

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 274

FISCAL
NOTE

BY SENATOR KARNES

[Introduced January 15, 2018; Referred
to the Committee on the Judiciary; and then 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:

CHAPTER 19. AGRICULTURE.

PART V. LICENSE AND PERMIT PROCEDURES.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-3. Definitions.

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

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

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

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

9 (4) "Horse race meeting" means the whole period of time for which a license is required
10 by the provisions of §19-23-1 of this code;

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

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

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

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

20 (9) "License" means the license required by the provisions of §19-23-1 of this code or the
21 license required to conduct televised racing pursuant to §19-23-12b of this code;

22 (10) "Permit" means the permit required by the provisions of §19-23-2 of this code;

23 (11) "Construction permit" means the construction permit required by the provisions of
24 §19-23-18 of this code;

25 (12) "Licensee" means any racing association holding a license required by the provisions
26 of §19-23-1 of this code and issued under the provisions of this article;

27 (13) "Permit holder" means any person holding a permit required by the provisions of §19-
28 23-2 of this code and issued under the provisions of this article;

29 (14) "Construction permit holder" means any person holding a construction permit required

30 by the provisions of §19-23-18 of this code and issued under the provisions of this article;

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

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

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

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

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

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

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

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

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

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

54 (A) Foaled in West Virginia; or

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

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

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

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

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

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

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

75 (28) The "owner of an accredited West Virginia sire" is the owner of record at the time the
76 offspring is conceived;

77 (29) The "owner of an accredited West Virginia horse" means the owner at the time the
78 horse earned designated purses to qualify for restricted purse supplements provided in §19-23-
79 13b of this code;

80 (30) "Registered greyhound owner" means an owner of a greyhound that is registered with
81 the National Greyhound Association;

82 (31) "Fund" means the West Virginia Thoroughbred Development Fund established in
83 §19-23-13b of this code; and

84 (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.**

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

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

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

13 (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, 2018, 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 §19-23-2 of
40 this code 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
19 at four-tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each
20 day during all other months, shall be calculated at one and four-tenths percent of the pool:
21 *Provided*, That out of the amount realized from the three-tenths of one percent decrease in the
22 tax effective for fiscal year 1991 and thereafter, which decrease correspondingly increases the
23 amount of commission retained by the licensee, the licensee shall annually expend or dedicate:
24 (i) One half of the realized amount for capital improvements in its barn area at the track, subject
25 to the Racing Commission's prior approval of the plans for the improvements; and (ii) the
26 remaining one half of the realized amount for capital improvements as the licensee may determine

27 appropriate at the track. The term "capital improvement" shall be as defined by the Internal
28 Revenue Code: *Provided, however,* That any racing association operating a horse racetrack in
29 this state having an average daily pari-mutuel pool on horse racing of \$280,000 or less per day
30 for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel
31 pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the
32 horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-
33 mutuel pool not exceeding \$300,000 the daily pari-mutuel pool tax shall be \$1,000 plus the
34 otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if
35 any, in excess of \$300,000: *Provided further,* That upon the effective date of the reduction of the
36 daily pari-mutuel pool tax to \$1,000 from the former \$2,000, the association or licensee shall daily
37 deposit \$500 into the special fund for regular purses established by §19-23-9(b)(1) of this code:
38 *And provided further,* That if an association or licensee qualifying for the foregoing alternate tax
39 conducts more than one racing performance, each consisting of up to thirteen races in a calendar
40 day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of
41 this section and the alternate tax in this subsection for each performance: *And provided further,*
42 That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund
43 established by §19-23-13b of this code: *And provided further,* That this exclusion shall not apply
44 to any thoroughbred racetrack at which the licensee has participated in the West Virginia
45 Thoroughbred Development Fund for more than four consecutive years prior to December 31,
46 1992.

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

53 each day in all pari-mutuel pools conducted or made at any and every harness race meeting of
54 the licensee licensed under the provisions of this article.

55 (d) Any racing association licensed by the Racing Commission to conduct dog racing and
56 permitting and conducting pari-mutuel wagering under the provisions of this article shall, in
57 addition to the daily license tax required under subsection (a) of this section, pay to the Racing
58 Commission, from the commission deducted each day by the licensee from the pari-mutuel pools
59 on dog racing, as a tax, four percent of the first \$50,000 or any part thereof of the pari-mutuel
60 pools, five percent of the next \$50,000 of the pari-mutuel pools, six percent of the next \$100,000
61 of the pari-mutuel pools, seven percent of the next \$150,000 of the pari-mutuel pools, and eight
62 percent of all over \$350,000 wagered each day: *Provided*, That the licensee shall deduct daily
63 from the pari-mutuel tax an amount equal to one-tenth of one percent of the daily pari-mutuel
64 pools in dog racing in fiscal year 1990; fifteen-hundredths of one percent in fiscal year 1991; two-
65 tenths of one percent in fiscal year 1992; one quarter of one percent in fiscal year 1993; and three-
66 tenths of one percent in fiscal year 1994 and every fiscal year thereafter. The amounts deducted
67 shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking
68 institution of its choice in a special account to be known as West Virginia Racing Commission-
69 Special Account-West Virginia Greyhound Breeding Development Fund: *Provided*, That effective
70 July 1, 2018, 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 §19-23-10a of this code:
73 *Provided, however*, That effective July 1, 2018, 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, 2018, 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 §19-23-10a of this code. 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 §19-23-9 of this code. The
100 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
149 Virginia Racing Commission by July 1, each year shall establish and announce the minimum
150 number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West
151 Virginia dog tracks must have on their racing active list during the calendar year following such
152 action. The minimum number may vary from dog track to dog track. The minimum number shall
153 be established after consultation with the West Virginia Greyhound Owners and Breeders
154 Association and kennel owners and operators. Factors to be considered in establishing this
155 minimum number shall be the number of individually registered accredited West Virginia whelped
156 greyhounds whelped in the previous two years. The number of all greyhounds seeking

157 qualification at each West Virginia dog track, the ratio of active running greyhounds to housed
158 number of greyhounds at each West Virginia dog track, and the size and number of racing kennels
159 at each West Virginia dog track. Any greyhound racing kennel not having the minimum number
160 of accredited West Virginia whelped greyhounds determined by the West Virginia Racing
161 Commission on their active list shall only be permitted to race the maximum allowable number on
162 the active list less the number of accredited West Virginia whelped greyhounds below the
163 established minimum number. Consistent violations of this minimum requirement may be
164 reviewed by the Racing Commission and may constitute cause for denial or revocation of a
165 kennel's racing license. The Racing Commission shall oversee and approve racing schedules
166 and purse amounts.

167 Ten percent of the deposits into the Greyhound Breeding Development Fund beginning
168 July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission
169 and placed in a special revenue account hereby created in the State Treasury called the
170 Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs
171 to include Spaying and Neutering Account. The Racing Commission is authorized to expend the
172 moneys deposited in the Administration, Promotion, Education, Capital Improvement and
173 Greyhound Adoption Programs to include Spaying and Neutering Account at such times and in
174 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 this section and §19-23-9 of this code, 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, 2018, the West
2 Virginia Greyhound Breeding Development Fund created in §19-23-10 of this code is
3 discontinued. On or before July 1, 2018, all amounts remaining in the West Virginia Greyhound
4 Breeding Development Fund shall be transferred to the State Excess Lottery Revenue Fund
5 created in §29-22-18a of this code for appropriation by the Legislature: *Provided*, That \$1 million
6 shall be withheld by the Racing Commission and placed in the special revenue account called the
7 Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs
8 to include Spaying and Neutering Account created in §19-23-10(d) of this code, to be allocated

9 specifically to facilitate care for and adoption of, or placement in, no-kill animal shelters of
10 accredited West Virginia whelped greyhounds actively running at each West Virginia dog track.

11 (b) Notwithstanding any other provision of this code, effective July 1, 2018, and thereafter,
12 all amounts required to be deposited into the West Virginia Greyhound Breeding Development
13 Fund prior to the enactment of this section shall, in lieu thereof, be deposited into the State Excess
14 Lottery Revenue Fund for appropriation by the Legislature: *Provided*, That net terminal lottery
15 income shall be distributed as provided in §29-22A-10(c)(5) of this code and, §29-22A-10b(a)(5)
16 of this code.

17 (c) Notwithstanding any other provision of this code, effective July 1, 2018, and thereafter,
18 all amounts required to be deposited into any fund or paid for the purpose of funding purses,
19 awards or providing any other funding for greyhound races shall, in lieu thereof, be deposited into
20 State Excess Lottery Fund for appropriation by the Legislature.

