

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 2136

FISCAL  
NOTE

BY DELEGATES MCGEEHAN AND PAYNTER

[Introduced February 10, 2021; Referred to the  
Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §29-22A-10 and §29-22A-10b of the Code of West Virginia, 1931,  
2 as amended, all relating to granting counties and municipalities a portion of the net  
3 terminal income from racetrack video lottery.

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

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

**§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 30 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 any amounts deducted by the commission for its actual  
17 costs and expenses that exceeds its actual costs and expenses shall be deposited into the State  
18 Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2020, the term “actual  
19 costs and expenses” may include transfers of up to \$10 million in surplus allocations for each  
20 fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to  
21 the Licensed Racetrack Modernization Fund created by subdivision (2), subsection (b) of this  
22 section. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive  
23 an amount of gross terminal income in excess of the amount of gross terminal income received  
24 during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal  
25 income received in excess of the amount of gross terminal income received during the fiscal year  
26 ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of this code;  
27 and

28 (2) A Licensed Racetrack Modernization Fund is created within the lottery fund. For all  
29 fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1,  
30 2020, the commission shall deposit such amounts as are available according to subdivision (1),  
31 subsection (b) of this section into a separate facility modernization account maintained within the  
32 Licensed Racetrack Modernization Fund for each racetrack. Each racetrack’s share of each  
33 year’s deposit shall be calculated in the same ratio as each racetrack’s apportioned contribution  
34 to the four percent administrative costs and expenses allowance provided for in subdivision (1),  
35 subsection (b) of this section for that year. For each two dollars expended by a licensed racetrack  
36 for facility modernization improvements at the racetrack, having a useful life of three or more years  
37 and placed in service after July 1, 2011, the licensed racetrack shall receive \$1 in recoupment  
38 from its facility modernization account. If the licensed racetrack’s facility modernization account  
39 contains a balance in any fiscal year, the unexpended balance from that fiscal year will be  
40 available for matching for one additional fiscal year, after which time, the remaining unused  
41 balance carried forward shall revert to the lottery fund. For purposes of this section, the term

42 “facility modernization improvements” includes acquisitions of new and unused video lottery  
43 terminals and related equipment. Video lottery terminals financed through the recoupment  
44 provided in this subdivision must be retained by the licensee in its West Virginia licensed location  
45 for a period of not less than five years from the date of initial installation.

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

54 (1) The commission shall receive 30 percent of net terminal income, which shall be paid  
55 into the State Lottery Fund as provided in §29-22A-10a of this code;

56 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be  
57 deposited in the special fund established by the licensee, and used for payment of regular purses  
58 in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1,  
59 2005, the rate shall be seven percent of net terminal income;

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

62 (A) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent  
63 received during the fiscal year 1999 by a county in which a racetrack is located that has  
64 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,  
65 1999 shall be divided as follows:

66 (i) The county shall receive 50 percent of the excess amount; and

67 (ii) The municipalities of the county shall receive 50 percent of the excess amount, said

68 50 percent to be divided among the municipalities on a per capita basis as determined by the  
69 most recent decennial United States census of population; and

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

75 (i) The county shall receive 50 percent of the ~~excess~~ amount; and

76 (ii) The municipality shall receive 50 percent of the ~~excess~~ amount; and

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

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

83 (5) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this  
84 code and the West Virginia Greyhound Breeding Development Fund created under §19-23-10 of  
85 this code shall receive an equal share of a total of not less than one and one-half percent of the  
86 net terminal income;

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

89 (7) A licensee shall receive 46 and one-half percent of net terminal income.

90 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive  
91 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,  
92 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three  
93 percent of the net terminal income described in this section and §29-22A-10b of this code into the

94 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of  
95 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the  
96 Department of Administration pursuant to §5A-4-6 of this code and \$5 million into the Tax  
97 Reduction and Federal Funding Increased Compliance Fund; and

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

102 (i) 1.375 percent of the total amount of net terminal income described in this section and  
103 in §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created under  
104 §5B-2-12 of this code;

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

108 (iii) 0.5 percent of the total amount of net terminal income described in this section and in  
109 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created under  
110 §18B-1B-10 of this code;

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

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

117 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited  
118 into the Workers' Compensation Debt Reduction Fund created in §23-2D-5 of this code: *Provided,*  
119 That in any fiscal year when the amount of money generated by this subdivision totals \$11 million,

120 all subsequent distributions under this subdivision shall be deposited in the special fund  
121 established by the licensee and used for the payment of regular purses in addition to the other  
122 amounts provided in §19-23-1 *et seq.* of this code;

123 (B) The deposit of the seven percent of net terminal income into the Worker's  
124 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed  
125 with respect to these funds and shall be deposited in the special fund established by the licensee  
126 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*  
127 *seq.* of this code, on and after the first day of the month following the month in which the Governor  
128 certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this  
129 code, have been retired or payment of the debt service provided for; and (ii) that an independent  
130 certified actuary has determined that the unfunded liability of the old fund, as defined in chapter  
131 23 of this code, has been paid or provided for in its entirety; and

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

133 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive  
134 one percent of the net terminal income until sufficient moneys have been received to complete  
135 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.  
136 The moneys shall be deposited in the State Treasury in the Division of Culture and History special  
137 fund created under §29-11-3 of this code: *Provided*, That only after sufficient moneys have been  
138 deposited in the fund to complete the veterans memorial and to pay in full the annual bonded  
139 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal  
140 income provided in this subdivision shall be deposited into a special revenue fund in the State  
141 Treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be  
142 expended by the Division of Veterans Affairs to provide for the placement of markers for the  
143 graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall  
144 promulgate legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code specifying  
145 the manner in which the funds are spent, determine the ability of the surviving spouse to pay for

