  
20 payment within ninety days from the date of the publication of the notice are thereafter  
21 irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall  
22 become the property of the Racing Commission and shall be expended as provided in  
23 subsections (c) and (d) of this section. The Racing Commission shall maintain separate accounts  
24 for each licensee and shall record in each separate account the moneys turned over by the  
25 licensee and the amount expended at the licensee's track for the purposes set forth in this  
26 subsection.

27 (c) In the fiscal year beginning on July 1, 2010, the Racing Commission shall keep  
28 separate the unredeemed pari-mutuel tickets received from each of the two licensee horse  
29 racetracks.

30 (1) The unredeemed pari-mutuel tickets attributable to each licensee horse racetrack  
31 together with funds distributed pursuant to section eighteen-a, article twenty-two, chapter twenty-  
32 nine of this code shall be used for claims received pursuant to this subsection by the Racing  
33 Commission each calendar quarter: *Provided*, That the first distribution after the effective date of  
34 amendments to this section made during the 2010 regular legislative session shall not occur until  
35 February 2011 and then each calendar quarter thereafter. Any claims made pursuant to this  
36 subsection must be submitted to the Racing Commission no later than fifteen days after the race  
37 where the funds are awarded. The funds in the two special accounts - unredeemed pari-mutuel

38 tickets shall be distributed based on claims received from each horse racetrack as follows:

39 (A) To the owner of the winning horse in any horse race at a horse race meeting held or  
40 conducted by any licensee: *Provided*, That the owner of the horse is at the time of the horse race  
41 a bona fide resident of this state, a sum equal to ten percent of the purse won by the horse at that  
42 race: *Provided, however*, That in the event there are more than ten races in any performance, the  
43 award to the resident owner of the winning horse will be that fractional share of the purse with a  
44 numerator of one and a denominator representing the number of races on the day of the  
45 performance. The commission may require proof that the owner was, at the time of the race, a  
46 bona fide resident of this state. Upon proof by the owner that he or she filed a personal income  
47 tax return in this state for the previous two years and that he or she owned real or personal  
48 property in this state and paid taxes in this state on real or personal property for the previous two  
49 years, he or she shall be presumed to be a bona fide resident of this state; and

50 (B) To the breeder (that is the owner of the mare) of the winning horse in any horse race  
51 at a horse race meeting held or conducted by any licensee: *Provided*, That the mare foaled in this  
52 state, a sum equal to ten percent of the purse won by the horse: *Provided, however*, That in the  
53 event there are more than ten races in any performance, the award to the breeder will be that  
54 fractional share of the purse with a numerator of one and a denominator representing the number  
55 of races on the day of the performance; and

56 (C) To the owner of the stallion which sired the winning horse in any horse race at a horse  
57 race meeting held or conducted by any licensee: *Provided*, That the mare which foaled the  
58 winning horse was served by a stallion standing and registered in this state, a sum equal to ten  
59 percent of the purse won by the horse: *Provided, however*, That in the event there are more than  
60 ten races in any performance, the award to the owner of the stallion will be percentage of the  
61 purse based upon the fractional share represented by the number of races on the day of the  
62 performance.

63 (2) If in any calendar quarter insufficient funds are available in each licensee horse



64 racetrack's special account - unredeemed pari-mutuel tickets administered by the Racing  
65 Commission for payments pursuant to subdivision (1), payments shall be made on a pro rata  
66 basis pursuant to paragraphs (A), (B) and (C), subdivision (1) of this subsection of the claims  
67 submitted from races won at each horse racetrack. Once payments on each claim are made,  
68 whether in full or on a pro rata basis, no further obligation for payment is created by this  
69 subdivision. Claims received after the deadline are not valid.

70 (3) If after paying any claims pursuant to this subsection and funds remain in the accounts,  
71 those funds shall carry over to the next calendar quarter. If in any quarter the surplus in either  
72 account reaches a balance of \$1 million, then that surplus balance shall be placed in to the regular  
73 purse fund of that licensee horse racetrack whose unredeemed pari-mutuel account achieves the  
74 surplus.

75 (d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be  
76 combined into a single balance and distributed quarterly to the West Virginia Racing Commission  
77 special account - West Virginia Greyhound Breeding Development Fund: Provided, That effective  
78 July 1, 2017, and thereafter, the balance shall instead be distributed to the state Excess Lottery  
79 Revenue Fund pursuant to section ten-a of this article. The deposit made pursuant to this  
80 subsection does not create a continuing obligation of payment except to the extent that there are  
81 unredeemed pari-mutuel tickets from the licensee dog racetracks.

82 (e) The amendments to this section made during the 2010 regular legislative session shall  
83 become effective July 1, 2010.

84 (f) The Racing Commission shall satisfy obligations of the prior enactment of this section  
85 for all claims received on purses won on or before June 30, 2010. Claimants must submit all  
86 claims on or before July 15, 2010, for verification by the Racing Commission. Claims received  
87 after July 15, 2010, are not valid.

88 (1) A transfer of \$2.5 million from the state Excess Lottery Revenue Fund available on the  
89 last day of the fiscal year which began July 1, 2009, shall be made to the nonappropriated fund

90 with the State Treasurer known as the Unredeemed Pari-Mutuel Tickets Fund. The Racing  
91 Commission shall also transfer to the account with the State Treasurer ~~monies~~ moneys from the  
92 Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets for deposits received in  
93 each of those accounts that have been credited with unredeemed pari-mutuel tickets for races  
94 completed at any licensee racetrack as of June 30, 2010, and any other ~~monies~~ moneys  
95 appropriated by the Legislature. Unredeemed pari-mutuel tickets for races completed after June  
96 30, 2010 must remain in the special accounts - unredeemed pari-mutuel tickets to satisfy future  
97 payments pursuant to this section.

98 (2) The Racing Commission is authorized to pay claims received for races completed on  
99 or before June 30, 2010, without regard to date of deposit or date of claim. Claims shall be paid  
100 in date order, with the oldest claims being paid first, until all claims have been satisfied. All  
101 payments made pursuant to this subsection for claims received on purses won on or before June  
102 30, 2010, shall extinguish any further obligation by the state with respect to those claims.

103 (g) The commission shall submit to the Legislative Auditor a quarterly report and  
104 accounting of the income and expenditures in the special account created by this section known  
105 as the West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets.

106 (h) Nothing contained in this article shall prohibit one person from qualifying for all or more  
107 than one of the aforesaid awards or for awards under section thirteen-b of this article.

108 (i) The cost of publication of the notice provided for in this section shall be paid from the  
109 funds in the hands of the State Treasurer collected from the pari-mutuel pools' tax provided for in  
110 section ten of this article, when not otherwise provided in the budget; but no such costs shall be  
111 paid unless an itemized account thereof, under oath, be first filed with the State Auditor.

112 (j) The Racing Commission is authorized to promulgate emergency rules, prior to  
113 September 1, 2010, to incorporate the revisions to this article enacted during the 2010 regular  
114 legislative session.

#### PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION FEES AND FINES.

**§19-23-13c. Expenditure of racetrack video lottery distribution.**

1 (a) Funds received by the Racing Commission pursuant to subdivision (6), subsection (c),  
2 section ten, article twenty-two-a, chapter twenty-nine of this code, and subdivision (5), subsection  
3 (a), section ten-b of said article, after the effective date of this section together with the balance  
4 in the bank account previously established by the commission to receive those funds shall be  
5 deposited in a banking institution of its choice in a special account to be known as West Virginia  
6 Racing Commission Racetrack Video Lottery Account. Notice of the amount, date and place of  
7 each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

8 (b) Funds in this account shall be allocated and expended as follows:

9 (1) For each fiscal year, the first \$800,000 deposited in the separate account plus the  
10 amount then remaining of the June 30, 1997, balance in the separate account previously  
11 established for the West Virginia breeders classic under section thirteen of this article, shall be  
12 used by the commission for promotional activities, advertising, administrative costs and purses  
13 for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all  
14 horses qualifying under the West Virginia breeders program for each stake race, based solely on  
15 the horses' sex, age and earnings.

