

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3219**

BY DELEGATE GRAVES

[Introduced March 16, 2021; Referred to the  
Committee on Government Organization then  
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 to dog  
7 racing requirements; modifying certain definitions; eliminating the requirement that an  
8 applicant for a dog racing license race a minimum number of dates to qualify for such a  
9 license; establishing procedure for licensee to discontinue live dog racing; discontinuing  
10 West Virginia Greyhound Breeding Development Fund; requiring that funds deposited in  
11 the West Virginia Greyhound Breeding development fund be paid out to licensees;  
12 requiring \$1 million from the fund be withheld and used for certain programs to care for  
13 and assist in adoption of greyhounds; eliminating the requirement that an applicant for a  
14 dog racing license race a minimum number of dates to contract to receive telecasts and  
15 accept wagers; providing that a dog racetrack is required to hold a racing license to  
16 conduct simulcast racing regardless of whether the racetrack continues to conduct live  
17 dog racing; eliminating the requirement that a video lottery licensee at a dog track must  
18 hold a racing license to renew a video lottery license or racetrack table games license;  
19 requiring that horse racetrack owners applying for video lottery license show agreement  
20 of proceeds from video lottery and representative of horse breeders association;  
21 establishing amounts, effective July 1, 2021, of net terminal income for both the West  
22 Virginia Thoroughbred Development Fund and licensees who discontinued greyhound  
23 racing at their respective racetracks; removing requirement that net terminal income be  
24 paid into the Workers' Compensation Debt Reduction Fund; providing that distribution to  
25 special funds established by licensees limited to amounts designated as either  
26 thoroughbred racetrack video lottery licensees or greyhound racetrack licensees;

27           permitting a dog racetrack to continue to operate operational video lottery and racetrack  
 28           table games in a location where live racing was previously conducted; providing for and  
 29           eliminating the requirement that a racetrack table games licensee at a dog racetrack must  
 30           race a minimum number of dates.

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

**CHAPTER 19. AGRICULTURE.**

**ARTICLE 23. HORSE AND DOG RACING.**

**PART V. LICENSE AND PERMIT PROCEDURES.**

**§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 section one of this article;

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 section one of this article or  
21 the 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 section two of this article;

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

25 (12) "Licensee" means any racing association holding a license required by the provisions  
26 of section one of this article 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 section two of this article 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 12 consecutive months of verifiable residence in the state,  
57 except for 30 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 12 consecutive months of verifiable residence in the state. During the period, the raiser  
68 will be granted one month of grace for his or her horse to be shipped to and from thoroughbred

69 sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred  
70 sales company. In the event the yearling was born in another state and transported to this state,  
71 this definition does not apply after the December 31, 2007, to any pari-mutuel racing facility  
72 located in Jefferson County nor shall it apply after the December 31, 2012, and thereafter to any  
73 pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out of the  
74 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 section  
79 thirteen-b of this article;

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 thirteen-b of this article; 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 200, such applicant intends to hold or conduct such  
17 horse or dog race meeting (which may be on any day including Sundays): Provided, That effective  
18 July 1, 2021, and thereafter, an applicant is not required to race any minimum number of dates in  
19 order to qualify for a race to hold a dog race meeting;
- 20 (5) The location of the horse or dog racetrack, place or enclosure where such applicant  
21 proposes to hold or conduct such horse or dog race meeting;
- 22 (6) Whether the applicant, any partner, member, officer or director has previously applied  
23 for a license under the provisions of this article or for a similar license in this or any other state,  
24 and if so, whether such license was issued or refused, and, if issued, whether it was ever  
25 suspended or revoked; and
- 26 (7) Such other information as the Racing Commission may reasonably require which may  
27 include information relating to any criminal record of the applicant, if an individual, or of each  
28 partner or member, if a partnership, firm or association, or of each officer and director, if a  
29 corporation.
- 30 (b) Such application shall be verified by the oath or affirmation of the applicant for such  
31 license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a  
32 partner, member or officer thereof, as the case may be. When required by the Racing  
33 Commission, an applicant for a license shall also furnish evidence satisfactory to the Racing  
34 Commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials

35 and other expenses incident to the horse or dog race meeting for which a license is sought. In the  
 36 event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to  
 37 pay such expenses and fees, the Racing Commission may require bond or other adequate  
 38 security before the requested license is issued.

39 (c) Any person desiring to obtain a permit, as required by the provisions of section two of  
 40 this article, shall make application therefor on a form prescribed by the Racing Commission. The  
 41 application for any such permit shall be accompanied by the fee prescribed therefor by the Racing  
 42 Commission. Each applicant for a permit shall set forth in the application such information as the  
 43 Racing Commission shall reasonably require.

44 (d) On or after July 1, 2021, a licensee that was licensed prior to January 1, 1994 to  
 45 conduct dog racing may continue to maintain a license as provided for in §19-22A-7 and §29-  
 46 22C-8 of this code without the requirement of conducting live racing dates. In order to discontinue  
 47 live dog racing dates, and such licensee shall comply with the following requirements:

48 (1) Provide written notification to the Lottery Commission of the licensee's intent to  
 49 discontinue live dog racing dates; and

50 (2) Comply with any and all requirements established by the Lottery Commission for the  
 51 discontinuance of live dog racing.

52 (e) The Lottery Commission shall have the authority to promulgate rules, including  
 53 emergency rules, in accordance with §29A-3-1 et seq. of this code, as it deems necessary to  
 54 implement and efficiently administer the requirement of §19-23-7(d) of this code.

## 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 subdivision (1), subsection  
38 (b), section nine of this article: *And provided further*, That if an association or licensee qualifying  
39 for the foregoing alternate tax conducts more than one racing performance, each consisting of up  
40 to 13 races in a calendar day, the association or licensee shall pay both the daily license tax  
41 imposed in subsection (a) of this section and the alternate tax in this subsection for each  
42 performance: *And provided further*, That a licensee qualifying for the foregoing alternate tax is  
43 excluded from participation in the fund established by section thirteen-b of this article: *And*  
44 *provided further*, That this exclusion shall not apply to any thoroughbred racetrack at which the  
45 licensee has participated in the West Virginia Thoroughbred Development Fund for more than  
46 four consecutive years prior to December 31, 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, however,*  
70 That effective July 1, 2021, and thereafter, the amounts deducted and any other moneys required  
71 by this section to be deposited in the West Virginia Greyhound Breeding Development Fund shall  
72 instead be distributed to the respective licensee that discontinued greyhound racing: *Provided*  
73 *further, That effective July 1, 2021, and thereafter, any expenditures from the West Virginia*  
74 *Greyhound Breeding Development Fund required by this section shall be discontinued: *And**  
75 *provided further, That effective July 1, 2021, 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 providing any*  
77 *other funding for dog races shall be discontinued pursuant to §19-23-10a of this code.* The  
78 purpose of the fund is to promote better breeding, training track facilities and racing of greyhounds  
79 in the state through awards and purses to bona fide resident registered greyhound owners of  
80 accredited West Virginia whelped greyhounds. In order to participate and be eligible to receive an

