

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2801

BY DELEGATES ESPINOSA, CRISS, GRAVES, STORCH,
ROWE, ROHRBACH, PETHTEL, CLARK, HOWELL, BARRETT,
AND HOUSEHOLDER

[Introduced March 01, 2021; Referred to the
Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §29-22C-8 of the Code of West Virginia, 1931, as amended; relating
 2 to changing date the annual racetrack table games license renewal fee is due to October 1
 3 annually; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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

§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~~ provisions of §19-23-1 *et seq.*
 13 of this code and has otherwise met the requirements for licensure under the provisions of this
 14 article and the rules of the commission.

15 (c) *Location.* — A racetrack table games license authorizes the operation of West Virginia
 16 Lottery table games on the grounds of the particular licensed facility identified in the racetrack
 17 video lottery license issued pursuant to §29-22A-1 *et seq.* of this code and the license to conduct
 18 horse or dog racing issued pursuant to §19-23-1 *et seq.* of this code.

19 (d) *Floor plan submission requirement.* — Prior to commencing the operation of any table
 20 games in a designated gaming area, a racetrack table games licensee shall submit to the

21 commission for its approval a detailed floor plan depicting the location of the designated gaming
22 area in which table games gaming equipment will be located and its proposed arrangement of the
23 table games gaming equipment. Any floor plan submission that satisfies the requirements of the
24 rules promulgated by the commission shall be considered approved by the commission unless
25 the racetrack table games licensee is notified in writing to the contrary within one month of filing
26 a detailed floor plan.

27 (e) *Management service contracts.* —

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

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

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

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

46 (f) *Coordination of licensed activities.* — In order to coordinate various licensed activities

47 within racetrack facilities, the following provisions apply to licensed racetrack facilities:

48 (1) The provisions of this article and of §29-22A-1 *et seq.* of this code shall be interpreted
49 to allow West Virginia Lottery table games and racetrack video lottery operations under those
50 articles to be harmoniously conducted in the same designated gaming area.

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

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

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

59 (1) An initial racetrack table games license fee of \$1,500,000 shall be paid to the
60 commission at the time of issuance of the racetrack table games license, regardless of the number
61 of months remaining in the license year for which it is issued. All licenses expire at the end of the
62 day on ~~June 30~~ September 30 each year.

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

65 (A) Successfully renews its racetrack video lottery license under §29-22A-1 *et seq.* of this
66 code before ~~July 1~~ October 1;

67 (B) Pays to the commission the annual license renewal fee of \$2,500,000 required by this
68 section at the time it files its application for renewal of its license under §29-22A-1 *et seq.* of this
69 code; and

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

73 (3) *Annual license surcharge for failure to construct hotel on premises.* — It is the intent
74 of the Legislature that each racetrack for which a racetrack table games license has been issued
75 be or become a destination tourism resort facility. To that end, it is important that each racetrack
76 for which a racetrack table games license has been issued operate a hotel with significant
77 amenities. Therefore, in addition to all other taxes and fees required by the provisions of this
78 article, there is hereby imposed, upon each racetrack for which a racetrack table games license
79 has been issued an annual license surcharge, payable to the commission in the amount of
80 \$2,500,000 if that racetrack does not operate a hotel on its racing property that contains at least
81 150 guest rooms with significant amenities within three years of the passage of the local option
82 election in its county authorizing table games at the racetrack, provided the time for completion
83 of the hotel shall be extended by the same number of days as the completion of the hotel is
84 delayed by a force majeure events or conditions beyond the reasonable control of the racetrack
85 licensee. The surcharge shall be paid upon each renewal of its racetrack table games license
86 made after the expiration of the three year period, and may be extended by the above force
87 majeure events or conditions, until the racetrack opens a qualifying hotel.

88 (4) If the licensee fails to apply to renew its license under §19-23-1 *et seq.* and §29-22A-
89 1 *et seq.* of this code until after the license expires, the commission shall renew its license under
90 this article at the time it renews its license under §29-22A-1 *et seq.* of this code, provided the
91 licensee has paid the annual license fee required by this section and during the preceding license
92 year the licensee complied with all provisions of this article, all rules adopted by the commission
93 and all final orders of the commission applicable to the licensee.

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

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

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

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

105 (3) With a surety approved by the commission who is licensed to write surety insurance in
106 this state. The bond shall remain in effect during the term of the license and may not be canceled
107 by a surety on less than 30 days' notice in writing to the commission. The total and aggregate
108 liability of the surety on the bond is limited to the amount specified in the bond.

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

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

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

NOTE: The purpose of this bill is to modify the due date of the Racetrack Table Game
renewal license fee from July 1 to October 1.

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