16 (2) For each fiscal year, the next \$200,000 deposited into the separate account shall be  
17 used by the commission for promotional activities and purses for open stake races for a race  
18 event to be known as the West Virginia Derby to be held at a thoroughbred racetrack which does  
19 not participate in the West Virginia Breeders Classic.

20 (3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this  
21 subsection have been deposited into separate bank accounts for use in connection with the West  
22 Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the commission shall  
23 return to each racetrack all additional amounts deposited which originate during that fiscal year  
24 from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article  
25 twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as

follows:

(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund: Provided, That effective July 1, 2017, and thereafter, the funds required by this paragraph to be deposited in the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund shall instead be deposited into the state Excess Lottery Revenue Fund pursuant to section ten-a of this article.

(B) At those thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia Thoroughbred Development Fund.

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia Breeders Classic, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia Derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia Racing Commission before the funds are expended for any of the purposes authorized by this section.

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

### **ARTICLE 22. STATE LOTTERY ACT.**

#### **§29-22-18a. State Excess Lottery Revenue Fund.**

(a) The State Lottery Fund in the State Treasury which is designated and known as the

2 state Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the  
3 fund and all interest earned from investment of the fund and any gifts, grants or contributions  
4 received by the fund. All revenues received under the provisions of sections ten-b and ten-c,  
5 article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the  
6 amounts due the commission under subdivision (1), subsection (a), section one thousand four  
7 hundred eight of said article, shall be deposited in the State Treasury and placed into the state  
8 Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this  
9 section for the purposes stated in this section and shall not be treated by the State Auditor and  
10 the State Treasurer as part of the general revenue of the state.

11 (b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) \$65 million  
12 into the subaccount of the state Excess Lottery Revenue Fund hereby created in the State  
13 Treasury to be known as the General Purpose Account to be expended pursuant to appropriation  
14 of the Legislature; (2) \$10 million into the Education Improvement Fund for appropriation by the  
15 Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter  
16 eighteen-c of this code; (3) \$19 million into the Economic Development Project Fund created in  
17 subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance  
18 with the provisions of said subsection; (4) \$20 million into the School Building Debt Service Fund  
19 created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue  
20 bonds; (5) \$40 million into the West Virginia Infrastructure Fund created in section nine, article  
21 fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said  
22 article; (6) \$10 million into the Higher Education Improvement Fund for Higher Education; and (7)  
23 \$5 million into the state Park Improvement Fund for Park Improvements. For the fiscal year  
24 beginning July 1, 2003, the commission shall deposit: (1) \$65 million into the General Purpose  
25 Account to be expended pursuant to appropriation of the Legislature; (2) \$17 million into the  
26 Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship  
27 Fund created in section seven, article seven, chapter eighteen-c of this code; (3) \$19 million into

the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$20 million into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) \$40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the Higher Education Improvement Fund for Higher Education; and (7) \$7 million into the state Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) \$65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$27 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$19 million into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds: *Provided, That* for the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead \$19 million shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) \$40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the state Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded

indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission shall deposit: (1) \$65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$19 million into the Excess Lottery School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code; (5) \$40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the state Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds

80 and payment of debt service on the bonds with funds distributed under this subsection and  
81 subsection (b) of this section, except distributions made in connection with bonds issued under  
82 subsection (e) of this section, the distributions may be used only to fund capital improvements  
83 that are not financed by bonds and only pursuant to appropriation of the Legislature.

84 (e) The Legislature finds and declares that in order to attract new business, commerce  
85 and industry to this state, to retain existing business and industry providing the citizens of this  
86 state with economic security and to advance the business prosperity of this state and the  
87 economic welfare of the citizens of this state, it is necessary to provide public financial support for  
88 constructing, equipping, improving and maintaining economic development projects, capital  
89 improvement projects and infrastructure which promote economic development in this state.

90 (1) The West Virginia Economic Development Authority created and provided for in article  
91 fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of  
92 this article and article fifteen, chapter thirty-one of this code, and upon direction of the Governor,  
93 issue revenue bonds of the Economic Development Authority in no more than two series to pay  
94 for all or a portion of the cost of constructing, equipping, improving or maintaining projects under  
95 this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on  
96 or after July 1, 2002, which are secured by State Excess Lottery revenue proceeds shall mature  
97 at a time or times not exceeding thirty years from their respective dates. The principal of and the  
98 interest and redemption premium, if any, on the bonds shall be payable solely from the special  
99 fund provided in this section for the payment.

100 (2) The special revenue fund named the Economic Development Project Fund into which  
101 shall be is deposited the amounts to be deposited in the fund as specified in subsections (b), (c)  
102 and (d) of this section is continued. The Economic Development Project Fund shall consist of all  
103 such moneys, all appropriations to the fund, all interest earned from investment of the fund and  
104 any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be  
105 pledged to the repayment of the principal, interest and redemption premium, if any, on any



106 revenue bonds or refunding revenue bonds authorized by this section, including any and all  
107 commercially customary and reasonable costs and expenses which may be incurred in  
108 connection with the issuance, refunding, redemption or defeasance of the bonds. The West  
109 Virginia Economic Development Authority may further provide in the resolution and in the trust  
110 agreement for priorities on the revenues paid into the Economic Development Project Fund that  
111 are necessary for the protection of the prior rights of the holders of bonds issued at different times  
112 under the provisions of this section. The bonds issued pursuant to this subsection shall be  
113 separate from all other bonds which may be or have been issued, from time to time, under the  
114 provisions of this article.

115 (3) After the West Virginia Economic Development Authority has issued bonds authorized  
116 by this section and after the requirements of all funds have been satisfied, including any coverage  
117 and reserve funds established in connection with the bonds issued pursuant to this subsection,  
118 any balance remaining in the Economic Development Project Fund may be used for the  
119 redemption of any of the outstanding bonds issued under this subsection which, by their terms,  
120 are then redeemable or for the purchase of the outstanding bonds at the market price, but not to  
121 exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be  
122 immediately canceled and shall not again be issued.

123 (4) Bonds issued under this subsection shall state on their face that the bonds do not  
124 constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges  
125 thereon cannot become an obligation of the State of West Virginia; and that the bondholders'  
126 remedies are limited in all respects to the Special Revenue Fund established in this subsection  
127 for the liquidation of the bonds.

128 (5) The West Virginia Economic Development Authority shall expend the bond proceeds  
129 from the revenue bond issues authorized and directed by this section for projects certified under  
130 the provision of this subsection: *Provided*, That the bond proceeds shall be expended in  
131 accordance with the requirements and provisions of article five-a, chapter twenty-one of this code

and either article twenty-two or twenty-two-a, chapter five of this code, as the case may be: *Provided, however,* That if the bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code and if the Design-Build Board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding the contract, the determination shall be conclusive for all purposes and shall be considered to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the Governor, or his or her designee, the Secretary of the Department of Revenue, the Executive Director of the West Virginia Development Office and six persons appointed by the Governor: *Provided,* That at least one citizen member must be from each of the state's three congressional districts. The committee shall meet as often as necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section.

(7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled with the committee. Within ten days from the effective date of this section as amended in the year 2003, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the

158 compensation reasonably anticipated to be paid persons filling new jobs or the compensation  
159 currently paid to persons whose jobs would be retained;

160 (D) Whether the project will promote economic development in the region and the type of  
161 economic development that will be promoted;

162 (E) The type of capital investments to be made with bond proceeds and the useful life of  
163 the capital investments; and

164 (F) Whether the project is in the best interest of the public.

165 (9) A grant may not be awarded to an individual or other private person or entity. Grants  
166 may be awarded only to an agency, instrumentality or political subdivision of this state or to an  
167 agency or instrumentality of a political subdivision of this state. The project of an individual or  
168 private person or entity may be certified to receive a low-interest loan paid from bond proceeds.  
169 The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid  
170 and the period of the repayment, shall be determined by the Economic Development Authority  
171 after considering all applicable facts and circumstances.

172 (10) Prior to making each certification, the committee shall conduct at least one public  
173 hearing, which may be held outside of Kanawha County. Notice of the time, place, date and  
174 purpose of the hearing shall be published in at least one newspaper in each of the three  
175 congressional districts at least fourteen days prior to the date of the public hearing.