81 award or purse through the fund, the registered greyhound owner must have an appropriate  
82 license from the Racing Commission to race in West Virginia. The registered greyhound dam at  
83 the time of breeding must be wholly or solely owned or leased by a bona fide resident or residents  
84 of West Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned  
85 by a bona fide resident or residents of this state. To qualify as a bona fide resident of West Virginia,  
86 a registered greyhound owner may not claim residency in any other state. A registered greyhound  
87 owner must prove bona fide residency by providing to the commission personal income tax  
88 returns filed in the State of West Virginia for the most recent tax year and the three previous tax  
89 years, has real or personal property in this state on which the owner has paid real or personal  
90 property taxes during the most recent tax year and the previous three tax years and an affidavit  
91 stating that the owner claims no other state of residency. The Racing Commission shall maintain  
92 a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing  
93 Commission for purses for stake races, training track facilities, supplemental purse awards,  
94 administration, promotion, education and greyhound adoption programs involving West Virginia  
95 whelped dogs, owned by residents of this state under rules promulgated by the Racing  
96 Commission. The Racing Commission shall pay out of the greyhound breeding development fund  
97 to each of the licensed dog racing tracks the sum of \$75,000 for the fiscal year ending June 30,  
98 1994. The licensee shall deposit the sum into the special fund for regular purses established  
99 under the provisions of section nine of this article. The funds shall be expended solely for the  
100 purpose of supplementing regular purses under rules promulgated by the Racing Commission.

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

103 The registered greyhound owner of accredited West Virginia whelped greyhounds that  
104 earn points at any West Virginia meet will receive a bonus award calculated at the end of each  
105 month as a percentage of the fund dedicated to the owners as purse supplements, which shall be  
106 a minimum of 50 percent of the total moneys deposited into the West Virginia Greyhound Breeding

107 Development fund monthly.

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

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

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

125           Any balance in the purse supplement funds after all distributions have been made for the  
126 year revert to the general account of the fund for distribution in the following year: *Provided*, That  
127 not more than \$2 million from the balance in the purse supplemental fund shall be used for the  
128 construction and maintenance of two dog training track facilities if such be approved by the Racing  
129 Commission: *Provided, however*, That not more than \$1 million may be allocated for the  
130 construction and maintenance of each training track: *Provided further*, That both training track  
131 facilities must be located in West Virginia. The West Virginia Racing Commission shall be  
132 authorized to promulgate rules governing dog training tracks: *And provided further*, That the

133 Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the  
134 construction or maintenance, or both, of the training tracks; and (2) set standards to assure that  
135 only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

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

142 Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia  
143 whelped greyhounds: *Provided, That* each pari-mutuel track shall have one juvenile and one open  
144 stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for  
145 accredited West Virginia whelped greyhounds per race card: *Provided, however, That* sufficient  
146 dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an  
147 opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West  
148 Virginia Racing Commission by July 1, each year shall establish and announce the minimum  
149 number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West  
150 Virginia dog tracks must have on their racing active list during the calendar year following such  
151 action. The minimum number may vary from dog track to dog track. The minimum number shall  
152 be established after consultation with the West Virginia Greyhound Owners and Breeders  
153 Association and kennel owners and operators. Factors to be considered in establishing this  
154 minimum number shall be the number of individually registered accredited West Virginia whelped  
155 greyhounds whelped in the previous two years. The number of all greyhounds seeking  
156 qualification at each West Virginia dog track, the ratio of active running greyhounds to housed  
157 number of greyhounds at each West Virginia dog track, and the size and number of racing kennels  
158 at each West Virginia dog track. Any greyhound racing kennel not having the minimum number

159 of accredited West Virginia whelped greyhounds determined by the West Virginia Racing  
160 Commission on their active list shall only be permitted to race the maximum allowable number on  
161 the active list less the number of accredited West Virginia whelped greyhounds below the  
162 established minimum number. Consistent violations of this minimum requirement may be  
163 reviewed by the Racing Commission and may constitute cause for denial or revocation of a  
164 kennel's racing license. The Racing Commission shall oversee and approve racing schedules  
165 and purse amounts.

166       Ten percent of the deposits into the greyhound breeding development fund beginning July  
167 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission and  
168 placed in a special revenue account hereby created in the State Treasury called the  
169 "Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs  
170 to include spaying and neutering account". The Racing Commission is authorized to expend the  
171 moneys deposited in the Administration, Promotion, Education, Capital Improvement and  
172 Greyhound Adoption Programs to include spaying and neutering account at such times and in  
173 such amounts as the commission determines to be necessary for purposes of administering and  
174 promoting the greyhound development program: *Provided, That* beginning with fiscal year 1995  
175 and in each fiscal year thereafter in which the commission anticipates spending any money from  
176 the account, the commission shall submit to the executive department during the budget  
177 preparation period prior to the Legislature convening before that fiscal year for inclusion in the  
178 executive budget document and budget bill, the recommended expenditures, as well as requests  
179 of appropriations for the purpose of Administration, Promotion, Education, Capital Improvement  
180 and Greyhound Adoption Programs to include spaying and neutering. The commission shall make  
181 an annual report to the Legislature on the status of the Administration, Promotion, Education,  
182 Capital Improvement and Greyhound Adoption Programs to include spaying and neutering  
183 account, including the previous year's expenditures and projected expenditures for the next year.

184       The Racing Commission, for the fiscal year 1994 only, may expend up to \$35,000 from

185 the West Virginia Greyhound Breeding Development Fund to accomplish the purposes of this  
186 section without strictly following the requirements in the previous paragraph.

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

191 (f) Every association or licensee subject to the provisions of this article, including the  
192 changed provisions of sections nine and ten of this article, shall annually submit to the Racing  
193 Commission and the Legislature financial statements, including a balance sheet, income  
194 statement, statement of change in financial position and an audit of any electronic data system  
195 used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing  
196 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, 2021, the West  
2 Virginia Greyhound Breeding Development Fund created in §19-23-10 of this code is  
3 discontinued. On or before July 1, 2021, all amounts remaining in the West Virginia Greyhound  
4 Breeding Development Fund shall be distributed to the respective licensees that discontinued  
5 greyhound racing: *Provided, That* \$1 million shall be withheld by the Racing Commission and  
6 placed in the special revenue account called the Administration, Promotion, Education, Capital  
7 Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account  
8 created in §19-23-10(d) of this code, to be allocated specifically to facilitate care for and adoption  
9 of, or placement in, no-kill animal shelters of accredited West Virginia whelped greyhounds  
10 actively running at each West Virginia dog track: Any funds remaining in either the Administration,  
11 Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include  
12 Spaying and Neutering as of June 30, 2022, shall thereafter be distributed to the respective



13 licensees that discontinued greyhound racing.