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

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a calendar day, assigned by the commission, at a
3 licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at other
4 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 §19-23-2
7 of this code; 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, 2018, 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
21 at 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 §19-23-12a of this code. The contract must receive the approval of the
48 representative of the majority of the owners and trainers who hold permits required by §19-23-2
49 of this code 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 §29A-3-1 et seq. of this code, as it deems necessary to implement and
55 efficiently administer the requirement of subdivision (2) of this subsection: *Provided*, That the rules
56 are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at live
57 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 §19-23-10 of this code; or (ii) a daily license tax of \$1,250. For each televised
79 racing day on which the total pari-mutuel pool is \$100,000 or less, the licensee shall pay a daily
80 license tax of \$500 plus an additional license tax of \$100 for each \$10,000, or part thereof, that
81 the pari-mutuel pool exceeds \$50,000, but does not exceed \$100,000. The calculation of the total
82 pari-mutuel pool for purposes of this subsection shall include only one half of all wagers placed
83 at a licensed racetrack in this state on televised races conducted at another licensed racetrack
84 within this state. Payments of the tax imposed by this section are subject to the requirements of
85 §10-23-10(e) of this code.

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

92 (3) From the licensee commissions authorized by subsection (c) of this section, after
93 payments are made in accordance with the provisions of subdivisions (1) and (2) of this
94 subsection, thoroughbred licensees shall pay, one-half percent of net simulcast income and for
95 each televised racing day on or after July 1, 1997, an additional five and one-half percent of net
96 simulcast income into the West Virginia Thoroughbred Development Fund established by the
97 Racing Commission according to §19-23-13b of this code: *Provided*, That no licensee qualifying
98 for the alternate tax provisions of §19-23-10(b) shall be required to make the payments unless
99 the licensee has participated in the West Virginia Thoroughbred Development Fund for a period
100 of more than four consecutive calendar years prior to December 31, 1992. For the purposes of
101 this section, the term “net simulcast income” means the total commission deducted each day by
102 the licensee from the pari-mutuel pools on simulcast horse or dog races, less direct simulcast
103 expenses, including, but not limited to, the cost of simulcast signals, telecommunication costs and
104 decoder costs.

105 (f) After deducting the tax and other payments required by subsection (e) of this section,
106 the amount required to be paid under the terms of the contract with the host racing association
107 and the cost of transmission, the horse racing association shall make a deposit equal to fifty
108 percent of the remainder into the purse fund established under the provisions of §19-23-9(b)(1)
109 of this code. After deducting the tax and other payments required by subsection (e) of this section,
110 dog racetracks shall pay an amount equal to two-tenths of one percent of the daily simulcast pari-
111 mutuel pool to the West Virginia Racing Commission Special Account-West Virginia Greyhound
112 Breeding Development Fund: *Provided*, That effective July 1, 2018, and thereafter, the amount
113 required to be paid to the West Virginia Greyhound Breeding Development Fund by this
114 subsection shall instead be paid to the state Excess Lottery Revenue Fund pursuant to §19-23-
115 10a of this code.

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

118 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.

1 (a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-
2 mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or
3 the televised racing day, as the case may be, in connection with which the tickets were issued,
4 shall be turned over by the licensee to the Racing Commission within fifteen days after the
5 expiration of the ninety-day period, and the licensee shall give any information required by the
6 Racing Commission concerning the outstanding and unredeemed tickets. The moneys shall be
7 deposited by the Racing Commission in a banking institution of its choice in a special account to
8 be known as West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel
9 Tickets. Notice of the amount, date and place of each deposit shall be given by the Racing
10 Commission, in writing, to the State Treasurer. The Racing Commission shall then cause to be
11 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 §59-3-1 *et seq.* of this code, and the publication area for the publication
17 shall be the county in which the horse or dog race meeting was held and the county in which the
18 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 §29-22-18a of this code shall be used for claims
32 received pursuant to this subsection by the Racing Commission each calendar quarter: *Provided,*
33 That the first distribution after the effective date of amendments to this section made during the
34 2010 regular legislative session shall not occur until February 2011 and then each calendar
35 quarter thereafter. Any claims made pursuant to this subsection must be submitted to the Racing
36 Commission no later than fifteen days after the race where the funds are awarded. The funds in
37 the two special accounts - unredeemed pari-mutuel tickets shall be distributed based on claims
38 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, 2018, and thereafter, the balance shall instead be distributed to the state Excess Lottery
79 Revenue Fund pursuant to §19-23-10a of this code. The deposit made pursuant to this subsection
80 does not create a continuing obligation of payment except to the extent that there are unredeemed
81 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 moneys from the Racing
92 Commission Special Account - Unredeemed Pari-Mutuel Tickets for deposits received in each of
93 those accounts that have been credited with unredeemed pari-mutuel tickets for races completed
94 at any licensee racetrack as of June 30, 2010, and any other moneys appropriated by the
95 Legislature. Unredeemed pari-mutuel tickets for races completed after June 30, 2010 must remain
96 in the special accounts - unredeemed pari-mutuel tickets to satisfy future payments pursuant to
97 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 §19-23-13b of this code.

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 §19-23-10 of this code, 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 §29-22A-10(c)(6) of this code,
2 and §29-22A-10b(a)(5) of this code after the effective date of this section together with the balance
3 in the bank account previously established by the commission to receive those funds shall be
4 deposited in a banking institution of its choice in a special account to be known as West Virginia
5 Racing Commission Racetrack Video Lottery Account. Notice of the amount, date and place of
6 each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

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

8 (1) For each fiscal year, the first \$800,000 deposited in the separate account plus the
9 amount then remaining of the June 30, 1997, balance in the separate account previously
10 established for the West Virginia breeders classic under §19-23-13 of this code, shall be used by
11 the commission for promotional activities, advertising, administrative costs and purses for the
12 West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses
13 qualifying under the West Virginia breeders program for each stake race, based solely on the
14 horses' sex, age and earnings.

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

19 (3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this
20 subsection have been deposited into separate bank accounts for use in connection with the West
21 Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the commission shall
22 return to each racetrack all additional amounts deposited which originate during that fiscal year
23 from each respective racetrack pursuant to §29-22A-10(c)(6) of this code, which returned excess
24 funds shall be used as follows:

25 (A) For each dog racetrack, one half of the returned excess funds shall be used for capital
26 improvements at the racetrack and one half of the returned excess funds shall be deposited into
27 the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding
28 Development Fund: Provided, That effective July 1, 2018, and thereafter, the funds required by
29 this paragraph to be deposited in the West Virginia Racing Commission Special Account - West
30 Virginia Greyhound Breeding Development Fund shall instead be deposited into the state Excess
31 Lottery Revenue Fund pursuant to §19-23-10a of this code.

32 (B) At those thoroughbred racetracks that have participated in the West Virginia
33 Thoroughbred Development Fund for a period of more than four consecutive calendar years prior

34 to December 31, 1992, one half of the returned excess funds shall be used for capital
35 improvements at the licensee's racetrack and one half of the returned excess funds shall be
36 equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia
37 Thoroughbred Development Fund.

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

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

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

1 (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 §29-22A-10b and §29-22A-
5 10c of this code and under §29-22B-1 *et seq.* of this code except the amounts due the commission
6 under §29-22B-1408(a)(1) of this code shall be deposited in the State Treasury and placed into
7 the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided
8 in this section for the purposes stated in this section and shall not be treated by the State Auditor
9 and the State Treasurer as part of the general revenue of the state.

10 (b) For the fiscal year beginning July 1, 2002, the commission shall deposit: (1) \$65 million
11 into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State

12 Treasury to be known as the General Purpose Account to be expended pursuant to appropriation
13 of the Legislature; (2) \$10 million into the Education Improvement Fund for appropriation by the
14 Legislature to the PROMISE Scholarship Fund created in §18-7-7 of this code; (3) \$19 million into
15 the Economic Development Project Fund created in subsection (e) of this section for the issuance
16 of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) \$20
17 million into the School Building Debt Service Fund created in §18-9D-6 of this code for the
18 issuance of revenue bonds; (5) \$40 million into the West Virginia Infrastructure Fund created in
19 §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million
20 into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the
21 State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1, 2003,
22 the commission shall deposit: (1) \$65 million into the General Purpose Account to be expended
23 pursuant to appropriation of the Legislature; (2) \$17 million into the Education Improvement Fund
24 for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of
25 this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e)
26 of this section for the issuance of revenue bonds and to be spent in accordance with the provisions
27 of said subsection; (4) \$20 million into the School Building Debt Service Fund created in §18-9D-
28 6 of this code for the issuance of revenue bonds; (5) \$40 million into the West Virginia
29 Infrastructure Fund created in §31-15A-6 of this code to be spent in accordance with the
30 provisions of §31-15A-1 *et seq.*; (6) \$10 million into the Higher Education Improvement Fund for
31 Higher Education; and (7) \$7 million into the state Park Improvement Fund for Park
32 Improvements.