176 (11) The committee may not certify a project unless the committee finds that the project is  
177 in the public interest and the grant will be used for a public purpose. For purposes of this  
178 subsection, projects in the public interest and for a public purpose include, but are not limited to:

179 (A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;

180 (B) Health clinics and other health facilities;

181 (C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping  
182 facilities and transmission lines;

183 (D) State-of-the-art telecommunications infrastructure;

184 (E) Biotechnical incubators, development centers and facilities;

185 (F) Industrial parks, including construction of roads, sewer, water, lighting and other  
186 facilities;

187 (G) Improvements at state parks, such as construction, expansion or extensive renovation  
188 of lodges, cabins, conference facilities and restaurants;

189 (H) Railroad bridges, switches and track extension or spurs on public or private land  
190 necessary to retain existing businesses or attract new businesses;

191 (I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails,  
192 picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and  
193 baseball, football and soccer fields;

194 (J) State-owned buildings that are registered on the National Register of Historic Places;

195 (K) Retail facilities, including related service, parking and transportation facilities,  
196 appropriate lighting, landscaping and security systems to revitalize decaying downtown areas;  
197 and

198 (L) Other facilities that promote or enhance economic development, educational  
199 opportunities or tourism opportunities thereby promoting the general welfare of this state and its  
200 residents.

201 (12) Prior to the issuance of bonds under this subsection, the committee shall certify to  
202 the Economic Development Authority a list of those certified projects that will receive funds from  
203 the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other  
204 than by legislative enactment.

205 (13) If any proceeds from sale of bonds remain after paying costs and making grants and  
206 loans as provided in this subsection, the surplus may be deposited in an account in the State  
207 Treasury known as the Economic Development Project Bridge Loan Fund administered by the  
208 Economic Development Authority created in article fifteen, chapter thirty-one of this code.  
209 Expenditures from the fund are not authorized from collections but are to be made only in

210 accordance with appropriation by the Legislature and in accordance with the provisions of article  
211 three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-  
212 a of this code. Loan repayment amounts, including the portion attributable to interest, shall be  
213 paid into the fund created in this subdivision.

214 (f) If the commission receives revenues in an amount that is not sufficient to fully comply  
215 with the requirements of subsections (b), (c), (d) and (i) of this section, the commission shall first  
216 make the distribution to the Economic Development Project Fund; second, make the distribution  
217 or distributions to the other funds from which debt service is to be paid; third, make the distribution  
218 to the Education Improvement Fund for appropriation by the Legislature to the PROMISE  
219 Scholarship Fund; and fourth, make the distribution to the General Purpose Account: *Provided,*  
220 That, subject to the provisions of this subsection, to the extent the revenues are not pledged in  
221 support of revenue bonds which are or may be issued, from time to time, under this section, the  
222 revenues shall be distributed on a pro rata basis.

223 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections  
224 (b), (c), (d) and (i) of this section and after transferring to the state Lottery Fund created under  
225 section eighteen of this article an amount equal to any transfer from the state Lottery Fund to the  
226 Excess Lottery Fund pursuant to subsection (f), section eighteen of this article, deposit fifty  
227 percent of the amount by which annual gross revenue deposited in the state Excess Lottery  
228 Revenue Fund exceeds \$225 million in a fiscal year in a separate account in the state Lottery  
229 Fund to be available for appropriation by the Legislature.

230 (h) When bonds are issued for projects under subsection (d) (e) of this section or for the  
231 School Building Authority, infrastructure, higher education or park improvement purposes  
232 described in this section that are secured by profits from lotteries deposited in the state Excess  
233 Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development  
234 Project Fund an amount equal to one-tenth of the projected annual principal, interest and  
235 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the

236 Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued  
237 under this section for the School Building Authority, infrastructure, higher education and park  
238 improvements an amount equal to one-tenth of the projected annual principal, interest and  
239 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the  
240 Lottery Director. In the event there are insufficient funds available in any month to transfer the  
241 amounts required pursuant to this subsection, the deficiency shall be added to the amount  
242 transferred in the next succeeding month in which revenues are available to transfer the  
243 deficiency.

244 (i) Prior to the distributions provided in subsection (d) of this section, the Lottery  
245 Commission shall deposit into the General Revenue Fund amounts necessary to provide  
246 reimbursement for the refundable credit allowable under section twenty-one, article twenty-one,  
247 chapter eleven of this code.

248 (j)(1) The Legislature considers the following as priorities in the expenditure of any surplus  
249 revenue funds:

250 (A) Providing salary and/or increment increases for professional educators and public  
251 employees;

252 (B) Providing adequate funding for the Public Employees Insurance Agency; and

253 (C) Providing funding to help address the shortage of qualified teachers and substitutes in  
254 areas of need, both in number of teachers and in subject matter areas.

255 (2) The provisions of this subsection may not be construed by any court to require any  
256 appropriation or any specific appropriation or level of funding for the purposes set forth in this  
257 subsection.

258 (k) The Legislature further directs the Governor to focus resources on the creation of a  
259 prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription  
260 drug services to senior citizens; by investigating the establishment of purchasing agreements with  
261 other entities to reduce costs; by providing discount prices or rebate programs for seniors; by

262 coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free  
263 drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient  
264 and cost-effective program possible for the senior citizens of this state; and by working closely  
265 with the state's congressional delegation to ensure that a national program is implemented. The  
266 Legislature further directs that the Governor report his or her progress back to the Joint Committee  
267 on Government and Finance on an annual basis until a comprehensive program has been fully  
268 implemented.

269 (l) After all of the expenditures in subsections (a) through (i) of this section have been  
270 satisfied in any fiscal year, the next \$2 million shall be distributed as follows:

271 (1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year  
272 thereafter, forty-six percent shall be placed in the General Purse Fund of a thoroughbred racetrack  
273 licensee that did not participate in the Thoroughbred Development Fund for at least four  
274 consecutive calendar years prior to December 31, 1992, for payment of regular purses;

275 (2) Forty-three and one-half percent shall be distributed to the Racing Commission special  
276 account - unredeemed pari-mutual tickets established on behalf of a thoroughbred racetrack  
277 licensee that did participate in the Thoroughbred Development Fund for at least four consecutive  
278 calendar years prior to December 31, 1992;

279 (3) Five and one-half percent shall be distributed to the Racing Commission special  
280 account - unredeemed pari-mutuel tickets established on behalf of a thoroughbred racetrack  
281 licensee that did not participate in the Thoroughbred Development Fund for at least four  
282 consecutive calendar years prior to December 31, 1992; and

283 (4) Five percent shall be distributed to the West Virginia Racing Commission special  
284 account Greyhound Breeding Development Fund; Provided, That effective July 1, 2017, and  
285 thereafter, the amount required by this subdivision to be distributed to the West Virginia  
286 Greyhound Breeding Development Fund shall remain in the State Excess Lottery Fund.

## ARTICLE 22A. RACETRACK VIDEO LOTTERY.

**§29-22A-3. Definitions.**

1 As used in this article:

2 (a) "Applicant" means any person applying for any video lottery license or permit.

3 (b) "Associated equipment" means any hardware located on a licensed racetrack's  
4 premises which is connected to the video lottery system for the purpose of performing  
5 communication, validation or other functions, but not including the video lottery terminals or the  
6 communication facilities of a regulated public utility.

7 (c) "Background investigation" means a security, criminal and credit investigation of a  
8 person, as defined in this section, who has applied for a video lottery license or permit, or who  
9 has been granted a video lottery license or permit.

10 (d) "Central computer", "central control computer" or "central site system" means any  
11 central site computer provided to and controlled by the commission to which video lottery  
12 terminals communicate for purposes of information retrieval and terminal activation and to disable  
13 programs.

14 (e) "Commission" or "State Lottery Commission" means the West Virginia Lottery  
15 Commission created by article twenty-two of this chapter.

16 (f) "Control" means the authority to direct the management and policies of an applicant or  
17 a license or permit holder.