14 (b) Notwithstanding any other provision of this code, effective July 1, 2021, and thereafter,  
15 all amounts required to be deposited into the West Virginia Greyhound Breeding Development  
16 Fund prior to the enactment of this section shall, in lieu thereof, be distributed to the respective  
17 licensees that discontinued greyhound racing: *Provided, That* net terminal lottery income shall be  
18 distributed as provided in §29-22a-10(c)(5) and §29-22a-10b(a)(5) of this code.

19 (c) Notwithstanding any other provision of this code, effective July 1, 2021, and thereafter,  
20 all amounts required to be deposited into any fund or paid for the purpose of funding purses,  
21 awards or providing any other funding for greyhound races shall, in lieu thereof, be distributed to  
22 the respective licensees that discontinued greyhound racing.

**§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 section two  
7 of this article; and

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

11 (b)(1) A licensee conducting not less than 220 live racing dates for each horse or dog race  
12 meeting may, with the prior approval of the state Racing Commission, contract with any legal  
13 wagering entity in this state or in any other governmental jurisdiction to receive telecasts and  
14 accept wagers on races conducted by the legal wagering entity: *Provided, That* effective July 1,  
15 2021, and thereafter, a licensee that was licensed prior to January 1, 1994 to conduct dog racing

16 is not required to conduct a minimum number of live racing dates to contract with a legal wagering  
17 entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers  
18 on dog and horse races: Provided, however, That at those thoroughbred racetracks the licensee,  
19 in applying for racing dates, shall apply for not less than 210 live racing dates for each horse race  
20 meeting: *Provided, however further,* That at those thoroughbred racetracks that have participated  
21 in the West Virginia thoroughbred development fund for a period of more than four consecutive  
22 calendar years prior to December 31, 1992, the licensee may apply for not less than 159 live  
23 racing dates during the calendar year 1997. If, thereafter, for reasons beyond the licensee's  
24 control, related to adverse weather conditions, unforeseen casualty occurrences or a shortage of  
25 thoroughbred horses eligible to compete for purses, the licensee concludes that this number of  
26 racing days cannot be attained, the licensee may file a request with the Racing Commission to  
27 reduce the authorized live racing days. Upon receipt of the request the Racing Commission shall  
28 within 72 hours of the receipt of the request notify the licensee and the representative of a majority  
29 of the owners and trainers at the requesting track and the representative of the majority of the  
30 mutuel clerks at the requesting track that such request has been received and that if no objection  
31 to the request is received within 10 days of the notification the request will be approved: And  
32 *provided further,* That the commission shall give consideration to whether there existed available  
33 unscheduled potential live racing dates following the adverse weather or casualty and prior to the  
34 end of the race meeting which could be used as new live racing dates in order to maintain the full  
35 live racing schedule previously approved by the Racing Commission. If an objection is received  
36 by the commission within the time limits, the commission shall, within 30 days of receipt of such  
37 objection, set a hearing on the question of reducing racing days, which hearing shall be conducted  
38 at a convenient place in the county in which the requesting racetrack is located. The commission  
39 shall hear from all parties concerned and, based upon testimony and documentary evidence  
40 presented at the hearing, shall determine the required number of live racing days: *And provided*  
41 *further,* That the commission shall not reduce the number of live racing days below 185 days for

42 a horse race meeting unless the licensee requesting such reduction has: (i) Filed with the  
43 commission a current financial statement, which shall be subject to independent audit; and (ii)  
44 met the burden of proving that just cause exists for such requested reduction in live racing days.  
45 The telecasts may be received and wagers accepted at any location authorized by the provisions  
46 of section twelve-a of this article. The contract must receive the approval of the representative of  
47 the majority of the owners and trainers who hold permits required by section two of this article at  
48 the receiving thoroughbred racetrack.

49 (2) A facility that was licensed prior to January 1, 1994, to conduct dog racing is required  
50 to hold a racing license to receive telecasts and accept wagers on dog and horse races,  
51 regardless of whether the facility continues to conduct live dog racing: *Provided, That* nothing in  
52 this section permits a racetrack to receive telecasts and accept wagers on dog and horse races  
53 in more than one location.

54 (3) The commission shall have the authority to promulgate rules, including emergency  
55 rules, in accordance with §29A-3-1 *et seq.* of this code, as it deems necessary to implement and  
56 efficiently administer the requirement of §19-23-12b(b)(2) of this code: *Provided, That* the rules  
57 are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at live  
58 racetracks.

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

68 host racing association shall receive a fee to be paid by the receiving licensee racetrack which  
69 shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing  
70 association.

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

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

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

93 (3) From the licensee commissions authorized by subsection (c) of this section, after

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

106 (f) After deducting the tax and other payments required by subsection (e) of this section,  
107 the amount required to be paid under the terms of the contract with the host racing association  
108 and the cost of transmission, the horse racing association shall make a deposit equal to 50  
109 percent of the remainder into the purse fund established under the provisions of subdivision one,  
110 subsection nine of this article. After deducting the tax and other payments required by subsection  
111 (e) of this section, dog racetracks shall pay an amount equal to two tenths of one percent of the  
112 daily simulcast pari-mutuel pool to the “West Virginia Racing Commission Special Account-West  
113 Virginia Greyhound Breeding Development Fund”: *Provided, That effective July 1, 2021, and*  
114 *thereafter, the amount required to be paid to the West Virginia Greyhound Breeding Development*  
115 *Fund by this subsection shall instead be distributed to the respective licensees that discontinued*  
116 *greyhound racing.*

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

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

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

1 (a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-  
2 mutuel tickets, if not claimed within 90 days after the close of a horse or dog race meeting or the  
3 televised racing day, as the case may be, in connection with which the tickets were issued, shall  
4 be turned over by the licensee to the racing commission within 15 days after the expiration of the  
5 90-day period, and the licensee shall give any information required by the racing commission  
6 concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the racing  
7 commission in a banking institution of its choice in a special account to be known as "West Virginia  
8 Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets." Notice of the amount,  
9 date and place of each deposit shall be given by the racing commission, in writing, to the State  
10 Treasurer. The racing commission shall then cause to be published a notice to the holders of the  
11 outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed  
12 tickets for payment at the principal office of the racing commission within 90 days from the date  
13 of the publication of the notice. The notice shall be published within 15 days following the receipt  
14 of the outstanding and unredeemed pari-mutuel ticket moneys by the commission from the  
15 licensee as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of  
16 this code, and the publication area for the publication shall be the county in which the horse or  
17 dog race meeting was held and the county in which the televised racing day wagering was  
18 conducted in this state.