33 (c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the
34 fiscal year ending June 30, 2009, the commission shall deposit: (1) \$65 million into the General
35 Purpose Account to be expended pursuant to appropriation of the Legislature; (2) \$27 million into
36 the Education Improvement Fund for appropriation by the Legislature to the PROMISE
37 Scholarship Fund created in §18C-7-7 of this code; (3) \$19 million into the Economic

38 Development Project Fund created in subsection (e) of this section for the issuance of revenue
39 bonds and to be spent in accordance with the provisions of said subsection; (4) \$19 million into
40 the School Building Debt Service Fund created in §18-9D-6 of this code for the issuance of
41 revenue bonds: *Provided*, That for the fiscal year beginning July 1, 2008, and subsequent fiscal
42 years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this
43 subsection and instead \$19 million shall be deposited into the Excess Lottery School Building
44 Debt Service Fund; (5) \$40 million into the West Virginia Infrastructure Fund created in §31-15A-
45 9 of this code to be spent in accordance with the provisions of said article; (6) \$10 million into the
46 Higher Education Improvement Fund for Higher Education; and (7) \$5 million into the State Park
47 Improvement Fund for Park Improvements. No portion of the distributions made as provided in
48 this subsection and subsection (b) of this section, except distributions made in connection with
49 bonds issued under subsection (e) of this section, may be used to pay debt service on bonded
50 indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment
51 of debt service on the bonds through statutory enactment or the adoption of a concurrent
52 resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption
53 of a resolution that expressly authorizes issuance of the bonds and payment of debt service on
54 the bonds with funds distributed under this subsection and subsection (b) of this section, except
55 distributions made in connection with bonds issued under subsection (d) of this section, the
56 distributions may be used only to fund capital improvements that are not financed by bonds and
57 only pursuant to appropriation of the Legislature.

58 (d) For the fiscal year beginning July 1, 2009, and subsequent fiscal years, the commission
59 shall deposit: (1) \$65 million into the General Purpose Account to be expended pursuant to
60 appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund for
61 appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of this
62 code; (3) \$19 million into the Economic Development Project Fund created in subsection (e) of
63 this section for the issuance of revenue bonds and to be spent in accordance with the provisions

64 of said subsection; (4) \$19 million into the Excess Lottery School Building Debt Service Fund
65 created in §18-9D-6 of this code; (5) \$40 million into the West Virginia Infrastructure Fund created
66 in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10
67 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into
68 the State Park Improvement Fund for Park Improvements. No portion of the distributions made
69 as provided in this subsection and subsection (b) of this section, except distributions made in
70 connection with bonds issued under subsection (e) of this section, may be used to pay debt
71 service on bonded indebtedness until after the Legislature expressly authorizes issuance of the
72 bonds and payment of debt service on the bonds through statutory enactment or the adoption of
73 a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment
74 or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt
75 service on the bonds with funds distributed under this subsection and subsection (b) of this
76 section, except distributions made in connection with bonds issued under subsection (e) of this
77 section, the distributions may be used only to fund capital improvements that are not financed by
78 bonds and only pursuant to appropriation of the Legislature.

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

85 (1) The West Virginia Economic Development Authority created and provided for in §31-
86 15-1 *et seq.* of this code shall, by resolution, in accordance with the provisions of this article and
87 §31-15-1 *et seq.* of this code, and upon direction of the Governor, issue revenue bonds of the
88 Economic Development Authority in no more than two series to pay for all or a portion of the cost
89 of constructing, equipping, improving or maintaining projects under this section or to refund the

90 bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which
91 are secured by State Excess Lottery Revenue Fund proceeds shall mature at a time or times not
92 exceeding thirty years from their respective dates. The principal of and the interest and
93 redemption premium, if any, on the bonds shall be payable solely from the special fund provided
94 in this section for the payment.

95 (2) The special revenue fund named the Economic Development Project Fund into which
96 shall be deposited the amounts to be deposited in the fund as specified in subsections (b), (c)
97 and (d) of this section is continued. The Economic Development Project Fund shall consist of all
98 such moneys, all appropriations to the fund, all interest earned from investment of the fund and
99 any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be
100 pledged to the repayment of the principal, interest and redemption premium, if any, on any
101 revenue bonds or refunding revenue bonds authorized by this section, including any and all
102 commercially customary and reasonable costs and expenses which may be incurred in
103 connection with the issuance, refunding, redemption or defeasance of the bonds. The West
104 Virginia Economic Development Authority may further provide in the resolution and in the trust
105 agreement for priorities on the revenues paid into the Economic Development Project Fund that
106 are necessary for the protection of the prior rights of the holders of bonds issued at different times
107 under the provisions of this section. The bonds issued pursuant to this subsection shall be
108 separate from all other bonds which may be or have been issued, from time to time, under the
109 provisions of this article.

110 (3) After the West Virginia Economic Development Authority has issued bonds authorized
111 by this section and after the requirements of all funds have been satisfied, including any coverage
112 and reserve funds established in connection with the bonds issued pursuant to this subsection,
113 any balance remaining in the Economic Development Project Fund may be used for the
114 redemption of any of the outstanding bonds issued under this subsection which, by their terms,
115 are then redeemable or for the purchase of the outstanding bonds at the market price, but not to

116 exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be
117 immediately canceled and shall not again be issued.

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

123 (5) The West Virginia Economic Development Authority shall expend the bond proceeds
124 from the revenue bond issues authorized and directed by this section for projects certified under
125 the provision of this subsection: *Provided*, That the bond proceeds shall be expended in
126 accordance with the requirements and provisions of §21-5A-1 *et seq.* of this code and either §5-
127 22-1 *et seq.* of this code or §5-22A-1 *et seq.* of this code, as the case may be: *Provided, however*,
128 That if the bond proceeds are expended pursuant to §5-22A-1 *et seq.* of this code and if the
129 Design-Build Board created under ~~said~~ that article determines that the execution of a design-build
130 contract in connection with a project is appropriate pursuant to the criteria set forth in said article
131 and that a competitive bidding process was used in selecting the design builder and awarding the
132 contract, the determination shall be conclusive for all purposes and shall be considered to satisfy
133 all the requirements of said article.

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

141 (7) Applications for grants submitted on or before July 1, 2002, shall be considered refiled

142 with the committee. Within ten days from the effective date of this section as amended in the year
143 2003, the lead applicant shall file with the committee any amendments to the original application
144 that may be necessary to properly reflect changes in facts and circumstances since the
145 application was originally filed with the committee.

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

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

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

151 (C) The ability of the project to create or retain jobs, considering the number of jobs, the
152 type of jobs, whether benefits are or will be paid, the type of benefits involved and the
153 compensation reasonably anticipated to be paid persons filling new jobs or the compensation
154 currently paid to persons whose jobs would be retained;

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

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

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

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

167 (10) Prior to making each certification, the committee shall conduct at least one public

168 hearing, which may be held outside of Kanawha County. Notice of the time, place, date and
169 purpose of the hearing shall be published in at least one newspaper in each of the three
170 congressional districts at least fourteen days prior to the date of the public hearing.

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

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

175 (B) Health clinics and other health facilities;

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

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

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

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

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

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

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

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

190 (K) Retail facilities, including related service, parking and transportation facilities,
191 appropriate lighting, landscaping and security systems to revitalize decaying downtown areas;
192 and

193 (L) Other facilities that promote or enhance economic development, educational

194 opportunities or tourism opportunities thereby promoting the general welfare of this state and its
195 residents.

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

200 (13) If any proceeds from sale of bonds remain after paying costs and making grants and
201 loans as provided in this subsection, the surplus may be deposited in an account in the State
202 Treasury known as the Economic Development Project Bridge Loan Fund administered by the
203 Economic Development Authority created in article fifteen, chapter thirty-one of this code.
204 Expenditures from the fund are not authorized from collections but are to be made only in
205 accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-
206 1 *et seq.* of this code and upon fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Loan
207 repayment amounts, including the portion attributable to interest, shall be paid into the fund
208 created in this subdivision.

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

218 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections
219 (b), (c), (d) and (i) of this section and after transferring to the State Lottery Fund created under

220 §29-22-18 of this code an amount equal to any transfer from the State Lottery Fund to the Excess
221 Lottery Fund pursuant to §29-22-18(f) of this code, deposit fifty percent of the amount by which
222 annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds \$225 million
223 in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation
224 by the Legislature.

225 (h) When bonds are issued for projects under subsection (d) (e) of this section or for the
226 School Building Authority, infrastructure, higher education or park improvement purposes
227 described in this section that are secured by profits from lotteries deposited in the State Excess
228 Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development
229 Project Fund an amount equal to one-tenth of the projected annual principal, interest and
230 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the
231 Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued
232 under this section for the School Building Authority, infrastructure, higher education and park
233 improvements an amount equal to one-tenth of the projected annual principal, interest and
234 coverage requirements on any and all revenue bonds issued, or to be issued as certified to the
235 Lottery Director. In the event there are insufficient funds available in any month to transfer the
236 amounts required pursuant to this subsection, the deficiency shall be added to the amount
237 transferred in the next succeeding month in which revenues are available to transfer the
238 deficiency.

239 (i) Prior to the distributions provided in subsection (d) of this section, the Lottery
240 Commission shall deposit into the General Revenue Fund amounts necessary to provide
241 reimbursement for the refundable credit allowable under §11-21-21 of this code.