18 (g) "Costs" means the expenses incurred by the commission in the testing and  
19 examination of video lottery terminals and the performance of background investigations and  
20 other related activities which are charged to and collected from applicants or license or permit  
21 holders.

22 (h) "Director" means the individual appointed by the Governor to provide management and  
23 administration necessary to direct the State Lottery Office.

24 (i) "Disable" or "terminal disable" means the process of executing a shutdown command  
25 from the central control computer which causes video lottery terminals to cease functioning.



(j) "Display" means the visual presentation of video lottery game features on a video lottery terminal in the form of video images, actual symbols or both.

(k) "EPROM" and "erasable programmable read-only memory chips" means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and which can also be in the form of CD-ROM, flash RAM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be the property of the State of West Virginia.

(l) "Floor attendant" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who corrects paper jams and bill jams in video lottery terminals and also provides courtesy services for video lottery players.

(m) "Gross terminal income" means the total amount of cash, vouchers or tokens inserted into the video lottery terminals operated by a licensee, minus the total value of coins and tokens won by a player and game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(n) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia Racing Commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission: Provided, That effective July 1, 2017, and thereafter, "license" or "video lottery license" also means authorization granted pursuant to said article to a racetrack which was licensed to conduct greyhound racing meetings prior to January 1, 1994.

(o) "Lottery" means the public gaming systems or games established and operated by the State Lottery Commission.

(p) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random

number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(q) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(r) "Noncash prize" means merchandise which a video lottery player may be given the option to receive in lieu of cash in exchange for a winning redemption ticket and which shall be assigned a redemption value equal to the actual cost of the merchandise to the licensed racetrack.

(s) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(t) "Pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: *Provided, That* for the purposes of this article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a facility which was licensed prior to January 1, 1994, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the Racing Commission in accordance with the provisions of section twelve-b of said article: *Provided, however, That effective July 1, 2017, and thereafter, "pari-mutuel racing facility," "licensed racetrack", "racetrack", "racing association" or "track" also includes any facility that was licensed to hold dog race meetings prior to January 1, 1994, regardless of whether the facility conducts live racing.*

(u) "Permit" means authorization granted by the commission to a person to function as

either a video lottery manufacturer, service technician or validation manager.

(v) "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.

(w) "Player" means a person who plays a video lottery game on a video lottery terminal at a racetrack licensed by the commission to conduct video lottery games.

(x) "Service technician" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who performs service, maintenance and repair on licensed video lottery terminals in this state.

(y) "Video lottery game" means a commission approved, owned and controlled electronically simulated game of chance which is displayed on a video lottery terminal and which:

(1) Is connected to the commission's central control computer by an online or dialup communication system;

(2) Is initiated by a player's insertion of coins, currency, vouchers or tokens into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credit entitles a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

(3) Allows the player to win additional game play credits, coins or tokens based upon game rules which establish the random selection of winning combinations of symbols or numbers or both and the number of free play credits, coins or tokens to be awarded for each winning combination of symbols or numbers or both;

(4) Is based upon computer-generated random selection of winning combinations based totally or predominantly on chance;

(5) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal.

(z) "Validation manager" means a person who holds a permit issued by the commission

and who performs video lottery ticket redemption services.

(aa) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins, currency, vouchers or tokens as consideration in order for play to be available, and through which terminal device the player may receive free games, coins, tokens or credit that can be redeemed for cash, annuitized payments over time, a noncash prize or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(bb) "Video lottery terminal" means a commission-approved interactive electronic terminal device which is connected with the commission's central computer system, and which is used for the purpose of playing video lottery games authorized by the commission. A video lottery terminal may simulate the play of one or more video lottery games.

(cc) "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

**§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.**

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:

(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia Racing Commission under provisions of article twenty-three, chapter nineteen of this code: Provided, That effective July 1, 2017, and thereafter, an applicant that held a valid dog racing license prior to January 1, 1994, is not required to hold a valid racing license in order to renew a video lottery license.

8           (2) An applicant must be a person of good character and integrity.

9           (3) An applicant must be a person whose background, including criminal record, reputation  
10 and associations, does not pose a threat to the security and integrity of the lottery or to the public  
11 interest of the state. All new applicants for licenses and permits issued by the commission shall  
12 furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of  
13 the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be  
14 furnished by all persons required to be named in the application and shall be accompanied by a  
15 signed authorization for the release of information by the Criminal Investigation Bureau and the  
16 Federal Bureau of Investigation. The commission may require any applicant seeking the renewal  
17 of a license or permit to furnish fingerprints for a national criminal records check by the Criminal  
18 Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. A  
19 person who has been convicted of any violation of article twenty-two of this chapter or of this  
20 article or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible  
21 for any license or permit. The commission shall revoke the license or permit of any person who is  
22 convicted of any such crime after a license or permit is granted.

23           (4) An applicant must be a person who demonstrates the business ability and experience  
24 necessary to establish, operate and maintain the business for which a video lottery license or  
25 permit application is made.

26           (5) An applicant must be a person who has secured adequate financing for the business  
27 for which a video lottery license or permit application is made. The commission shall determine  
28 whether financing is from a source which meets the qualifications of this section and is adequate  
29 to support the successful performance of the duties and responsibilities of the licensed racetrack  
30 or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing  
31 arrangements for the purchase, lease or other acquisition of video lottery terminals and  
32 associated equipment in the degree of detail requested by the commission. A licensed racetrack  
33 shall request commission approval of any change in financing or lease arrangements at least

thirty days before the effective date of the change.

(6) A horse racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a majority of the pari-mutuel clerks for horse racing associations and the representative of a majority of the horse breeders ~~or the representative of a majority of the kennel owners~~ for the applicable racetrack who hold permits required by section two, article twenty-three, chapter nineteen of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the racetrack of video lottery terminals, the electronic computer components of the terminals, the random number generator of the terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is a public document subject to the provisions of article one, chapter twenty-nine-b of this code.

(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant.

60 (3) Key personnel of an applicant, including any executive, employee or agent, having the  
61 power to exercise significant influence over decisions concerning any part of the applicant's  
62 business operation.

63 (c) Applicants must furnish all information, including financial data and documents,  
64 certifications, consents, waivers, individual history forms and other materials requested by the  
65 commission for purposes of determining qualifications for a license or permit. No video lottery  
66 license or permit may be granted to an applicant who fails to provide information and  
67 documentation requested by the commission. The burden of proving qualification for any video  
68 lottery license or permit is on the applicant.

69 (d) Each applicant bears all risks of adverse public notice, embarrassment, criticism,  
70 damages or financial loss which may result from any disclosure or publication of any material or  
71 information obtained by the commission pursuant to action on an application. The applicant shall,  
72 as a part of its application, expressly waive any and all claims against the commission, the State  
73 of West Virginia and the employees of either for damages as a result of any background  
74 investigation, disclosure or publication relating to an application for a video lottery license or  
75 permit.

76 (e) All application, registration and disclosure forms and other documents submitted to the  
77 commission by or on behalf of the applicant for purposes of determining qualification for a video  
78 lottery license or permit shall be sworn to or affirmed before an officer qualified to administer  
79 oaths.

80 (f) An applicant who knowingly fails to reveal any fact material to qualification or who  
81 knowingly submits false or misleading material information is ineligible for a video lottery license  
82 or permit.