19 (b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for  
20 payment within 90 days from the date of the publication of the notice are thereafter irredeemable,  
21 and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the

22 property of the racing commission and shall be expended as provided in subsections (c) and (d)  
23 of this section. The racing commission shall maintain separate accounts for each licensee and  
24 shall record in each separate account the moneys turned over by the licensee and the amount  
25 expended at the licensee's track for the purposes set forth in this subsection.

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

28 (1) The unredeemed pari-mutuel tickets attributable to each licensee horse racetrack  
29 together with funds distributed pursuant to §29-22-18a of this code shall be used for claims  
30 received pursuant to this subsection by the Racing Commission each calendar quarter: *Provided,*  
31 That the first distribution after the effective date of amendments to this section made during the  
32 2010 regular legislative session shall not occur until February 2011 and then each calendar  
33 quarter thereafter. Any claims made pursuant to this subsection must be submitted to the racing  
34 commission no later than 15 days after the race where the funds are awarded. The funds in the  
35 two special accounts - unredeemed pari-mutuel tickets shall be distributed based on claims  
36 received from each horse racetrack as follows:

37 (A) To the owner of the winning horse in any horse race at a horse race meeting held or  
38 conducted by any licensee: *Provided,* That the owner of the horse is at the time of the horse race  
39 a bona fide resident of this state, a sum equal to 10 percent of the purse won by the horse at that  
40 race: *Provided, however,* That in the event there are more than 10 races in any performance, the  
41 award to the resident owner of the winning horse will be that fractional share of the purse with a  
42 numerator of one and a denominator representing the number of races on the day of the  
43 performance. The commission may require proof that the owner was, at the time of the race, a  
44 bona fide resident of this state. Upon proof by the owner that he or she filed a personal income  
45 tax return in this state for the previous two years and that he or she owned real or personal  
46 property in this state and paid taxes in this state on real or personal property for the previous two  
47 years, he or she shall be presumed to be a bona fide resident of this state; and

48 (B) To the breeder (that is, the owner of the mare) of the winning horse in any horse race  
49 at a horse race meeting held or conducted by any licensee: *Provided, That* the mare foaled in  
50 this state, a sum equal to 10 percent of the purse won by the horse: *Provided, however,* That in  
51 the event there are more than 10 races in any performance, the award to the breeder will be that  
52 fractional share of the purse with a numerator of one and a denominator representing the number  
53 of races on the day of the performance; and

54 (C) To the owner of the stallion which sired the winning horse in any horse race at a horse  
55 race meeting held or conducted by any licensee: *Provided,* That the mare which foaled the  
56 winning horse was served by a stallion standing and registered in this state, a sum equal to 10  
57 percent of the purse won by the horse: *Provided, however,* That in the event there are more than  
58 10 races in any performance, the award to the owner of the stallion will be percentage of the purse  
59 based upon the fractional share represented by the number of races on the day of the  
60 performance.

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

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

73 (d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be



74 combined into a single balance and distributed quarterly to the West Virginia racing commission  
75 special account - West Virginia Greyhound Breeding Development Fund: Provided, That effective  
76 July 1, 2021, and thereafter, the balance shall instead be distributed to the respective licensees  
77 that discontinued greyhound racing. The deposit made pursuant to this subsection does not  
78 create a continuing obligation of payment except to the extent that there are unredeemed pari-  
79 mutuel tickets from the licensee dog racetracks.

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

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

86 (1) A transfer of \$2.5 million from the State Excess Lottery Revenue Fund available on the  
87 last day of the fiscal year which began July 1, 2009 shall be made to the nonappropriated fund  
88 with the State Treasurer known as the Unredeemed Pari-Mutuel Tickets Fund. The Racing  
89 Commission shall also transfer to the account with the State Treasurer monies from the racing  
90 commission special accounts - Unredeemed Pari-Mutuel Tickets for deposits received in each of  
91 those accounts that have been credited with unredeemed pari-mutuel tickets for races completed  
92 at any licensee racetrack as of June 30, 2010, and any other monies appropriated by the  
93 legislature. Unredeemed pari-mutuel tickets for races completed after June 30, 2010 must remain  
94 in the special accounts - Unredeemed Pari-Mutuel Tickets to satisfy future payments pursuant to  
95 this section.

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

100 shall extinguish any further obligation by the state with respect to those claims.

101 (g) The commission shall submit to the legislative auditor a quarterly report and accounting  
102 of the income and expenditures in the special account created by this section known as the West  
103 Virginia racing commission special account - Unredeemed Pari-Mutuel Tickets.

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

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

110 (j) The racing commission is authorized to promulgate emergency rules, prior to  
111 September 1, 2010, to incorporate the revisions to this article enacted during the 2010 regular  
112 legislative session.

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

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

1 (a) Funds received by the Racing Commission pursuant to §29-22A-10(c)(6) and §29-  
2 22A-10b(a)(5) of this code, after the effective date of this section together with the balance in the  
3 bank account previously established by the Commission to receive those funds shall be deposited  
4 in a banking institution of its choice in a special account to be known as "West Virginia Racing  
5 Commission Racetrack Video Lottery Account". Notice of the amount, date and place of each  
6 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 section thirteen of this article, shall be  
11 used by the commission for promotional activities, advertising, administrative costs and purses

12 for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all  
13 horses qualifying under the West Virginia breeders program for each stake race, based solely on  
14 the 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, 2021, 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 distributed to the respective  
31 licensees that discontinued greyhound racing.

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-101 *et seq.* of this code, except the amounts due the  
6 commission under §29-22B-1408(a)(1) of this code, shall be deposited in the State Treasury and  
7 placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the  
8 manner provided in this section for the purposes stated in this section and shall not be treated by  
9 the State Auditor 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 §18C-7-7 of this code; (3) \$19 million  
15 into the Economic Development Project Fund created in subsection (e) of this section for the

16 issuance of revenue bonds and to be spent in accordance with the provisions of said subsection;  
17 (4) \$20 million into the School Building Debt Service Fund created in §18-9D-6 of this code for  
18 the issuance of revenue bonds; (5) \$40 million into the West Virginia Infrastructure Fund created  
19 in §31-15A-9 of this code to be spent in accordance with the provisions of said article; (6) \$10  
20 million into the Higher Education Improvement Fund for Higher Education; and (7) \$5 million into  
21 the State Park Improvement Fund for Park Improvements. For the fiscal year beginning July 1,  
22 2003, the commission shall deposit: (1) \$65 million into the General Purpose Account to be  
23 expended pursuant to appropriation of the Legislature; (2) \$17 million into the Education  
24 Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund  
25 created in §18C-7-7 of this code; (3) \$19 million into the Economic Development Project Fund  
26 created in subsection (e) of this section for the issuance of revenue bonds and to be spent in  
27 accordance with the provisions of said subsection; (4) \$20 million into the School Building Debt  
28 Service Fund created in §18-9D-6 of this code for the issuance of revenue bonds; (5) \$40 million  
29 into the West Virginia Infrastructure Fund created in §31-15A-9 of this code to be spent in  
30 accordance with the provisions of said article; (6) \$10 million into the Higher Education  
31 Improvement Fund for Higher Education; and (7) \$7 million into the State Park Improvement Fund  
32 for Park 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  
59 commission shall deposit: (1) \$65 million into the General Purpose Account to be expended  
60 pursuant to appropriation of the Legislature; (2) \$29 million into the Education Improvement Fund  
61 for appropriation by the Legislature to the PROMISE Scholarship Fund created in §18C-7-7 of  
62 this code; (3) \$19 million into the Economic Development Project Fund created in subsection (e)  
63 of 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 proceeds shall mature at a time or times not  
92 exceeding 30 years from their respective dates. The principal of and the interest and redemption  
93 premium, if any, on the bonds shall be payable solely from the special fund provided in this section