146 the placement of the marker and setting forth the standards to be used to determine the priority  
147 in which the veterans grave markers will be placed in the event that there are not sufficient funds  
148 to complete the placement of veterans grave markers in any one year, or at all. Upon payment in  
149 full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net  
150 terminal income provided in this subdivision shall be deposited in the special fund in the Division  
151 of Culture and History created under §29-11-3 of this code and be expended by the Division of  
152 Culture and History to establish a West Virginia veterans memorial archives within the Cultural  
153 Center to serve as a repository for the documents and records pertaining to the veterans  
154 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided,*  
155 *however,* That \$500,000 of the one percent of net terminal income shall be deposited in the State  
156 Treasury in a special fund of the Department of Administration, created under §5A-4-5 of this  
157 code, to be used for construction and maintenance of a parking garage on the State Capitol  
158 Complex; and the remainder of the one percent of net terminal income shall be deposited in equal  
159 amounts in the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and  
160 Cultural Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3  
161 of this code.

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

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

167 (ii) The remainder of the one percent of net terminal income and all of the one percent of  
168 net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows:  
169 The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol  
170 Improvements Fund created under §5A-4-2 of this code and the Cultural Facilities and Capitol  
171 Resources Matching Grant Program Fund created under §29-1-3 of this code until a total of \$1.5



172 million is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program  
173 Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol  
174 Improvements Fund.

175 (d) Each licensed racetrack shall maintain in its account an amount equal to or greater  
176 than the gross terminal income from its operation of video lottery machines, to be electronically  
177 transferred by the commission on dates established by the commission. Upon a licensed  
178 racetrack's failure to maintain this balance, the commission may disable all of a licensed  
179 racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall  
180 accrue on any unpaid balance at a rate consistent with the amount charged for state income tax  
181 delinquency under chapter 11 of this code. The interest shall begin to accrue on the date payment  
182 is due to the commission.

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

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

198 in favor of the commission.

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

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

212 (i) The commission has the right to examine all accounts, bank accounts, financial  
213 statements and records in a licensed racetrack's possession, under its control or in which it has  
214 an interest and the licensed racetrack shall authorize all third parties in possession or in control  
215 of the accounts or records to allow examination of any of those accounts or records by the  
216 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 41 percent of net terminal income, which the commission  
6 shall deposit in the state Excess Lottery Revenue Fund created in §29-22-18a of this code;

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

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

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

17 (i) The county shall receive 50 percent of ~~the excess~~ that amount; and

18 (ii) The municipalities of the county shall receive 50 percent of ~~the excess~~ that amount,  
19 the 50 percent to be divided among the municipalities on a per capita basis as determined by the  
20 most recent decennial United States census of population; and

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

26 (i) The county shall receive 50 percent of ~~the excess~~ that amount; and

27 (ii) The municipality shall receive 50 percent of ~~the excess~~ that amount; and

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

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

33 employees of the licensed racing association;

34 (5) The West Virginia Thoroughbred Development Fund created under §19-23-13b of this  
35 code and the West Virginia greyhound breeding development fund created under §29-22A-10 of  
36 this code shall receive an equal share of a total of not less than one and one-half percent of the  
37 net terminal income.

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

40 (7) A licensee shall receive 42 percent of net terminal income;

41 (8) The tourism promotion fund established in §5B-2-12 of this code shall receive three  
42 percent of the net terminal income: *Provided*, That for each fiscal year beginning after June 30,  
43 2004, this three percent of net terminal income shall be distributed pursuant to the provisions of  
44 §29-22A-10(c)(8)(B) of this code;

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

52 (B) The deposit of the four percent of net terminal income into the Worker's Compensation  
53 Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to  
54 these funds, which shall be deposited in the special fund established by the licensee and used  
55 for payment of regular purses in addition to the other amounts provided in §19-23-1 *et seq.* of this  
56 code on and after the first day of the month following the month in which the Governor certifies to  
57 the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this code have  
58 been retired or payment of the debt service is provided for; and (ii) that an independent certified

59     actuary has determined that the unfunded liability of the Old Fund, as defined in chapter 23 of this  
60     code, has been paid or provided in its entirety; and

61             (10) (A) One percent of the net terminal income shall be deposited in equal amounts in  
62     the capitol dome and improvements fund created under §5A-4-2 of this code and cultural facilities  
63     and capitol resources matching grant program fund created under §29-1-3 of this code; and

64             (B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for  
65     each fiscal year beginning after June 30, 2004, this one percent of net terminal income shall be  
66     distributed pursuant to the provisions of §29-22A-10(c)(9)(B)(ii) of this code.

67             (b) The Commission may establish orderly and effective procedures for the collection and  
68     distribution of funds under this section in accordance with the provisions of this section and §29-  
69     22A-10 of this code.

NOTE: The purpose of this bill is to eliminate the discriminatory trigger mechanism “in excess of” language that prevents municipalities within counties that house a thoroughbred racetrack from equally participating in their net terminal income distributions because the “in excess of” language creates an unattainable trigger that has not been reached in years. Consequently, municipalities have suffered as a result. The bill grants counties and municipalities a portion of the net terminal income from racetrack video lottery.

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