**§29-22A-10. Accounting and reporting; commission to provide communications protocol  
data; distribution of net terminal income; remittance through electronic transfer of  
funds; establishment of accounts and nonpayment penalties; commission control**

**of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.**

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

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

12 (1) The commission shall deduct an amount sufficient to reimburse the commission for its  
13 actual costs and expenses incurred in administering racetrack video lottery at the licensed  
14 racetrack and the resulting amount after the deduction is the net terminal income. The amount  
15 deducted for administrative costs and expenses of the commission may not exceed four percent  
16 of gross terminal income: Provided, That the commission shall transfer fifteen percent of the  
17 amount deducted, generated from racetrack video lottery at licensed thoroughbred racetracks, to  
18 the West Virginia Racing Commission's General Administrative Account created in section  
19 eleven, article twenty-three, chapter nineteen of this code. *Provided, however,* That any amounts  
20 deducted by the commission for its actual costs and expenses that exceeds its actual costs and  
21 expenses shall be deposited into the state Lottery Fund. For the fiscal years ending June 30,  
22 2011, through June 30, 2020, the term "actual costs and expenses" may include transfers of up  
23 to \$10 million in surplus allocations for each fiscal year, as calculated by the commission when it



has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), subsection (b) of this section. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter; and

(2) A Licensed Racetrack Modernization Fund is created within the Lottery Fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2020, the commission shall deposit such amounts as are available according to subdivision (1), subsection (b) of this section into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit shall be calculated in the same ratio as each racetrack's apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1), subsection (b) of this section for that year. For each two dollars expended by a licensed racetrack for facility modernization improvements at the racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment from its facility modernization account. If the licensed racetrack's facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term "facility modernization improvements" includes acquisitions of new and unused video lottery terminals and related equipment. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

(c) The amount resulting after the deductions required by subsection (b) of this section

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

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

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

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

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

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

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

(B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in

a municipality within the county since on or before January 1, 1999 shall be divided, if applicable, as follows:

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

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

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

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

(5)(A) The West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten of said article shall receive an equal share of a total of not less than one and one-half percent of the net terminal income. Effective July 1, 2017, the requirements of this paragraph are discontinued.

(B) Effective July 1, 2017, and thereafter, the West Virginia Thoroughbred Development Fund, created under section thirteen-b, article twenty-three, chapter nineteen of this code, shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks.

(C) Effective July 1, 2017, and thereafter, the state Excess Lottery Revenue Fund, created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, shall receive one and one-half percent of the net terminal income originating at licensed dog racetracks;

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

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

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

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

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

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

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

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

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

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

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

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

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

154 fund created under section three, article one-i, chapter twenty-nine of this code: *Provided*, That  
155 only after sufficient moneys have been deposited in the fund to complete the veterans memorial  
156 and to pay in full the annual bonded indebtedness on the veterans memorial, not more than  
157 \$20,000 of the one percent of net terminal income provided in this subdivision shall be deposited  
158 into a special revenue fund in the State Treasury, to be known as the John F. “Jack” Bennett  
159 Fund. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide  
160 for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The  
161 Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of article  
162 three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent,  
163 determine the ability of the surviving spouse to pay for the placement of the marker and setting  
164 forth the standards to be used to determine the priority in which the veterans grave markers will  
165 be placed in the event that there are not sufficient funds to complete the placement of veterans  
166 grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the  
167 veterans memorial, \$100,000 of the one percent of net terminal income provided in this  
168 subdivision shall be deposited in the special fund in the Division of Culture and History created  
169 under section three, article one-i, chapter twenty-nine of this code and be expended by the  
170 Division of Culture and History to establish a West Virginia Veterans Memorial Archives within the  
171 Cultural Center to serve as a repository for the documents and records pertaining to the veterans  
172 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided*,  
173 *however*, That \$500,000 of the one percent of net terminal income shall be deposited in the State  
174 Treasury in a special fund of the Department of Administration, created under section five, article  
175 four, chapter five-a of this code, to be used for construction and maintenance of a parking garage  
176 on the State Capitol Complex; and the remainder of the one percent of net terminal income shall  
177 be deposited in equal amounts in the Capitol Dome and Improvements Fund created under  
178 section two, article four, chapter five-a of this code and Cultural Facilities and Capitol Resources  
179 Matching Grant Program Fund created under section three, article one of this chapter.

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

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

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

194 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater  
195 than the gross terminal income from its operation of video lottery machines, to be electronically  
196 transferred by the commission on dates established by the commission. Upon a licensed  
197 racetrack's failure to maintain this balance, the commission may disable all of a licensed  
198 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall  
199 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax  
200 delinquency under chapter eleven of this code. The interest shall begin to accrue on the date  
201 payment is due to the commission.

202 (e) The commission's central control computer shall keep accurate records of all income  
203 generated by each video lottery terminal. The commission shall prepare and mail to the licensed  
204 racetrack a statement reflecting the gross terminal income generated by the licensee's video  
205 lottery terminals. Each licensed racetrack shall report to the commission any discrepancies

206 between the commission's statement and each terminal's mechanical and electronic meter  
207 readings. The licensed racetrack is solely responsible for resolving income discrepancies  
208 between actual money collected and the amount shown on the accounting meters or on the  
209 commission's billing statement.

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

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

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

231 (i) The commission has the right to examine all accounts, bank accounts, financial



statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

**§29-22A-10b. Distribution of excess net terminal income.**

(a) For all years beginning on or after July 1, 2001, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on June 30, 2001, shall be divided as follows:

(1) The commission shall receive forty-one percent of net terminal income, which the commission shall deposit in the state Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter;

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

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

(A) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1999, shall be divided as follows:

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

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

(B) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999, shall be divided, if applicable, as follows:

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

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

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

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

(5)(A) The West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten of said article shall receive an equal share of a total of not less than one and one-half percent of the net terminal income. Effective July 1, 2017, the requirements of this paragraph are discontinued.

(B) Effective July 1, 2017, and thereafter, the West Virginia Thoroughbred Development Fund, created under section thirteen-b, article twenty-three, chapter nineteen of this code, shall receive one and one-half percent of the net terminal income originating at licensed thoroughbred racetracks.

(C) Effective July 1, 2017, and thereafter, the state Excess Lottery Revenue Fund, created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, shall receive one and one-half percent of the net terminal income originating at licensed dog racetracks;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal

income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-two percent of net terminal income;

(8) The Tourism Promotion Fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30, 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of paragraph (B), subdivision (8), subsection (c), section ten of this article;

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

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

(10) (A) One percent of the net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created under section two, article four, chapter five-a of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created under section three, article one of this chapter; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be distributed pursuant to the provisions of subparagraph (ii), paragraph (B), subdivision (9), subsection (c), section ten of this article.

(b) The commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and section ten of this article.

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

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

(b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent. For the fiscal year beginning after June 30, 2017, and each fiscal year thereafter, the distribution to the special fund established by the licensee and used for payment of regular purses, pursuant to subdivision (2), subsection (c), section ten of this article, only includes amounts to be distributed to each thoroughbred racetrack video lottery licensee for the payment of regular racetrack purses.

Payments shall not be made pursuant to section ten of this article, other than those excepted by

14 this subsection, and are made in lieu thereof in an amount to be determined by appropriation from  
15 the state Excess Lottery Revenue Fund.

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

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

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

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

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

article shall expire and those funds shall remain in the state Excess Lottery Revenue Fund subject to appropriation.

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

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

(a) Notwithstanding any provision of subsection (a), section ten-b of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this article, shall be reduced by one hundred percent. For fiscal year beginning after June 30, 2017, and each fiscal year thereafter, the distribution to the

6 special fund established by the licensee and used for payment of regular purses, pursuant to  
7 subdivision (2) of said subsection, only includes amounts to be distributed to each thoroughbred  
8 racetrack video lottery licensee for the payment of regular racetrack purses. Payments shall not  
9 be made pursuant to section ten-b of this article, other than those excepted by this subsection,  
10 and are made in lieu thereof in an amount to be determined by appropriation from the state Excess  
11 Lottery Revenue Fund.

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

18 (c) 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 (d) 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 of said article.

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

30 (f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the  
31 provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon

certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this article shall expire and those funds shall remain in the state Excess Lottery Revenue Fund subject to appropriation.

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

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

**§29-22A-12. Number and location of video lottery terminals security.**

(a) A racetrack which has been licensed to conduct video lottery games has the right to install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed



racetrack may apply to the commission for authorization to install and operate more than four hundred video lottery terminals. If the commission determines that the installation of additional machines is in the best interest of the licensed racetrack, the Lottery Commission and the citizens of this state, the commission may grant permission to install and operate additional machines.