94 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 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.* or §5-22A-1 *et seq.* of this code, as the case may be: *Provided, however,* That if the  
128 bond proceeds are expended pursuant to §5-22A-1 *et seq.* of this code and if the Design-Build  
129 Board created under said article determines that the execution of a design-build contract in  
130 connection with a project is appropriate pursuant to the criteria set forth in said article and that a  
131 competitive bidding process was used in selecting the design builder and awarding the contract,  
132 the determination shall be conclusive for all purposes and shall be considered to satisfy all the  
133 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 30 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 10 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.

163 The project of an individual or private person or entity may be certified to receive a low-  
164 interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not  
165 limited to, the rate of interest to be paid and the period of the repayment, shall be determined by  
166 the Economic Development Authority 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 14 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 §31-15-1 *et seq.* of this code. Expenditures from the  
204 fund are not authorized from collections but are to be made only in accordance with appropriation  
205 by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon  
206 fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Loan repayment amounts, including  
207 the portion attributable to interest, shall be paid into the fund created in this subdivision.

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

217 (g) Each fiscal year, the commission shall, after meeting the requirements of subsections  
218 (b), (c), (d), (i) and (m) of this section and after transferring to the State Lottery Fund created  
219 under §29-22-18 of this code an amount equal to any transfer from the State Lottery Fund to the  
220 Excess Lottery Fund pursuant to §29-22-18(f) of this code, deposit 50 percent of the amount by  
221 which annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds \$225  
222 million in a fiscal year in a separate account in the State Lottery Fund to be available for  
223 appropriation by the Legislature.

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

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

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

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

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

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

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

250 subsection.

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

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

264 (1) On the last day of the fiscal year that begins on July 1, 2010, and for each fiscal year  
265 thereafter, 46 percent shall be placed in the General Purse Fund of a thoroughbred racetrack  
266 licensee that did not participate in the Thoroughbred Development Fund for at least four  
267 consecutive calendar years prior to December 31, 1992, for payment of regular purses;

268 (2) Forty-three and one-half percent shall be distributed to the racing commission special  
269 account — Unredeemed Pari-Mutuel Tickets, established on behalf of a thoroughbred racetrack  
270 licensee that did participate in the Thoroughbred Development Fund for at least four consecutive  
271 calendar years prior to December 31, 1992;

272 (3) Five and one-half percent shall be distributed to the racing commission special account  
273 — Unredeemed Pari-Mutuel Tickets, established on behalf of a thoroughbred racetrack licensee  
274 that did not participate in the Thoroughbred Development Fund for at least four consecutive  
275 calendar years prior to December 31, 1992; and

276 (4) Five percent shall be distributed to the racing commission special account –  
 277 Greyhound Breeding Development Fund: Provided, That effective July 1, 2021, and thereafter,  
 278 the amount required by this subdivision to be distributed to the West Virginia Greyhound Breeding  
 279 Development Fund shall in lieu thereof, be distributed to the respective licensees that  
 280 discontinued greyhound racing.

281 (m) For the fiscal year beginning July 1, 2019, and subsequent fiscal years, the  
 282 commission shall deposit \$11 million to be distributed into the special funds established by the  
 283 respective licensees and used for the payment of regular purses in addition to the other amounts  
 284 provided in §19-23-1 *et seq.* of this code; such distribution shall be on a pro rata basis based  
 285 upon the actual purse earnings of each such licensee as specified in §29-22A-10(c)(2) and §29-  
 286 22A-10b(a)(2) of this code. Provided, That effective July 1, 2021, and thereafter, the amount  
 287 required by this subdivision to be distributed to any fund or paid for the purpose of funding purses,  
 288 awards, or providing any other funding for greyhound races shall, in lieu thereof, be distributed to  
 289 the respective licensees that discontinued greyhound racing.

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

### **§29-22A-3. Definitions.**

1 As used in this article:

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

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

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

10 (d) “Central computer,” “central control computer” or “central site system” means any

11 central site computer provided to and controlled by the commission to which video lottery  
12 terminals communicate for purposes of information retrieval and terminal activation and to disable  
13 programs.

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

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

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

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

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

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 §19-23-1 *et seq.* of this code permitting the racetrack  
43 to operate video lottery terminals authorized by the commission: Provided, That effective July 1,  
44 2021, and thereafter, "license" or video lottery license" Also means authorization granted  
45 pursuant to said article to a racetrack which was licensed to conduct greyhound racing meetings  
46 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  
68 this 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 220 live racing dates for each horse or dog race meeting or such other  
71 number of live racing dates as may be approved by the Racing Commission in accordance with  
72 the provisions of §19-23-12-b. of this code. Provided further, That effective July 1, 2021, and  
73 thereafter, "pari-mutuel racing facility", "licensed racetrack", "racetrack", or "track" also includes a  
74 racetrack which was licensed to conduct greyhound racing meetings prior to January 1, 1994,  
75 and continues to hold a racing license to receive telecasts and accept wagers on horse or dog  
76 races, regardless of whether the facility continues to conduct live dog racing.

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

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

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

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

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

88 (1) Is connected to the commission's central control computer by an on-line or dial-up

89 communication system;

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

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

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

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

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

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

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

**§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, 2021, 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,  
10 reputation, and associations, does not pose a threat to the security and integrity of the lottery or  
11 to the public interest of the state. All new applicants for licenses and permits issued by the  
12 commission shall furnish fingerprints for a national criminal records check by the Criminal  
13 Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation.  
14 The fingerprints shall be furnished by all persons required to be named in the application and  
15 shall be accompanied by a signed authorization for the release of information by the Criminal  
16 Investigation Bureau and the Federal Bureau of Investigation. The commission may require any  
17 applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal  
18 records check by the Criminal Identification Bureau of the West Virginia State Police and the  
19 Federal Bureau of Investigation: *Provided, That* the Lottery Commission shall apply §29-22A-7(g)

20 and §29-22A-7(h) of this code in determining whether an applicant's prior criminal convictions  
21 bear a rational nexus to the license or permit being sought.