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

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

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

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

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

252 (k) The Legislature further directs the Governor to focus resources on the creation of a
253 prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription
254 drug services to senior citizens; by investigating the establishment of purchasing agreements with
255 other entities to reduce costs; by providing discount prices or rebate programs for seniors; by
256 coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free
257 drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient
258 and cost-effective program possible for the senior citizens of this state; and by working closely
259 with the state's congressional delegation to ensure that a national program is implemented. The
260 Legislature further directs that the Governor report his or her progress back to the Joint Committee
261 on Government and Finance on an annual basis until a comprehensive program has been fully
262 implemented.

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

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

269 (2) Forty-three and one-half percent shall be distributed to the Racing Commission special
270 account - unredeemed pari-mutual tickets established on behalf of a thoroughbred racetrack
271 licensee that did participate in the Thoroughbred Development Fund for at least four consecutive

272 calendar years prior to December 31, 1992;

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

277 (4) Five percent shall be distributed to the West Virginia Racing Commission special
278 account Greyhound Breeding Development Fund: Provided, That effective July 1, 2017, and
279 thereafter, the amount required by this subdivision to be distributed to the West Virginia
280 Greyhound Breeding Development Fund shall remain in the Sate 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 §29-22-1 *et seq.*

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.

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

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

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

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

40 (n) "License" or "video lottery license" means authorization granted by the commission to
41 a racetrack which is licensed by the West Virginia Racing Commission to conduct thoroughbred

42 or greyhound racing meetings pursuant to ~~article~~ §19-23-1 *et seq.* of this code permitting the
43 racetrack to operate video lottery terminals authorized by the commission: Provided, That
44 effective July 1, 2018 and thereafter, “license” or “video lottery license” also means authorization
45 granted pursuant to said article to a racetrack which was licensed to conduct greyhound racing
46 meetings prior to January 1, 1994.

47 (o) “Lottery” means the public gaming systems or games established and operated by the
48 State Lottery Commission.

49 (p) “Manufacturer” means any person holding a permit granted by the commission to
50 engage in the business of designing, building, constructing, assembling or manufacturing video
51 lottery terminals, the electronic computer components of the video lottery terminals, the random
52 number generator of the video lottery terminals, or the cabinet in which it is housed, and whose
53 product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia,
54 and who contracts directly with the licensee for the sale, lease or other assignment to a licensed
55 racetrack in West Virginia.

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

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

63 (s) “Own” means any beneficial or proprietary interest in any property or business of an
64 applicant or licensed racetrack.

65 (t) “Pari-mutuel racing facility”, “licensed racetrack”, “racetrack” or “track” means a facility
66 where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized
67 pursuant to the provisions of §19-23-1 *et seq.* of this code: *Provided, That* for the purposes of this

68 article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a
69 facility which was licensed prior to January 1, 1994, to hold horse or dog race meetings, and which
70 conducts not less than two hundred twenty live racing dates for each horse or dog race meeting
71 or such other number of live racing dates as may be approved by the Racing Commission in
72 accordance with the provisions of §19-23-12b of this code: Provided, however, That effective July
73 1, 2018, and thereafter, "pari-mutuel racing facility," "licensed racetrack", "racetrack", "racing
74 association" or "track" also includes any facility that was licensed to hold dog race meetings prior
75 to January 1, 1994, regardless of whether the facility conducts live racing.

76 (u) "Permit" means authorization granted by the commission to a person to function as
77 either a video lottery manufacturer, service technician or validation manager.

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

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

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

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

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

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

93 (3) Allows the player to win additional game play credits, coins or tokens based upon game

94 rules which establish the random selection of winning combinations of symbols or numbers or
95 both and the number of free play credits, coins or tokens to be awarded for each winning
96 combination of symbols or numbers or both;

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

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

102 (z) "Validation manager" means a person who holds a permit issued by the commission
103 and who performs video lottery ticket redemption services.

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

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

118 (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.

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

3 (1) An applicant for a video lottery license must hold a valid racing license granted by the
4 West Virginia Racing Commission under provisions of §19-23-1 *et seq.* of this code: Provided,
5 That effective July 1, 2018, and thereafter, an applicant that held a valid dog racing license prior
6 to January 1, 1994, is not required to hold a valid racing license in order to renew a video lottery
7 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 §29-22-1 *et seq.* of this code or of this article
20 or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible for any
21 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
34 thirty days before the effective date of the change.

35 (6) A horse racetrack applying for a video lottery license or a license renewal must present
36 to the commission evidence of the existence of an agreement, regarding the proceeds from video
37 lottery terminals, between the applicant and the representative of a majority of the horse owners
38 and trainers, the representative of a majority of the pari-mutuel clerks for horse racing
39 associations and the representative of a majority of the horse breeders ~~or the representative of a~~
40 ~~majority of the kennel owners~~ for the applicable racetrack who hold permits required by §19-23-2
41 of this code.

42 (7) A racetrack applying for a video lottery license or a license renewal must file with the
43 commission a copy of any current or proposed agreement between the applicant and any
44 manufacturer for the sale, lease or other assignment to the racetrack of video lottery terminals,
45 the electronic computer components of the terminals, the random number generator of the
46 terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is
47 a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

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

51 applicant:

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

57 (2) Each person associated with a noncorporate applicant who directly or indirectly holds
58 any beneficial or proprietary interest in the applicant or who the commission determines to have
59 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 §19-23-11 of
19 this code: Provided, however, That any amounts deducted by the commission for its actual costs
20 and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery
21 Fund. For the fiscal years ending June 30, 2011, through June 30, 2020, the term "actual costs
22 and expenses" may include transfers of up to \$10 million in surplus allocations for each fiscal
23 year, as calculated by the commission when it has closed its books for the fiscal year, to the
24 Licensed Racetrack Modernization Fund created by subdivision (2), subsection (b) of this section.
25 For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount
26 of gross terminal income in excess of the amount of gross terminal income received during the
27 fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income
28 received in excess of the amount of gross terminal income received during the fiscal year ending
29 on June 30, 2001, shall be deposited into the fund established in section eighteen-a, article
30 twenty-two of this chapter; and

31 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all
32 fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,
33 2020, the commission shall deposit such amounts as are available according to subdivision (1),
34 subsection (b) of this section into a separate facility modernization account maintained within the
35 Licensed Racetrack Modernization Fund for each racetrack. Each racetrack's share of each
36 year's deposit shall be calculated in the same ratio as each racetrack's apportioned contribution
37 to the four percent administrative costs and expenses allowance provided for in subdivision (1),
38 subsection (b) of this section for that year. For each two dollars expended by a licensed racetrack
39 for facility modernization improvements at the racetrack, having a useful life of three or more years
40 and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment

41 from its facility modernization account. If the licensed racetrack's facility modernization account
42 contains a balance in any fiscal year, the unexpended balance from that fiscal year will be
43 available for matching for one additional fiscal year, after which time, the remaining unused
44 balance carried forward shall revert to the lottery fund. For purposes of this section, the term
45 "facility modernization improvements" includes acquisitions of new and unused video lottery
46 terminals and related equipment. Video lottery terminals financed through the recoupment
47 provided in this subdivision must be retained by the licensee in its West Virginia licensed location
48 for a period of not less than five years from the date of initial installation.

49 (c) The amount resulting after the deductions required by subsection (b) of this section
50 constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal
51 years beginning on or after July 1, 2001, any amount of net terminal income received in excess
52 of the amount of net terminal income received during the fiscal year ending on June 30, 2001,
53 shall be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu
54 of all lottery agent commissions and is considered to cover all costs and expenses required to be
55 expended by the licensed racetrack in connection with video lottery operations. The division shall
56 be made as follows:

57 (1) The commission shall receive thirty percent of net terminal income, which shall be paid
58 into the State Lottery Fund as provided in §29-22A-10a of this code;

59 (2) Until July 1, 2005, fourteen percent of net terminal income at a licensed racetrack shall
60 be deposited in the special fund established by the licensee, and used for payment of regular
61 purses in addition to other amounts provided in §19-23-1 *et seq.* of this code, on and after July 1,
62 2005, the rate shall be seven percent of net terminal income;

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

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

67 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,
68 1999 shall be divided as follows:

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

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

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

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

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

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

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

86 (5)(A) The West Virginia Thoroughbred Development Fund created under section §19-23-
87 13b of this code and the West Virginia Greyhound Breeding Development Fund created under
88 §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half
89 percent of the net terminal income. Effective July 1, 2018, the requirements of this paragraph are
90 discontinued.

91 (B) Effective July 1, 2018, and thereafter, the West Virginia Thoroughbred Development
92 Fund, created under §19-23-13b of this code, shall receive one and one-half percent of the net

93 terminal income originating at licensed thoroughbred racetracks.