(b) All video lottery terminals in licensed racetracks shall be physically located as follows:

(1) The video lottery location shall be continuously monitored through the use of a closed-circuit television system capable of recording activity for a continuous 24-hour period. All video tapes shall be retained for a period of at least thirty days;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without prior approval from the commission; and

(5) Operational video lottery terminals may only be located in the building or structure in which the grandstand area of the racetrack is located and in the area of the building or structure where pari-mutuel wagering is permitted under the provisions of article twenty-three, chapter nineteen of this code: *Provided*, That if the commission, before November 1, 1993, has authorized any racetrack to operate video lottery terminals and offer video lottery games in a location which would not conform to the requirements of this subdivision, the racetrack may continue to use video lottery terminals registered with and approved by the commission at that nonconforming location and to offer the games and any variations or composites of the games as may be approved by the commission: *Provided, however, That a racetrack that held a valid dog racing license prior to January 1, 1994, and that no longer conducts live racing, may continue to operate operational video lottery terminals in the building or structure in which the grandstand area of the racetrack*

29 was located and in the area of the building or structure where pari-mutuel wagering was permitted  
30 between January 1, 1994 and June 30, 2017, or in an alternate building or structure approved by  
31 the commission within the county of such racetrack: *Provided further*, That nothing in this  
32 subdivision permits a racetrack to operate operational video lottery terminals or offer video lottery  
33 games in more than one location.

34 (c) A licensee shall allow video lottery games to be played only on days when live racing  
35 is being conducted at the racetrack and/or on televised racing days: *Provided*, That this restriction  
36 shall not apply to any racetrack authorized by the commissioner prior to November 1, 1993, to  
37 operate video lottery terminals and conduct video lottery games.

38 (d) Security personnel shall be present during all hours of operation at each video lottery  
39 terminal location. Each license holder shall employ the number of security personnel the  
40 commission determines is necessary to provide for safe and approved operation of the video  
41 lottery facilities and the safety and well-being of the players.

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

### **§29-22C-3. Definitions.**

1 (a) *Applicability of definitions.* — For the purposes of this article, the words or terms  
2 defined in this section, and any variation of those words or terms required by the context, have  
3 the meanings ascribed to them in this section. These definitions are applicable unless a different  
4 meaning clearly appears from the context in which the word or term is used.

5 (b) *Terms defined.* —

6 (1) “Adjusted gross receipts” means gross receipts from West Virginia Lottery table games  
7 less winnings paid to patrons wagering on the racetrack’s table games.

8 (2) “Applicant” means any person who on his or her own behalf, or on behalf of another,  
9 has applied for permission to engage in any act or activity that is regulated under the provision of  
10 this article for which a license is required by this article or rule of the commission.

11 (3) “Application” means any written request for permission to engage in any act or activity

that is regulated under the provisions of this article submitted in the form prescribed by the commission.

(4) "Background investigation" means a security, criminal and credit investigation of an applicant who has applied for the issuance or renewal of a license pursuant to this article, or a licensee who holds a current license.

(5) "Commission" or "State Lottery Commission" means the West Virginia Lottery Commission created by article twenty-two of this chapter.

(6) "Complimentary" means a service or item provided at no cost or at a reduced price.

(7) "Compensation" means any money, thing of value, or financial benefit conferred or received by a person in return for services rendered, or to be rendered, whether by that person or another.

(8) "Contested case" means a proceeding before the commission, or a hearing examiner designated by the commission to hear the contested case, in which the legal rights, duties, interests or privileges of specific persons are required by law or constitutional right to be determined after a commission hearing, but does not include cases in which the commission issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and does not include rulemaking.

(9) "Control" means the authority directly or indirectly to direct the management and policies of an applicant for a license issued under this article or the holder of a license issued under this article.

(10) "Designated gaming area" means one or more specific floor areas of a licensed racetrack within which the commission has authorized operation of racetrack video lottery terminals or table games, or the operation of both racetrack video lottery terminals and West Virginia Lottery table games.

(11) "Director" means the Director of the West Virginia State Lottery Commission

appointed pursuant to section six, article twenty-two of this chapter.

(12) "Disciplinary action" is an action by the commission suspending or revoking a license, fining, excluding, reprimanding or otherwise penalizing a person for violating this article or rules promulgated by the commission.

(13) "Financial interest" or "financially interested" means any interest in investments, awarding of contracts, grants, loans, purchases, leases, sales or similar matters under consideration for consummation by the commission. A member, employee or agent of the commission will be considered to have a financial interest in a matter under consideration if any of the following circumstances exist:

(A) He or she owns one percent or more of any class of outstanding securities that are issued by a party to the matter under consideration by the commission; or

(B) He or she is employed by an independent contractor for a party to the matter under consideration or consummated by the commission.

(14) "Gaming equipment" means gaming tables, cards, dice, chips, shufflers, drop boxes or any other mechanical, electronic or other device, mechanism or equipment or related supplies used or consumed in the operation of any West Virginia Lottery table game at a licensed racetrack.

(15) "Gross receipts" means the total of all sums including valid or invalid checks, currency, tokens, coupons (excluding match play coupons), vouchers or instruments of monetary value whether collected or uncollected, received by a racetrack with table games from table gaming operations at a race track, including all entry fees assessed for tournaments or other contests.

(16) "Indirect ownership" means an interest a person owns in an entity or in property solely as a result of application of constructive ownership rules without regard to any direct ownership interest (or other beneficial interest) in the entity or property. "Indirect ownership" shall be determined under the same rules applicable to determining whether a gain or loss between related parties is recognized for federal income tax purposes.

(17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility licensed under both article twenty-two-a of this chapter and article twenty-three, chapter nineteen of this code: Provided, That effective July 1, 2017, and thereafter, "licensed racetrack" or "racing association" includes a facility which was licensed prior to January 1, 1994, to hold dog race meetings and which is licensed under article twenty-two-a of this chapter.

(18) "License" means any license applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery table games at a licensed racetrack;

(B) A license to supply a racetrack licensed under this article to operate table games with table gaming equipment or services necessary for the operation of table games;

(C) A license to be employed at a racetrack licensed under this article to operate West Virginia Lottery table games when the employee works in a designated gaming area that has table games or performs duties in furtherance of or associated with the operation of table games at the licensed racetrack; or

(D) A license to provide management services under a contract to a racetrack licensed under this article to operate table games.

(19) "Licensee" means any person who is licensed under any provision of this article.

(20) "Lottery" means the public gaming systems or games regulated, controlled, owned and operated by the state Lottery Commission in the manner provided by general law, as provided in this article and in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter.

(21) "Member" means a commission member appointed to the West Virginia Lottery Commission under article twenty-two of this chapter.

(22) "National criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(23) "Own" means any beneficial or proprietary interest in any real or personal property, including intellectual property, and also includes, but is not limited to, any direct or indirect beneficial or proprietary interest in any business of an applicant or licensee.

(24) "Person" means any natural person, and any corporation, association, partnership, limited liability company, limited liability partnership, trust or other entity, regardless of its form, structure or nature other than a government agency or instrumentality.

(25) "Player" or "Patron" means a person who plays a racetrack video lottery game or a West Virginia Lottery table game at a racetrack licensed under this article to have table games.

(26) "Player's account" means a financial record established by a licensed racetrack for an individual racetrack patron to which the racetrack may credit winnings and other amounts due to the racetrack patron and from which the patron may withdraw moneys due to the patron for purchase of tokens, chips or electronic media or other purposes.

(27) "Racetrack table games license" means authorization granted under this article by the commission to a racetrack that is already licensed under article twenty-two-a of this chapter to operate racetrack video lottery terminals and holds a valid horse racing license or held a valid dog racing license prior to January 1, 1994, granted by the West Virginia Racing Commission pursuant to the provision of article twenty-three, chapter nineteen of this code, which permits the racetrack as an agent of the commission for the limited purpose of operation of West Virginia Lottery table games in one or more designated gaming areas in one or more buildings owned by the licensed racetrack on the grounds where live pari-mutuel racing is conducted by the licensee, or in the case of a licensee that held a valid dog racing license prior to January 1, 1994 and that no longer conducts live racing, on the grounds where live pari-mutuel racing was conducted between January 1, 1994, and June 30, 2017, or in an alternate location approved by the commission within the county of such racetrack: *Provided*, That nothing in this subdivision permits a racetrack to offer West Virginia lottery table games in more than one location.