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

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

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

41 (7) A racetrack applying for a video lottery license or a license renewal must file with the  
42 commission a copy of any current or proposed agreement between the applicant and any  
43 manufacturer for the sale, lease, or other assignment to the racetrack of video lottery terminals,  
44 the electronic computer components of the terminals, the random number generator of the  
45 terminals, or the cabinet in which it is housed. Once filed with the commission, the agreement is

46 a public document subject to the provisions of §29B-1-1 *et seq.* of this code.

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

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

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

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

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

68 (d) Each applicant bears all risks of adverse public notice, embarrassment, criticism,  
69 damages, or financial loss which may result from any disclosure or publication of any material or  
70 information obtained by the commission pursuant to action on an application. The applicant shall,  
71 as a part of its application, expressly waive any and all claims against the commission, the State

72 of West Virginia and the employees of either for damages as a result of any background  
73 investigation, disclosure, or publication relating to an application for a video lottery license or  
74 permit.

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

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

82 (g) The Lottery Commission may not disqualify an applicant from an initial license or permit  
83 because of a prior criminal conviction that remains unreversed unless that conviction is for a crime  
84 that bears a rational nexus to the activity requiring a license or permit. In determining whether a  
85 criminal conviction bears a rational nexus to a profession or occupation, the Lottery Commission  
86 shall consider at a minimum:

- 87 (1) The nature and seriousness of the crime for which the individual was convicted;  
88 (2) The passage of time since the commission of the crime;  
89 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the  
90 duties and discharge the responsibilities of the profession or occupation; and  
91 (4) Any evidence of rehabilitation or treatment undertaken by the individual.

92 (h) Notwithstanding any other provision of this code to the contrary, if an applicant is  
93 disqualified from a license or permit because of a prior criminal conviction, the Lottery  
94 Commission shall permit the applicant to apply for an initial license or permit if:

- 95 (1) A period of five years has elapsed from the date of conviction or the date of release  
96 from incarceration, whichever is later;  
97 (2) The individual has not been convicted of any other crime during the period of time

98 following the disqualifying offense; and

99 (3) The conviction was not for an offense of a violent or sexual nature: *Provided, That a*  
100 conviction for an offense of a violent or sexual nature may subject an individual to a longer period  
101 of disqualification from a license or permit, to be determined by the Lottery Commission.

102 (i) An individual with a criminal record who has not previously applied for a license or  
103 permit may petition the Lottery Commission at any time for a determination of whether the  
104 individual's criminal record will disqualify the individual from obtaining a license or permit. This  
105 petition shall include sufficient details about the individual's criminal record to enable the Lottery  
106 Commission to identify the jurisdiction where the conviction occurred, the date of the conviction,  
107 and the specific nature of the conviction. The Lottery Commission shall provide the determination  
108 within 60 days of receiving the petition from the applicant. The Lottery Commission may charge  
109 a fee to recoup its costs for each petition.

**§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 section eighteen, article  
27 twenty-two of this chapter; 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 section ten-b of this article. 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 section ten-a of this article;

56 (2) Until July 1, 2005, fourteen percent of net terminal income at a licensed racetrack shall  
57 be deposited in the special fund established by the licensee, and used for payment of regular  
58 purses in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July  
59 1, 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 is located and where the racetrack has been located in  
73 a municipality within the county since on or before January 1, 1999 shall be divided, if applicable,  
74 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;

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)(A) The West Virginia Thoroughbred Development Fund created under section §19-23-  
84 13b of this code and the West Virginia Greyhound Breeding Development Fund created under  
85 §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half  
86 percent of the net terminal income: Effective July 1, 2021, the requirements of this paragraph are

87 discontinued.

88 (B) Effective July 1, 2021, and thereafter, the West Virginia Thoroughbred Development  
89 Fund, created under §19-23-13b of this code shall receive one and one-half percent of the net  
90 terminal income originating at license thoroughbred racetracks.

91 (C) Effective July 1, 2021, and thereafter, the respective licensee that discontinued  
92 greyhound racing, shall receive one and one-half percent of the net terminal income originating  
93 at such licensed dog racetracks.

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

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

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

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

109 (i) 1.375 percent of the total amount of net terminal income described in this section and  
110 in section ten-b of this article shall be deposited into the Tourism Promotion Fund created under  
111 §5B-2-12 of this code;

112 (ii) 0.375 percent of the total amount of net terminal income described in this section and

113 in section ten-b of this article shall be deposited into the Development Office Promotion Fund  
114 created under §5B-2-3b of this code;

115 (iii) 0.5 percent of the total amount of net terminal income described in this section and in  
116 section ten-b of this article shall be deposited into the Research Challenge Fund created under  
117 §18B-1b-10 of this code;

118 (iv) 0.6875 percent of the total amount of net terminal income described in this section and  
119 in section ten-b of this article shall be deposited into the Capitol Renovation and Improvement  
120 Fund administered by the Department of Administration pursuant to §5A-4-6 of this code; and

121 (v) 0.0625 percent of the total amount of net terminal income described in this section and  
122 in section ten-b of this article shall be deposited into the 2004 Capitol Complex Parking Garage  
123 Fund administered by the Department of Administration pursuant to §5A-4-5A of this code; and

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

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

139 ~~liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided~~  
140 ~~for in its entirety; and~~

141 ~~(10)~~ (9) The remaining one percent of net terminal income shall be deposited as follows:

142 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive  
143 one percent of the net terminal income until sufficient moneys have been received to complete  
144 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.  
145 The moneys shall be deposited in the State Treasury in the Division of Culture and History special  
146 fund created under §29-1i-3 of this code: *Provided, That* only after sufficient moneys have been  
147 deposited in the fund to complete the veterans memorial and to pay in full the annual bonded  
148 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal  
149 income provided in this subdivision shall be deposited into a special revenue fund in the State  
150 Treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be  
151 expended by the Division of Veterans Affairs to provide for the placement of markers for the  
152 graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall  
153 promulgate legislative rules pursuant to the provisions of §29A-3-1 *et seq.* of this code specifying  
154 the manner in which the funds are spent, determine the ability of the surviving spouse to pay for  
155 the placement of the marker and setting forth the standards to be used to determine the priority  
156 in which the veterans grave markers will be placed in the event that there are not sufficient funds  
157 to complete the placement of veterans grave markers in any one year, or at all. Upon payment in  
158 full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net  
159 terminal income provided in this subdivision shall be deposited in the special fund in the Division  
160 of Culture and History created under §29-1i-3 of this code and be expended by the Division of  
161 Culture and History to establish a West Virginia veterans memorial archives within the Cultural  
162 Center to serve as a repository for the documents and records pertaining to the veterans  
163 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided,*  
164 *however,* That \$500,000 of the one percent of net terminal income shall be deposited in the State

165 Treasury in a special fund of the Department of Administration, created under §5A-4-5 of this  
166 code, to be used for construction and maintenance of a parking garage on the State Capitol  
167 Complex; and the remainder of the one percent of net terminal income shall be deposited in equal  
168 amounts in the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and  
169 Cultural Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3  
170 of this code.