94 (C) Effective July 1, 2018 and thereafter, the State Excess Lottery Revenue Fund, created
95 under §29-22-18a of this code, shall receive one and one-half percent of the net terminal income
96 originating at licensed dog racetracks;

97 (6) The West Virginia Racing Commission shall receive one percent of the net terminal
98 income which shall be deposited and used as provided in §19-23-13c of this code;

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

100 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive
101 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,
102 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three
103 percent of the net terminal income described in this section and §29-22A-10b of this code into the
104 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of
105 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the
106 Department of Administration pursuant to §5A-4-6 of this code and \$5 million into the Tax
107 Reduction and Federal Funding Increased Compliance Fund; and

108 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for
109 each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the
110 three percent of net terminal income described in §29-22A-10b (a) (8) (B) of this code shall be
111 distributed as provided in this paragraph as follows:

112 (i) 1.375 percent of the total amount of net terminal income described in this section and
113 in §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created under
114 §5B-2-12 of this code;

115 (ii) 0.375 percent of the total amount of net terminal income described in this section and
116 in §29-22-10b of this code shall be deposited into the Development Office Promotion Fund
117 created under §5B-2-3b of this code;

118 (iii) 0.5 percent of the total amount of net terminal income described in this section and in

119 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created under
120 §18B-1B-10 of this code;

121 (iv) 0.6875 percent of the total amount of net terminal income described in this section and
122 in §29-22A-10b of this code shall be deposited into the Capitol Renovation and Improvement
123 Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

124 (v) 0.0625 percent of the total amount of net terminal income described in this section and
125 in §29-22A-10b of this code shall be deposited into the 2004 Capitol Complex Parking Garage
126 Fund administered by the Department of Administration pursuant to §5A-4-5a of this code;

127 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited
128 into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided,*
129 That in any fiscal year when the amount of money generated by this subdivision totals \$11 million,
130 all subsequent distributions under this subdivision shall be deposited in the special fund
131 established by the licensee and used for the payment of regular purses in addition to the other
132 amounts provided in §19-23-1 *et seq.* of this code;

133 (B) The deposit of the seven percent of net terminal income into the Worker's
134 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed
135 with respect to these funds and shall be deposited in the special fund established by the licensee
136 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*
137 *seq.* of this code, on and after the first day of the month following the month in which the Governor
138 certifies to the Legislature that: (i) The revenue bonds issued pursuant to article two-d, chapter
139 twenty-three of this code, have been retired or payment of the debt service provided for; and (ii)
140 that an independent certified actuary has determined that the unfunded liability of the old fund, as
141 defined in chapter twenty-three of this code, has been paid or provided for in its entirety; and

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

143 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
144 one percent of the net terminal income until sufficient moneys have been received to complete

145 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.
146 The moneys shall be deposited in the State Treasury in the Division of Culture and History special
147 fund created under §29-11-3 of this code: *Provided*, That only after sufficient moneys have been
148 deposited in the fund to complete the veterans memorial and to pay in full the annual bonded
149 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal
150 income provided in this subdivision shall be deposited into a special revenue fund in the State
151 Treasury, to be known as the John F. "Jack" Bennett Fund. The moneys in this fund shall be
152 expended by the Division of Veterans Affairs to provide for the placement of markers for the
153 graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall
154 promulgate legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code specifying
155 the manner in which the funds are spent, determine the ability of the surviving spouse to pay for
156 the placement of the marker and setting forth the standards to be used to determine the priority
157 in which the veterans grave markers will be placed in the event that there are not sufficient funds
158 to complete the placement of veterans grave markers in any one year, or at all. Upon payment in
159 full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net
160 terminal income provided in this subdivision shall be deposited in the special fund in the Division
161 of Culture and History created under §29-11-3 of this code and be expended by the Division of
162 Culture and History to establish a West Virginia Veterans Memorial Archives within the Cultural
163 Center to serve as a repository for the documents and records pertaining to the veterans
164 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided*,
165 *however*, That \$500,000 of the one percent of net terminal income shall be deposited in the State
166 Treasury in a special fund of the Department of Administration, created under §5A-4-5 of this
167 code, to be used for construction and maintenance of a parking garage on the State Capitol
168 Complex; and the remainder of the one percent of net terminal income shall be deposited in equal
169 amounts in the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and
170 Cultural Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3

171 of this code

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

173 (i) Five hundred thousand dollars of the one percent of net terminal income shall be
174 deposited in the State Treasury in a special fund of the Department of Administration, created
175 under §5A-4-5 of this code, to be used for construction and maintenance of a parking garage on
176 the State Capitol Complex; and

177 (ii) The remainder of the one percent of net terminal income and all of the one percent of
178 net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows:
179 The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol
180 Improvements Fund created §5A-4-2 of this code and the Cultural Facilities and Capitol
181 Resources Matching Grant Program Fund created under §29-1-3 of this code until a total of
182 \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant
183 Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol
184 Improvements Fund.

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

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

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

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

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

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

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

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

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

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

5 (1) The commission shall receive forty-one percent of net terminal income, which the
6 commission shall deposit in the State Excess Lottery Revenue Fund created in §29-22-18a of this
7 chapter;

8 (2) Until July 1, 2005, eight percent of net terminal income at a licensed racetrack shall be
9 deposited in the special fund established by the licensee and used for payment of regular purses
10 in addition to other amounts provided in §19-23-1 *et seq.* of this code; on and after July 1, 2005,
11 the rate shall be four percent of net terminal income;

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

14 (A) Any amount by which the total amount under this section and §29-22A-10(c)(3) of this
15 code is in excess of the two percent received during fiscal year 1999 by a county in which a
16 racetrack is located that has participated in the West Virginia Thoroughbred Development Fund
17 since on or before January 1, 1999, shall be divided as follows:

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

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

22 (B) Any amount by which the total amount under this section and §29-22A-10(c)(3) is in
23 excess of the two percent received during fiscal year 1999 by a county in which a racetrack other
24 than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has
25 been located in a municipality within the county since on or before January 1, 1999, shall be
26 divided, if applicable, as follows:

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

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

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

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

35 (5)(A) The West Virginia Thoroughbred Development Fund created under §19-23-13b of
36 this code and the West Virginia Greyhound Breeding Development Fund created under §19-23-
37 10 of this code shall receive an equal share of a total of not less than one and one-half percent of
38 the net terminal income. Effective July 1, 2018, the requirements of this paragraph are
39 discontinued.

40 (B) Effective July 1, 2018, and thereafter, the West Virginia Thoroughbred Development
41 Fund, created under §19-23-13b of this code, shall receive one and one-half percent of the net
42 terminal income originating at licensed thoroughbred racetracks.

43 (C) Effective July 1, 2018, and thereafter, the State Excess Lottery Revenue Fund, created
44 under §29-2-18a of this code, shall receive one and one-half percent of the net terminal income
45 originating at licensed dog racetracks;

46 (6) The West Virginia Racing Commission shall receive one percent of the net terminal
47 income which shall be deposited and used as provided §19-23-13c of this code;

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

49 (8) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive three
50 percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30,
51 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of
52 §29-22A-10(c)(8)(B) of this code;

53 (9) (A) On and after July 1, 2005, four percent of net terminal income shall be deposited
54 into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided*,
55 That in any fiscal year when the amount of money generated by this subdivision together with the
56 total allocation transferred by the operation of §29-22A-10(c)(9) of this code totals \$11 million, all
57 subsequent distributions under this subdivision during that fiscal year shall be deposited in the
58 special fund established by the licensee and used for payment of regular purses in addition to
59 other amounts provided in §19-23-1 *et seq.* of this code;

60 (B) The deposit of the four percent of net terminal income into the Worker's Compensation
61 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to
62 these funds, which shall be deposited in the special fund established by the licensee and used
63 for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this
64 code on and after the first day of the month following the month in which the Governor certifies to
65 the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have
66 been retired or payment of the debt service is provided for; and (ii) that an independent certified
67 actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-
68 three of this code, has been paid or provided in its entirety; and

69 (10) (A) One percent of the net terminal income shall be deposited in equal amounts in
70 the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and Cultural
71 Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3 of this
72 code; and

73 (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for

74 each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be
75 distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

76 (b) The commission may establish orderly and effective procedures for the collection and
77 distribution of funds under this section in accordance with the provisions of this section and §29-
78 22A-10 of this code.

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

1 (a) Notwithstanding any provision of §29-22A-10(b) of this code to the contrary, for the
2 fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer
3 up to \$9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

4 (b) Notwithstanding any provision of §29-22A-10(c) of this code to the contrary, for the
5 fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those
6 distributions to be made pursuant to subdivisions §29-22A-10(c)(1), §29-22A-10(c)(2), §29-22A-
7 10(c)(3), §29-22A-10(c)(4), §29-22A-10(c)(5), and §29-22A-10(c)(7) of this code, shall be
8 reduced by one hundred percent. For the fiscal year beginning after June 30, 2018, and each
9 fiscal year thereafter, the distribution to the special fund established by the licensee and used for
10 payment of regular purses, pursuant to §29-22A-10(c)(2) of this code, only includes amounts to
11 be distributed to each thoroughbred racetrack video lottery licensee for the payment of regular
12 racetrack purses. Payments shall not be made pursuant to §29-22A-10 of this code, other than
13 those excepted by this subsection, and are made in lieu thereof in an amount to be determined
14 by appropriation from the State Excess Lottery Revenue Fund.