(28) "Racetrack Table Games Fund" means the special fund in the State Treasury created

in section twenty-seven of this article.

(29) “Significant influence” means the capacity of a person to affect substantially (but not control) either, or both, of the financial and operating policies of another person.

(30) “Supplier” means a person who the commission has identified under legislative rules of the commission as requiring a license to provide a racetrack table games licensee with goods or services to be used in connection with operation of table games.

(31) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(32) “West Virginia Lottery table game” means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar in design or operation and expressly authorized by rule of the commission, including multiplayer electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.

(33) “Winnings” means the total cash value of all property or sums including currency, tokens, or instruments of monetary value paid to players as a direct result of wagers placed on West Virginia Lottery table games.

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

(a) *Racetrack table games licenses.* — The commission may issue up to four racetrack table games licenses to operate West Virginia Lottery table games in accordance with the provisions of this article. The Legislature intends that no more than four licenses to operate a racetrack with West Virginia Lottery table games in this state shall be permitted in any event.

(b) *Grant of license.* — Upon the passage of a local option election in a county in accordance with the provisions of section seven of this article, the commission shall immediately grant a West Virginia Lottery table games license, and a license for the right to conduct West Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow

the licensee to conduct West Virginia table games at the licensed pari-mutuel racetrack identified on the local option election ballot, provided that racetrack holds a valid racetrack video lottery license issued by the commission pursuant to article twenty-two-a of this chapter and a valid racing license granted by the West Virginia Racing Commission pursuant to the provision of article twenty-three, chapter nineteen of this code and has otherwise met the requirements for licensure under the provisions of this article and the rules of the commission: Provided, That effective July 1, 2017, and thereafter, a racetrack that held a valid dog racing license prior to January 1, 1994, is not required to hold a current racing license.

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

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

(e) *Management service contracts.* —

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



35           (2) *Material change.* — The licensed racetrack table games licensee shall submit any  
36 material change in a management service contract previously approved by the commission to the  
37 commission for its approval or rejection before the material change may take effect.

38           (3) *Prohibition on assignment or transfer.* — A management services contract may not be  
39 assigned or transferred to a third party.

40           (4) *Other commission approvals and licenses.* — The duties and responsibilities of a  
41 management services provider under a management services contract may not be assigned,  
42 delegated, subcontracted or transferred to a third party to perform without the prior approval of  
43 the commission. Third parties must be licensed under this article before providing service. The  
44 commission may by rule clarify application of this subdivision and provide exceptions to its  
45 application. The commission shall license and require the display of West Virginia Lottery game  
46 logos on appropriate game surfaces and other gaming items and locations as the commission  
47 considers appropriate.

48           (f) *Coordination of licensed activities.* — In order to coordinate various licensed activities  
49 within racetrack facilities, the following provisions apply to licensed racetrack facilities:

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

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

56           (3) On and after the effective date of this article, vacation of the premises after service of  
57 beverages ceases is not required, notwithstanding to the contrary any inconsistent provisions of  
58 this code or inconsistent rules promulgated by the Alcohol Beverage Control Commissioner with  
59 respect to hours of sale of those beverages, or required vacation of the premises.

60           (g) *Fees, expiration date and renewal.* —

(1) An initial racetrack table games license fee of \$1.5 million shall be paid to the commission at the time of issuance of the racetrack table games license, regardless of the number of months remaining in the license year for which it is issued. All licenses expire at the end of the day on June 30 each year.

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

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

(B) Pays to the commission the annual license renewal fee of \$2.5 million required by this section at the time it files its application for renewal of its license under article twenty-two-a of this chapter; and

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

(3) *Annual license surcharge for failure to construct hotel on premises.* — It is the intent of the Legislature that each racetrack for which a racetrack table games license has been issued be or become a destination tourism resort facility. To that end, it is important that each racetrack for which a racetrack table games license has been issued operate a hotel with significant amenities. Therefore, in addition to all other taxes and fees required by the provisions of this article, there is hereby imposed, upon each racetrack for which a racetrack table games license has been issued an annual license surcharge, payable to the commission in the amount of \$2.5 million if that racetrack does not operate a hotel on its racing property that contains at least one hundred fifty guest rooms with significant amenities within three years of the passage of the local option election in its county authorizing table games at the racetrack, provided the time for completion of the hotel shall be extended by the same number of days as the completion of the hotel is delayed by a force majeure events or conditions beyond the reasonable control of the

racetrack licensee. The surcharge shall be paid upon each renewal of its racetrack table games license made after the expiration of the three-year period, and may be extended by the above force majeure events or conditions, until the racetrack opens a qualifying hotel.

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

(h) *Facility qualifications.* — A racetrack table games licensee shall demonstrate that the racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state and local laws; and (3) meet any other qualifications specified in rules adopted by the commission.

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

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

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

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

(j) *Authorization.* — A racetrack table games license authorizes the licensee act as an

agent of the commission in operating an unlimited amount of West Virginia Lottery table games while the license is active, subject to subsection (d) of this section. A racetrack table games license is not transferable or assignable and cannot be sold or pledged as collateral.

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

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

**§29-22C-10. Duties of racetrack table games licensee.**

(a) *General.* — All racetrack table games licensees shall:

(1) Promptly report to the commission any facts or circumstances related to the operation of a racetrack with West Virginia Lottery table games which constitute a violation of state or federal law;

(2) Conduct all table games activities and functions in a manner which does not pose a threat to the public health, safety or welfare of the citizens of this state and which does not adversely affect the security or integrity of the operation of West Virginia Lottery table games;

(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a racetrack licensee, the commission, the state or employees thereof, arising from the licensee's actions or omission while acting as an agent of the commission by operation of West Virginia Lottery table games pursuant to this article;

(4) Assist the commission in maximizing table games revenues;

(5) Give preference in hiring to existing employees who have expressed an interest in transferring to an entry level West Virginia Lottery Table games job and who have demonstrated

the potential to succeed in that job. To enable these employees to develop the skills necessary to fill an entry level West Virginia Lottery table games position, a licensee shall provide customary industry training for entry level West Virginia Lottery table games jobs. The dates, times, place and manner of providing such training, the appropriate qualifications and certifications, the number of existing employees to be trained, the determination of standards for evaluating successful performance in live auditions for such positions and the determination of who shall be given West Virginia Lottery table game jobs shall be within the sole business discretion of the licensee's management, provided that among equally qualified applicants, as determined by the licensee, length of service shall be the determining factor;

(6) Maintain all records required by the commission;

(7) Upon request by the commission, provide the commission access to all records and the physical premises where the licensee's table games activities and related activities occur, for the purpose of monitoring or inspecting the licensee's activities and the table games, gaming equipment and security equipment;

(8) Keep current in all payments and obligations to the commission; and

(9) Conduct no less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the Racing Commission in accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this code, and otherwise keep in good standing, all licenses and permits granted by the Racing Commission pursuant to section six, article twenty-three, chapter nineteen of this code, and any rules promulgated thereunder: Provided, That effective July 1, 2017, and thereafter, a racetrack that held a valid dog racing license prior to January 1, 1994, is not required to race any minimum number of dates.

(b) *Specific.* — All racetrack table games licensees shall:

(1) Acquire West Virginia Lottery table games and gaming equipment by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the

41 table games and gaming equipment;

42 (2) Permit no person to tamper with or interfere with the operation of any West Virginia  
43 Lottery table game;

44 (3) Ensure that West Virginia Lottery table games are within the sight and control of  
45 designated employees of the licensed racetrack with West Virginia Lottery table games and under  
46 continuous observation by security equipment in conformity with specifications and requirements  
47 of the commission;

48 (4) Ensure that West Virginia Lottery table games are placed and remain placed in the  
49 specific locations within designated gaming areas at the licensed racetrack which have been  
50 approved by the commission. West Virginia Lottery table games at a licensed racetrack shall only  
51 be relocated in accordance with the rules of the commission;

52 (5) Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or  
53 other electronic media;

54 (6) Install, post and display conspicuously at locations within or about the licensed  
55 racetrack with West Virginia Lottery table games, signs, redemption information and other  
56 promotional material as required by the commission; and

57 (7) Assume liability for stolen money from any table game.