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

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

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

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

191 is due to the commission.

192 (e) The commission's central control computer shall keep accurate records of all income  
193 generated by each video lottery terminal. The commission shall prepare and mail to the licensed  
194 racetrack a statement reflecting the gross terminal income generated by the licensee's video  
195 lottery terminals. Each licensed racetrack shall report to the commission any discrepancies  
196 between the commission's statement and each terminal's mechanical and electronic meter  
197 readings. The licensed racetrack is solely responsible for resolving income discrepancies  
198 between actual money collected and the amount shown on the accounting meters or on the  
199 commission's billing statement.

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

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



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

221 (i) The commission has the right to examine all accounts, bank accounts, financial  
222 statements and records in a licensed racetrack's possession, under its control or in which it has  
223 an interest and the licensed racetrack shall authorize all third parties in possession or in control  
224 of the accounts or records to allow examination of any of those accounts or records by the  
225 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  
6 commission shall deposit in the State Excess Lottery Revenue Fund created in section eighteen-  
7 a, article twenty-two of this 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 subdivision (3),  
15 subsection (c), section ten of this article is in excess of the two percent received during fiscal year  
16 1999 by a county in which a racetrack is located that has participated in the West Virginia

17 thoroughbred development fund since on or before January 1, 1999, shall be divided as follows:

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

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

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

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

28 (ii) The municipality shall receive 50 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 section  
37 of this article 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, 2021, the requirements of this paragraph are  
39 discontinued.

40 (B) Effective July 1, 2021, 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 license thoroughbred racetracks.

43 (C) Effective July 1, 2021, and thereafter, the respective licensee that discontinued  
44 greyhound racing shall receive one and one-half percent of the net terminal income originating at  
45 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 in §19-23-13c of this code;

48 (7) A licensee shall receive 42 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 paragraph (B), subdivision (8), subsection (c), section ten of this article; and

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 section five, article two-d,~~  
55 ~~chapter twenty-three of this code: *Provided, That* in any fiscal year when the amount of money~~  
56 ~~generated by this subdivision together with the total allocation transferred by the operation of~~  
57 ~~subdivision (9), subsection (c), section ten of this article totals \$11,000,000, all subsequent~~  
58 ~~distributions under this subdivision (9) during that fiscal year shall be deposited in the special fund~~  
59 ~~established by the licensee and used for payment of regular purses in addition to other amounts~~  
60 ~~provided in article twenty-three, chapter nineteen of this code;~~

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

69 ~~liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided~~  
 70 ~~in its entirety; and~~

71 ~~(10)~~ (9)(A) One percent of the net terminal income shall be deposited in equal amounts in  
 72 the Capitol Dome and Improvements Fund created under §5A-4-2 of this code and Cultural  
 73 Facilities and Capitol Resources Matching Grant Program Fund created under §29-1-3 of this  
 74 code; and

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

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

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

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

5 (b) Notwithstanding any provision of subsection (c), section ten of this article to the  
 6 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each  
 7 distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5)  
 8 and (7), subsection (c), section ten of this article, shall be reduced by 100 percent. For the fiscal  
 9 year beginning after July 1, 2021, and each fiscal year thereafter, the distribution to the special  
 10 fund established by the licensee of each thoroughbred racetrack and used for payment of regular  
 11 purses, pursuant to §29-22A-10(c)(2) of this code only includes amounts to be distributed to each

12 thoroughbred racetrack video lottery licensee for the payment of regular racetrack purses and all  
13 amounts that were to be distributed to the special fund established by the licensee of each  
14 greyhound racetrack and used for payment of regular purses, pursuant to §29-22A-10(c)(2) of  
15 this code for each greyhound racetrack video lottery licensee shall be distributed to the respective  
16 licensees that discontinued greyhound racing. Payments shall not be made pursuant to section  
17 ten of this article, other than those excepted by this subsection, and are made in lieu thereof in  
18 an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

19 (c) The total amount of reductions resulting from subsection (b) of this section shall be  
20 paid into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-  
21 two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter,  
22 distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this  
23 article shall be reduced by 10 percent, and the amounts resulting from the reduction shall be paid  
24 into the State Excess Lottery Revenue Fund.

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

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

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

38 (g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the  
39 provisions of paragraph (B), subdivision (9), subsection (c), section ten of this article, upon  
40 certification of the Governor to the Legislature that an independent actuary has determined that  
41 the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or  
42 provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction  
43 Fund pursuant to paragraph (A), subdivision (9), subsection (c), section ten of this article shall  
44 expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to  
45 appropriation.

46 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision  
47 of paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision  
48 of this code to the contrary, if the budget shortfall, as determined by the state Budget Office as of  
49 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,  
50 redirect deposits of revenues derived from net terminal income imposed under this article, for any  
51 period commencing after February 29, 2016 and ending before July 1, 2016, to the General  
52 Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of  
53 this code or in any other provision of this code.

54 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of  
55 paragraph (B), subdivision (9), subsection (c), section ten of this article or any other provision of  
56 this code to the contrary, the Governor may, by Executive Order, redirect one-half of the deposits  
57 of revenues derived from net terminal income imposed under this article, for any period  
58 commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund,  
59 instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code or in  
60 any other provision of this code, until certification of the Governor to the Legislature that an  
61 independent actuary has determined that the unfunded liability of the Old Fund, as defined in  
62 chapter 23 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 subsection (a), section ten-b of this article to the  
2 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each  
3 distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5)  
4 and (7), subsection (a), section ten-b of this article, shall be reduced by 100 percent. For the fiscal  
5 year beginning after June 30, 2021, and each fiscal year thereafter, the distribution to the special  
6 fund established by the licensee of each thoroughbred racetrack and used for payment of regular  
7 purses, pursuant to subdivision (2) of said subsection, only includes amounts to be distributed to  
8 each thoroughbred racetrack video lottery licensee for the payment of regular racetrack purses  
9 and all amounts that were to be distributed to the special fund established by the licensee of each  
10 greyhound racetrack and used for payment of regular purses, pursuant to §29-22A-10(c)(2) of  
11 this code for each greyhound racetrack video lottery licensee shall be distributed to the respective  
12 licensees that discontinued greyhound racing. Payments shall not be made pursuant to section  
13 ten-b of this article, other than those excepted by this subsection, and are made in lieu thereof in  
14 an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

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

21 (c) 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 (d) 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 sections eighteen-a, eighteen-d, and eighteen-e, article twenty-two of this chapter  
28 and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this  
29 chapter.