15 (c) The total amount of reductions resulting from subsection (b) of this section shall be
16 paid into the State Excess Lottery Revenue Fund, created by section §29-22-18a of this code.
17 For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
18 pursuant to §29-22A-10(c)(2) and §29-22A-10(c)(5) of this code shall be reduced by ten percent,
19 and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue

20 Fund.

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

25 (e) Prior to payment of any appropriation made pursuant to this section, debt service
26 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
27 provisions of §29-22-18a, §29-22-18d and §29-22-18e of this code and in the priority as defined
28 by §29-22-18f(c) of this code.

29 (f) Notwithstanding any other provision of this code to the contrary, after payment of debt
30 service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-
31 18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro
32 rata basis.

33 (g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
34 provisions of §29-22A-10(c)(9)(B) of this code, upon certification of the Governor to the
35 Legislature that an independent actuary has determined that the unfunded liability of the Old
36 Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety,
37 the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-
38 10(c)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery
39 Revenue Fund subject to appropriation.

40 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
41 of §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, if the budget
42 shortfall, as determined by the State Budget Office as of December 1, 2015, is greater than \$100
43 million, then the Governor may, by Executive Order, redirect deposits of revenues derived from
44 net terminal income imposed under this article, for any period commencing after February 29,
45 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to the funds

46 otherwise mandated in this article, §23-2D-1 *et seq.* of this code or in any other provision of this
47 code.

48 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
49 §29-22A-10(c)(9)(B) of this code or any other provision of this code to the contrary, the Governor
50 may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal
51 income imposed under this article, for any period commencing after June 30, 2016, and ending
52 before July 1, 2017, to the General Revenue Fund, instead of to the funds otherwise mandated
53 in this article, in article two-d, chapter twenty-three of this code §23-2D-1 *et seq.* of this code or
54 in any other provision of this code, until certification of the Governor to the Legislature that an
55 independent actuary has determined that the unfunded liability of the Old Fund, as defined in
56 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.**

1 (a) Notwithstanding any provision of §29-22A-10b(a) of this code to the contrary, for the
2 fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those
3 distributions to be made pursuant §29-22A-10b(a)(1), §29-22A-10b(a)(2), §29-22A-10b(a)(3),
4 §29-22A-10b(a)(4), §29-22A-10b(a)(5), and §29-22A-10b(a)(7) of this code, shall be reduced by
5 one hundred percent. For fiscal year beginning after June 30, 2018, and each fiscal year
6 thereafter, the distribution to the special fund established by the licensee and used for payment
7 of regular purses, pursuant to subdivision (2) of said subsection, only includes amounts to be
8 distributed to each thoroughbred racetrack video lottery licensee for the payment of regular
9 racetrack purses. Payments shall not be made pursuant to §29-22A-10b of this code, other than
10 those excepted by this subsection, and are made in lieu thereof in an amount to be determined
11 by appropriation from the State Excess 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 §29-22-18a of this code. For the

14 fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
15 pursuant to §29-22A-10b-(a)(2) and §29-22A-10b-(a)(5) of this code shall be reduced by ten
16 percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery
17 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 §29-22-18a, §29-22-18d and §29-22-18e of this code-and in the priority as defined
25 by §29-22-18f(c) of this code.

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 §29-22-
28 18a and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

29 (f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the
30 provisions of §29-22A-10b(a)(9)(B) of this code, upon certification of the Governor to the
31 Legislature that an independent actuary has determined that the unfunded liability of the Old
32 Fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety,
33 the transfers made to the Workers' Compensation Debt Reduction Fund pursuant to §29-22A-
34 10b(a)(9)(A) of this code shall expire and those funds shall remain in the State Excess Lottery
35 Revenue Fund subject to appropriation.

36 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision
37 of §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, if the
38 budget shortfall, as determined by the state Budget Office as of December 1, 2015, is greater
39 than \$100 million, then the Governor may, by Executive Order, redirect deposits of revenues

40 derived from net terminal income imposed under this article, for any period commencing after
41 February 29, 2016 and ending before July 1, 2016, to the General Revenue Fund, instead of to
42 the funds otherwise mandated in this article, §23-2D-1 *et seq.* of this code or in any other provision
43 of this code.

44 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of
45 §29-22A-10b(a)(9)(B) of this code or any other provision of this code to the contrary, the Governor
46 may, by Executive Order, redirect one-half of the deposits of revenues derived from net terminal
47 income imposed under this article, for any period commencing after June 30, ~~2016~~ 2017, and
48 ending before July 1, ~~2017~~ 2018, to the General Revenue Fund, instead of to the funds otherwise
49 mandated in this article, in article §23-2D-1 *et seq.* of this code or in any other provision of this
50 code, until certification of the Governor to the Legislature that an independent actuary has
51 determined that the unfunded liability of the Old Fund, as defined in chapter twenty three of this
52 code, has been paid or provided for in its entirety.

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

1 (a) A racetrack which has been licensed to conduct video lottery games has the right to
2 install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed
3 racetrack may apply to the commission for authorization to install and operate more than four
4 hundred video lottery terminals. If the commission determines that the installation of additional
5 machines is in the best interest of the licensed racetrack, the Lottery Commission and the citizens
6 of this state, the commission may grant permission to install and operate additional machines.

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

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

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

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

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

18 (5) Operational video lottery terminals may only be located in the building or structure in
19 which the grandstand area of the racetrack is located and in the area of the building or structure
20 where pari-mutuel wagering is permitted under the provisions of §19-23-1 *et seq.*: *Provided*, That
21 if the commission, before November 1, 1993, has authorized any racetrack to operate video lottery
22 terminals and offer video lottery games in a location which would not conform to the requirements
23 of this subdivision, the racetrack may continue to use video lottery terminals registered with and
24 approved by the commission at that nonconforming location and to offer the games and any
25 variations or composites of the games as may be approved by the commission: *Provided*,
26 *however, That a racetrack that held a valid dog racing license prior to January 1, 1994, and that*
27 *no longer conducts live racing, may continue to operate operational video lottery terminals in the*
28 *building or structure in which the grandstand area of the racetrack was located and in the area of*
29 *the building or structure where pari-mutuel wagering was permitted between January 1, 1994,*
30 *and June 30, 2018, or in an alternate building or structure approved by the commission within the*
31 *county of such racetrack: *Provided further*, That nothing in this subdivision permits a racetrack to*
32 *operate operational video lottery terminals or offer video lottery games in more than one location.*

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

37 (d) Security personnel shall be present during all hours of operation at each video lottery
38 terminal location. Each license holder shall employ the number of security personnel the

39 commission determines is necessary to provide for safe and approved operation of the video
40 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
12 that is regulated under the provisions of this article submitted in the form prescribed by the
13 commission.

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

17 (5) “Commission” or “State Lottery Commission” means the West Virginia Lottery
18 Commission created by §29-22-1 *et seq.* of this code.

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

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

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

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

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

37 (11) "Director" means the Director of the West Virginia State Lottery Commission
38 appointed pursuant to section six, article twenty-two of this chapter.

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

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

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

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

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

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

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

64 (17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility
65 licensed under both §29-22A-1 *et seq.* of this code and §19-23-1 *et seq.* of this code: Provided,
66 That effective July 1, 2018, and thereafter, "licensed racetrack" or "racing association" includes a
67 facility which was licensed prior to January 1, 1994, to hold dog race meetings and which is
68 licensed under §29-22A-1 *et seq.* of this code.

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

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

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

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

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

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

82 (20) "Lottery" means the public gaming systems or games regulated, controlled, owned
83 and operated by the State Lottery Commission in the manner provided by general law, as provided
84 in this article and in ~~articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this~~
85 ~~chapter~~ §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq. and §29-25-1 et seq. of this code.

86 (21) "Member" means a commission member appointed to the West Virginia Lottery
87 Commission under §29-22-1 et seq. of this code.

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

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

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

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

99 (26) "Player's account" means a financial record established by a licensed racetrack for
100 an individual racetrack patron to which the racetrack may credit winnings and other amounts due

101 to the racetrack patron and from which the patron may withdraw moneys due to the patron for
102 purchase of tokens, chips or electronic media or other purposes.