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

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

6 (2) Notwithstanding any provision of this article to the contrary, all racetrack table games  
7 license fees received by the commission pursuant to section eight of this article shall be deposited

8 into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the  
9 fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature  
10 solely for the purpose of enabling the aged and disabled citizens of this state to maintain their  
11 residency in the community-based setting through the provision of home and community-based  
12 services.

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

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

17 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred  
18 racetracks with West Virginia Lottery table games to the special funds established by each  
19 thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the  
20 amount being divided on a pro rata basis between the special funds of each thoroughbred  
21 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts  
22 from all greyhound racetracks with West Virginia Lottery table games to the special funds  
23 established by each greyhound racetrack table games licensees for the payment of regular  
24 racetrack purses, the amount being divided equally between the special funds of each greyhound  
25 racetrack table games licensee: Provided, That effective July 1, 2017, and thereafter, the amount  
26 required by this subdivision to be transferred to the special funds established by each greyhound  
27 racetrack table games licensee for the payment of regular racetrack purses shall instead be  
28 transferred to the state Excess Lottery Fund pursuant to section ten-a, article twenty three,  
29 chapter nineteen of this article;

30 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the  
31 West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-  
32 three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development  
33 Fund created under section ten, article twenty-three, chapter nineteen of this code. The total

amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack: Provided, That effective July 1, 2017, and thereafter, the amount required by this subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be transferred to the state Excess Lottery Revenue Fund. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. County commissions may pledge this money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code. The one percent transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: *Provided, That* the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in section two, article two-h, chapter thirteen of this code or to make payments on lottery revenue bonds issued to finance public projects;

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

(A) One half of the amounts transferred under this subdivision shall be allocated to the



60 municipalities within each county having a racetrack table games licensee, based on relative  
61 adjusted gross receipts from West Virginia Lottery table games from those racetracks and the  
62 total amount allocated to the municipalities within a county shall be divided pro rata among the  
63 municipalities based on each municipality's population determined at the most recent United  
64 States decennial census of population: *Provided, That:* (i) For each allocation, when a municipality  
65 is physically located in two or more counties, only that portion of its population residing in the  
66 county where the authorized table games are located shall be considered; (ii) a single municipality  
67 in a county where West Virginia Lottery racetrack table games are played may not receive a total  
68 share under this paragraph that is in excess of seventy-five percent of the total distribution under  
69 this paragraph for the county in which the municipality is located; and (iii) a municipality receiving  
70 moneys under this paragraph may not receive an amount which is less than that received by a  
71 municipality under provisions of subdivision (4), subsection (d) of this section; and

72 (B) One half of the amounts transferred under this subdivision shall be allocated pro rata  
73 to the municipalities within all the counties, having a racetrack table games licensee based on  
74 each municipality's population determined at the most recent United States decennial census of  
75 population: *Provided, That:* (i) A municipality which received funds above its pro rata share  
76 pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this  
77 paragraph; (ii) for each allocation, when a municipality is physically located in two or more  
78 counties, only that portion of its population residing in the county where the authorized table  
79 games are located shall be considered; and (iii) a single municipality in a county where West  
80 Virginia Lottery racetrack games are played may not receive a total share under this paragraph  
81 that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided,*  
82 *however,* That the county board of education of a growth county, as that term is defined in section  
83 three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in  
84 which county a racetrack is located that has participated in the West Virginia Thoroughbred  
85 Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted

gross receipts as provided in this subdivision for the purpose of public projects, as defined in section two, article two-h, chapter thirteen of this code, or to make payments on lottery revenue bonds issued to finance the public projects;

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

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

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

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

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

established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee: Provided, That effective July 1, 2017, and thereafter, the amount required by this subdivision to be transferred to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses shall instead be transferred to the state Excess Lottery Fund pursuant to section ten-a, article twenty three, chapter nineteen of this article;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code: Provided, That effective July 1, 2017, and thereafter, the amount required by this subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be transferred to the state Excess Lottery Revenue Fund pursuant to section ten-a, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The money transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: Provided, That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive

one half of that county's share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

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

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: *Provided, That:* (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section.

(B) One half of the money transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: *Provided, That:* (i) A municipality which received funds above its pro rata share pursuant to subparagraph (iii), paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of

its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph.

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

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

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

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

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

194 (2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from  
195 the individual licensed racetracks for and on behalf of all employees of each licensed racing  
196 association, into a special fund to be established by the Racing Commission to be used for  
197 payment into the pension plan for all employees of each licensed racing association;

198 (3) Transfer ten percent, to be divided and paid in equal shares, to each county  
199 commission in the state that is not eligible to receive a distribution under subdivision (4),  
200 subsection (b) of this section: *Provided*, That funds transferred to county commissions under this  
201 subdivision shall be used only to pay regional jail expenses and the costs of infrastructure  
202 improvements and other capital improvements: *Provided, however*, That up to fifty percent of  
203 these funds may be pledged to make payments on lottery revenue bonds issued pursuant to  
204 article two-h, chapter thirteen of this code; and

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

212 (e) All expenses of the commission incurred in the administration and enforcement of this  
213 article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-  
214 enforcement agencies for services performed at the request of the commission pursuant to this  
215 article. The commission's expenses associated with a particular racetrack with authorized table

games under this article may not exceed three percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia Lottery racetrack table games under this article and for the fiscal year thereafter, the commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed four percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least \$100,000 but not more than \$500,000 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.

**§29-22C-27a. Changes in distribution of adjusted gross receipts; distributions from excess lottery fund.**

(a) Notwithstanding any provision of section twenty-seven of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to subdivision (1), subsection (d) of that section shall be reduced by one hundred percent. For fiscal year beginning after June 30, 2017, and each fiscal year thereafter, the

5 distribution to the special fund established by the licensee, and used for payment of regular  
6 purses, pursuant to subdivision (2), subsection (c), section twenty-seven of this article only  
7 includes amounts to be distributed to each thoroughbred racetrack table games licensee for the  
8 payment of regular racetrack purses.

9 (b) The total amount of reductions resulting from subsection (a) of this section shall be  
10 paid into the state Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two  
11 of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter,  
12 distributions to be made pursuant to subdivisions (2) and (3), subsection (c), section twenty-seven  
13 of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall  
14 be paid into the state Excess Lottery Revenue Fund.

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

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

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

NOTE: The purpose of this bill is to discontinue the West Virginia Racing Commission special account known as the West Virginia Greyhound Breeding Development Fund; to transfer all moneys in the West Virginia Greyhound Breeding Development Fund to the



state Excess Lottery Revenue Fund for appropriation by the Legislature; to require that all moneys previously required to be directed to the West Virginia Greyhound Breeding Development Fund be redirected to the state Excess Lottery Revenue Fund for appropriation by the Legislature; requiring that upon transfer of moneys from the West Virginia Greyhound Breeding Development Fund to the state Excess Lottery Revenue Fund, a certain amount be withheld and deposited in the special account known as the “administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account;” to require that all moneys previously required to be directed into any fund or paid for the purpose of funding purses, awards or provide any other funding for greyhound races be redirected to the state Excess Lottery Revenue Fund for appropriation by the Legislature; to eliminate the requirement that an applicant for a dog racing license race a minimum number of dates to qualify for such license; to eliminate the requirement that an applicant for a dog racing license race a minimum number of dates to or to contract to receive telecasts and accept wagers; to eliminate the requirement that a video lottery licensee at a dog track must hold a racing license to renew a video lottery license or racetrack table games license; to eliminate the requirement, for a video lottery licensee at a dog track, that operational video lottery must be located in the same building or structure as a racetrack and area where pari-mutuel wagering is permitted; to eliminate the requirement that an applicant for a video lottery license or license renewal at a dog track must provide evidence of the existence of an agreement regarding proceeds from lottery terminals with certain parties; to eliminate the requirement that an applicant for a racetrack table games license at a dog track must race a certain number of days to qualify for such license; and to eliminate the requirement that a video lottery licensee at a dog track must hold a racing license to conduct simulcast racing.

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