103 (27) "Racetrack table games license" means authorization granted under this article by
104 the commission to a racetrack that is already licensed under §29-22A -1 *et seq.* of this code to
105 operate racetrack video lottery terminals and holds a valid horse racing license or held a valid dog
106 racing license prior to January 1, 1994, granted by the West Virginia Racing Commission pursuant
107 to the provision of §19-23-1 *et seq.* of this code, which permits the racetrack as an agent of the
108 commission for the limited purpose of operation of West Virginia Lottery table games in one or
109 more designated gaming areas in one or more buildings owned by the licensed racetrack on the
110 grounds where live pari-mutuel racing is conducted by the licensee, or in the case of a licensee
111 that held a valid dog racing license prior to January 1, 1994, and that no longer conducts live
112 racing, on the grounds where live pari-mutuel racing was conducted between January 1, 1994,
113 and June 30, 2018, or in an alternate location approved by the commission within the county of
114 such racetrack: *Provided*, That nothing in this subdivision permits a racetrack to offer West
115 Virginia lottery table games in more than one location.

116 (28) "Racetrack Table Games Fund" means the special fund in the State Treasury created
117 in §29-22C-27 of this code.

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

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

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

124 (32) "West Virginia Lottery table game" means any game played with cards, dice or any
125 mechanical, electromechanical or electronic device or machine for money, credit or any
126 representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette,

127 wheel of fortune or any variation of these games similar in design or operation and expressly
128 authorized by rule of the commission, including multiplayer electronic table games, machines and
129 devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets,
130 pull tabs or similar games.

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

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

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

5 (b) *Grant of license.* — Upon the passage of a local option election in a county in
6 accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant
7 a West Virginia Lottery table games license, and a license for the right to conduct West Virginia
8 Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee
9 to conduct West Virginia table games at the licensed pari-mutuel racetrack identified on the local
10 option election ballot, provided that racetrack holds a valid racetrack video lottery license issued
11 by the commission pursuant to §29-22A-1 *et seq.* of this code and a valid racing license granted
12 by the West Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code
13 and has otherwise met the requirements for licensure under the provisions of this article and the
14 rules of the commission: Provided, That effective July 1, 2018, and thereafter, a racetrack that
15 held a valid dog racing license prior to January 1, 1994, is not required to hold a current racing
16 license.

17 (c) *Location.* — A racetrack table games license authorizes the operation of West Virginia
18 Lottery table games on the grounds of the particular licensed facility identified in the racetrack

19 video lottery license issued pursuant to §19-22A-1 *et seq.* of this code and the license to conduct
20 horse or dog racing issued pursuant to §19-23-1 *et seq.* of this code.

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

29 (e) *Management service contracts.* —

30 (1) *Approval.* — A racetrack table games licensee may not enter into any management
31 service contract that would permit any person other than the licensee to act as the commission's
32 agent in operating West Virginia Lottery table games unless the management service contract is:
33 (A) With a person licensed under this article to provide management services; (B) is in writing;
34 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 §29-22A-1 *et seq.* of this chapter shall be interpreted
51 to allow West Virginia Lottery table games and racetrack video lottery operations under those
52 articles to be harmoniously conducted in the same designated gaming area.

53 (2) On the effective date of this article, the provisions of §29-22C-23 of this code apply to
54 all video lottery games conducted within a racetrack facility, notwithstanding any inconsistent
55 provisions contained in §29-22A-1 *et seq.* of this code 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.* —

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

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

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

69 (B) Pays to the commission the annual license renewal fee of \$2.5 million required by this
70 section at the time it files its application for renewal of its license §29-22A-1 *et seq.* of this code;

71 and

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

75 (3) *Annual license surcharge for failure to construct hotel on premises.* — It is the intent
76 of the Legislature that each racetrack for which a racetrack table games license has been issued
77 be or become a destination tourism resort facility. To that end, it is important that each racetrack
78 for which a racetrack table games license has been issued operate a hotel with significant
79 amenities. Therefore, in addition to all other taxes and fees required by the provisions of this
80 article, there is hereby imposed, upon each racetrack for which a racetrack table games license
81 has been issued an annual license surcharge, payable to the commission in the amount of \$2.5
82 million if that racetrack does not operate a hotel on its racing property that contains at least one
83 hundred fifty guest rooms with significant amenities within three years of the passage of the local
84 option election in its county authorizing table games at the racetrack, provided the time for
85 completion of the hotel shall be extended by the same number of days as the completion of the
86 hotel is delayed by a force majeure events or conditions beyond the reasonable control of the
87 racetrack licensee. The surcharge shall be paid upon each renewal of its racetrack table games
88 license made after the expiration of the three-year period, and may be extended by the above
89 force majeure events or conditions, until the racetrack opens a qualifying hotel.

90 (4) If the licensee fails to apply to renew its license under §19-23-1 et seq. of this code
91 and §29-22A-1 et seq. of this code until after the license expires, the commission shall renew its
92 license under this article at the time it renews its license under a §29-22A-1 et seq. of this code
93 provided the licensee has paid the annual license fee required by this section and during the
94 preceding license year the licensee complied with all provisions of this article, all rules adopted
95 by the commission and all final orders of the commission applicable to the licensee.

96 (h) *Facility qualifications.* — A racetrack table games licensee shall demonstrate that the

97 racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in
98 accordance with applicable federal and state laws; (2) be licensed in accordance with this article,
99 and all other applicable federal, state and local laws; and (3) meet any other qualifications
100 specified in rules adopted by the commission.

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

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

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

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

111 (j) *Authorization.* — A racetrack table games license authorizes the licensee act as an
112 agent of the commission in operating an unlimited amount of West Virginia Lottery table games
113 while the license is active, subject to subsection (d) of this section. A racetrack table games
114 license is not transferable or assignable and cannot be sold or pledged as collateral.

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

120 (l) *Commission office space.* — A racetrack table games licensee shall provide to the
121 commission, at no cost to the commission, suitable office space at the racetrack facility for the
122 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.

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

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

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

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

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

13 (5) Give preference in hiring to existing employees who have expressed an interest in
14 transferring to an entry level West Virginia Lottery Table games job and who have demonstrated
15 the potential to succeed in that job. To enable these employees to develop the skills necessary
16 to fill an entry level West Virginia Lottery table games position, a licensee shall provide customary
17 industry training for entry level West Virginia Lottery table games jobs. The dates, times, place
18 and manner of providing such training, the appropriate qualifications and certifications, the
19 number of existing employees to be trained, the determination of standards for evaluating
20 successful performance in live auditions for such positions and the determination of who shall be
21 given West Virginia Lottery table game jobs shall be within the sole business discretion of the
22 licensee's management, provided that among equally qualified applicants, as determined by the
23 licensee, length of service shall be the determining factor;

24 (6) Maintain all records required by the commission;

25 (7) Upon request by the commission, provide the commission access to all records and

26 the physical premises where the licensee's table games activities and related activities occur, for
27 the purpose of monitoring or inspecting the licensee's activities and the table games, gaming
28 equipment and security equipment;

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

30 (9) Conduct no less than two hundred twenty live racing dates for each horse or dog race
31 meeting or such other number of live racing dates as may be approved by the Racing Commission
32 in accordance with the provisions of §19-23-12b_of this code, and otherwise keep in good
33 standing, all licenses and permits granted by the Racing Commission pursuant to §19-23-6_of this
34 code, and any rules promulgated thereunder: Provided, That effective July 1, 2018, and
35 thereafter, a racetrack that held a valid dog racing license prior to January 1, 1994, is not required
36 to race any minimum number of dates.

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

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

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

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

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

51 (5) Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or

52 other electronic media;

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

56 (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 §29-22C-8 of this code 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, 2018, 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 §19-23-10a of this code;

29 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
30 West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the
31 West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code. The
32 total amount transferred under this subdivision shall be divided pro rata among the development
33 funds for each racetrack table games licensee based on relative adjusted receipts from each
34 racetrack: Provided, That effective July 1, 2018, and thereafter, the amount required by this
35 subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall
36 instead be transferred to the State Excess Lottery Revenue Fund. The amounts transferred to
37 these funds may not be used for the benefit of any person or activity other than at or associated
38 with a racetrack table games licensee;

39 (4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to
40 the county commissions of the counties where racetracks with West Virginia Lottery table games
41 are located. County commissions may pledge this money to make payments on lottery revenue
42 bonds issued pursuant to §13-2H-1 *et seq.* of this code. The one percent transferred under this
43 subdivision shall be divided pro rata among the counties with a racetrack with West Virginia
44 Lottery table games based on relative adjusted gross receipts from each county's racetrack:
45 *Provided, That the county board of education of a growth county, as that term is defined in §7-20-*

46 3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located
47 that has participated in the West Virginia Thoroughbred Development Fund since on or before
48 January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this
49 subdivision for the purpose of public projects, as defined in §13-2H-2 of this code or to make
50 payments on lottery revenue bonds issued to finance public projects;

51 (5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
52 governing bodies of municipalities within counties where racetracks with West Virginia Lottery
53 table games are located. Municipalities may pledge the money to make payments on lottery
54 revenue bonds issued pursuant to §13-2H-1 et seq. of this code. This money shall be allocated
55 as follows:

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

69 (B) One half of the amounts transferred under this subdivision shall be allocated pro rata
70 to the municipalities within all the counties, having a racetrack table games licensee based on
71 each municipality's population determined at the most recent United States decennial census of

72 population: *Provided*, That: (i) A municipality which received funds above its pro rata share
73 pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this
74 paragraph; (ii) for each allocation, when a municipality is physically located in two or more
75 counties, only that portion of its population residing in the county where the authorized table
76 games are located shall be considered; and (iii) a single municipality in a county where West
77 Virginia Lottery racetrack games are played may not receive a total share under this paragraph
78 that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided*,
79 *however*, That the county board of education of a growth county, as that term is defined in §7-20-
80 3 of this code, which has enacted the Local Powers Act, and in which county a racetrack is located
81 that has participated in the West Virginia Thoroughbred Development Fund since on or before
82 January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this
83 subdivision for the purpose of public projects, as defined in §13-2H-2 of this code, or to make
84 payments on lottery revenue bonds issued to finance the public projects;

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

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

95 (c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer
96 West Virginia Lottery racetrack table games under this article, subsection (b) of this section shall
97 be superseded and replaced by this subsection for distribution of the balances in the fund

98 established by subsection (a) of this section. From the gross amounts deposited into the fund, the
99 commission shall:

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

102 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred
103 racetracks with West Virginia Lottery table games to the special funds established by each
104 thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the
105 amount being divided on a pro rata basis between the special funds of each thoroughbred
106 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts
107 from all greyhound racetracks with West Virginia Lottery table games to the special funds
108 established by each greyhound racetrack table games licensee for the payment of regular
109 racetrack purses, the amount being divided equally between the special funds of each greyhound
110 racetrack table games licensee: Provided, That effective July 1, 2018, and thereafter, the amount
111 required by this subdivision to be transferred to the special funds established by each greyhound
112 racetrack table games licensees for the payment of regular racetrack purses shall instead be
113 transferred to the state Excess Lottery Fund pursuant to §19-23-10a of this code;

114 (3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the
115 West Virginia Thoroughbred Development Fund created under §19-23-13b of this code and the
116 West Virginia Greyhound Breeding Development Fund created under §19-23-10 of this code:
117 Provided, That effective July 1, 2018, and thereafter, the amount required by this subdivision to
118 be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be
119 transferred to the state Excess Lottery Revenue Fund pursuant to §19-23-10a of this code. The
120 total amount transferred under this subdivision shall be divided pro rata among the development
121 funds for each racetrack table games licensee based on relative adjusted receipts from each
122 racetrack. The amounts transferred to these funds may not be used for the benefit of any person
123 or activity other than at or associated with a racetrack table games licensee;

124 (4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the
125 county commissions of the counties where racetracks with West Virginia Lottery table games are
126 located. The money transferred under this subdivision shall be divided pro rata among the
127 counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross
128 receipts from each county's racetrack: *Provided*, That the county board of education of a growth
129 county, as that term is defined in §7-20-3 of this code, which has enacted the Local Powers Act,
130 and in which a racetrack is located that has participated in the West Virginia Thoroughbred
131 Development Fund since on or before January 1, 1991, shall receive one half of that county's
132 share of adjusted gross receipts as provided in this subdivision for the purpose of capital
133 improvements;

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

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

150 provisions of subdivision (4), subsection (d) of this section.

151 (B) One half of the money transferred under this subdivision shall be allocated pro rata to
152 the municipalities within all the counties, other than a county described in paragraph (C) of this
153 subdivision, having a racetrack table games licensee based on each municipality's population
154 determined at the most recent United States decennial census of population: *Provided, That:* (i)
155 A municipality which received funds above its pro rata share pursuant to subparagraph (iii),
156 paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each
157 allocation, when a municipality is physically located in two or more counties, only that portion of
158 its population residing in the county where the authorized table games are located shall be
159 considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games
160 are played may not receive a total share under this paragraph that is in excess of twenty-five
161 percent of the total transfers under this paragraph.

162 (C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a
163 racetrack is located in a growth county, as that term is defined in §7-20-3 of this code, which has
164 enacted the Local Powers Act, and in which county a racetrack is located that has participated in
165 the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the
166 county board of education shall receive two thirds of the share of adjusted gross receipts from
167 West Virginia Lottery table games from the racetrack in the county as provided in this subdivision
168 and the municipalities within the county shall share the remaining one third of the total amount
169 allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata
170 among the municipalities based on each municipality's population determined at the most recent
171 United States decennial census of population. All money transferred under this paragraph shall
172 be used by the county board of education and by the municipalities for ~~the purpose of~~ capital
173 improvements;

174 (6) Transfer one-half of one percent of the adjusted gross receipts to the governing bodies
175 of municipalities in which a racetrack table games licensee is located. The municipalities shall

176 each receive an equal share of the total amount allocated under this subdivision: *Provided*, That
177 distribution under this subdivision may not be made to any municipality that did not have a
178 licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided*,
179 *however*, That if no racetrack table games licensee is located within a municipality, a transfer may
180 not be made under this subdivision; and

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

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

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

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

192 (3) Transfer ten percent, to be divided and paid in equal shares, to each county
193 commission in the state that is not eligible to receive a distribution under subdivision (4),
194 subsection (b) of this section: *Provided*, That funds transferred to county commissions under this
195 subdivision shall be used only to pay regional jail expenses and the costs of infrastructure
196 improvements and other capital improvements: *Provided, however*, That up to fifty percent of
197 these funds may be pledged to make payments on lottery revenue bonds issued pursuant to §13-
198 2H-1 *et seq.* of this code; and

199 (4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies
200 of each municipality in the state that is not eligible to receive a distribution under subdivisions (5)
201 and (6), subsection (b) of this section: *Provided*, That funds transferred to municipalities under

202 this subdivision shall be used only to pay for debt reduction in municipal police and fire pension
203 funds and the costs of infrastructure improvements and other capital improvements: *Provided,*
204 *however,* That up to fifty percent of these funds may be pledged to make payments on lottery
205 revenue bonds issued pursuant to §13-2H-1 et seq. of this code.

206 (e) All expenses of the commission incurred in the administration and enforcement of this
207 article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-
208 enforcement agencies for services performed at the request of the commission pursuant to this
209 article. The commission's expenses associated with a particular racetrack with authorized table
210 games under this article may not exceed three percent of the total annual adjusted gross receipts
211 received from that licensee's operation of table games under this article, including, but not limited
212 to, all license fees or other amounts attributable to the licensee's operation of table games under
213 this article, except as provided in subdivision (2), subsection (a) of this section. However, for the
214 fiscal year following the licensing of every licensed racetrack to offer West Virginia Lottery
215 racetrack table games under this article and for the fiscal year thereafter, the commission's
216 expenses associated with a particular racetrack with authorized table games under this article
217 may not exceed four percent of the total annual adjusted gross receipts received from that
218 licensee's operation of table games under this article, including, but not limited to, all license fees
219 or other amounts attributable to the licensee's operation of table games under this article, except
220 as provided in subdivision (2), subsection (a) of this section. These expenses shall either be
221 allocated to the racetrack with West Virginia Lottery table games for which the expense is
222 incurred, if practicable, or be treated as general expenses related to all racetrack table games
223 facilities and be allocated pro rata among the racetrack table games facilities based on the ratio
224 that annual adjusted gross receipts from operation of table games at each racetrack with West
225 Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table
226 games at all racetracks with West Virginia Lottery table games during the fiscal year of the state.
227 From this allowance, the commission shall transfer at least \$100,000 but not more than \$500,000

228 into the Compulsive Gambling Treatment Fund created in §29-22A-19 of this code.

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

1 (a) Notwithstanding any provision of §29-22C-27 of this code to the contrary, for the fiscal
2 year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to
3 subdivision (1), subsection (d) of that section shall be reduced by one hundred percent. For fiscal
4 year beginning after June 30, 2018, and each fiscal year thereafter, the distribution to the special
5 fund established by the licensee, and used for payment of regular purses, pursuant to §29-22C-
6 27(c)(2) of this code only includes amounts to be distributed to each thoroughbred racetrack table
7 games licensee for the payment of regular racetrack purses.

8 (b) The total amount of reductions resulting from subsection (a) of this section shall be
9 paid into the State Excess Lottery Revenue Fund created in §29-22-18a of this chapter. For the
10 fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
11 pursuant to §29-22C-27(c)(2) and §22C-27(c)(3) of this code shall be reduced by ten percent,
12 and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue
13 Fund.

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

18 (d) Prior to payment of any appropriation made pursuant to this section, debt service
19 payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
20 provisions of §29-22-18a, §29-22-18d and §29-22-18e of this code and in the priority as defined
21 by §29-22-18f(c) of this code.

22 (e) Notwithstanding any other provision of this code to the contrary, after payment of debt
23 service from the State Excess Lottery Revenue Fund, all other distributions required by §29-22-

- 24 18a of this code and the distributions appropriated pursuant to this section shall be paid on a pro
25 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.