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

34 (f)(1) Except as provided in subdivision (2) of this subsection, notwithstanding the  
35 provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, , upon  
36 certification of the Governor to the Legislature that an independent actuary has determined that  
37 the unfunded liability of the Old Fund, as defined in chapter 23 of this code, has been paid or  
38 provided for in its entirety, the transfers made to the Workers' Compensation Debt Reduction  
39 Fund pursuant to paragraph (A), subdivision (9), subsection (a), section ten-b of this article shall  
40 expire and those funds shall remain in the State Excess Lottery Revenue Fund subject to  
41 appropriation.

42 (2)(A) Notwithstanding any provision of subdivision (1) of this subsection or any provision  
43 of paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision  
44 of this code to the contrary, if the budget shortfall, as determined by the State Budget Office as of  
45 December 1, 2015, is greater than \$100 million, then the Governor may, by Executive Order,  
46 redirect deposits of revenues derived from net terminal income imposed under this article, for any  
47 period commencing after February 29, 2016 and ending before July 1, 2016, to the General  
48 Revenue Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of  
49 this code or in any other provision of this code.

50 (B) Notwithstanding any provision of subdivision (1) of this subsection or any provision of  
51 paragraph (B), subdivision (9), subsection (a), section ten-b of this article or any other provision



52 of this code to the contrary, the Governor may, by Executive Order, redirect one-half of the  
53 deposits of revenues derived from net terminal income imposed under this article, for any period  
54 commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue Fund,  
55 instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code or in  
56 any other provision of this code, until certification of the Governor to the Legislature that an  
57 independent actuary has determined that the unfunded liability of the Old Fund, as defined in  
58 chapter twenty three of this code, has been paid or provided for in its entirety.

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

1 (a) A racetrack which has been licensed to conduct video lottery games has the right to  
2 install and operate up to 400 video lottery terminals at a licensed racetrack. A licensed racetrack  
3 may apply to the commission for authorization to install and operate more than 400 video lottery  
4 terminals. If the commission determines that the installation of additional machines is in the best  
5 interest of the licensed racetrack, the Lottery Commission and the citizens of this state, the  
6 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 30 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 parimutuel wagering is permitted under the provisions of §19-23-1 *et seq.* of this code:  
 21 *Provided, That* if the commission, before November 1, 1993, has authorized any racetrack to  
 22 operate video lottery terminals and offer video lottery games in a location which would not conform  
 23 to the requirements of this subdivision, the racetrack may continue to use video lottery terminals  
 24 registered with and approved by the commission at that nonconforming location and to offer the  
 25 games and any variations or composites of the games as may be approved by the commission;  
 26 *Provided, however, That a racetrack that held a valid dog racing license prior to January 1, 1994,*  
 27 *and that no longer conducts live racing, may continue to operate operational video lottery*  
 28 *terminals or offer video lottery games in more than one location.*

29 (6) Nothing in this subdivision permits a licensed racetrack to operate operational video  
 30 lottery terminals or offer video lottery games in more than one location.

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

35 (d) Security personnel shall be present during all hours of operation at each video lottery  
 36 terminal location. Each license holder shall employ the number of security personnel the  
 37 commission determines is necessary to provide for safe and approved operation of the video  
 38 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 defined  
 2 in this section, and any variation of those words or terms required by the context, have the  
 3 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 rule making.

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 §29-22-6 of this code.

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

49 (B) He ~~or she~~ or she is employed by an independent contractor for a party to the matter  
50 under 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.* and §19-23-1 *et seq.* of this code: Provided, That effective  
66 July 1, 2021, and thereafter, "licensed racetrack" or "racing association" includes a facility which  
67 was licensed prior to January 1, 1994, to hold dog race meetings and which is licensed under  
68 §29-22C-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 chapter.

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

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

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

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

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

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

102 (27) "Racetrack table games license" means authorization granted under this article by  
103 the commission to a racetrack that is already licensed under article twenty-two-a of this chapter  
104 to operate racetrack video lottery terminals and holds a valid horse racing license or held a valid  
105 dog racing license prior to January 1, 1994, granted by the West Virginia Racing Commission  
106 pursuant to the provisions §19-23-1 *et seq.* of this code, which permits the racetrack as an agent  
107 of the commission for the limited purpose of operation of West Virginia Lottery table games in one  
108 or more designated gaming areas in one or more buildings owned or leased by the licensed

109 racetrack on the grounds where live pari-mutuel racing is conducted by the licensee, or in the  
110 case of a licensee that held a valid dog racing license prior to January 1, 1994 and that no longer  
111 conducts live racing.

112 (28) "Racetrack Table Games Fund" means the special fund in the State Treasury created  
113 in section twenty-seven of this article.

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

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

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

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

127 (33) "Winnings" means the total cash value of all property or sums including currency,  
128 tokens, or instruments of monetary value paid to players as a direct result of wagers placed on  
129 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 section seven of this article, the commission shall immediately  
7 grant a West Virginia Lottery table games license, and a license for the right to conduct West  
8 Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow  
9 the licensee to conduct West Virginia table games at the licensed pari-mutuel racetrack identified  
10 on the local option election ballot, provided that racetrack holds a valid racetrack video lottery  
11 license issued by the commission pursuant to article twenty-two-a of this chapter and a valid  
12 racing license granted by the West Virginia Racing Commission pursuant to the ~~provision~~  
13 provisions of §19-23-1 *et seq.* of this code and has otherwise met the requirements for licensure  
14 under the provisions of this article and the rules of the commission: Provided, That effective July  
15 1, 2021, and thereafter, a racetrack that held a valid dog racing license.

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

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

28           (e) *Management service contracts.* --

29           (1) *Approval.* -- A racetrack table games licensee may not enter into any management  
30 service contract that would permit any person other than the licensee to act as the commission's



31 agent in operating West Virginia Lottery table games unless the management service contract is:  
32 (A) With a person licensed under this article to provide management services; (B) is in writing;  
33 and (C) the contract has been approved by the commission.

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

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

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

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

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

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

55 (3) On and after the effective date of this article, vacation of the premises after service of  
56 beverages ceases is not required, notwithstanding to the contrary any inconsistent provisions of

57 this code or inconsistent rules promulgated by the Alcohol Beverage Control Commissioner with  
58 respect to hours of sale of those beverages, or required vacation of the premises.

59 (g) *Fees, expiration date and renewal.* --

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

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

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

68 (B) Pays to the commission the annual license renewal fee of \$2,500,000 required by this  
69 section at the time it files its application for renewal of its license under article twenty-two-a of this  
70 chapter; and

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

74 (3) *Annual license surcharge for failure to construct hotel on premises.* -- It is the intent of  
75 the Legislature that each racetrack for which a racetrack table games license has been issued be  
76 or become a destination tourism resort facility. To that end, it is important that each racetrack for  
77 which a racetrack table games license has been issued operate a hotel with significant amenities.  
78 Therefore, in addition to all other taxes and fees required by the provisions of this article, there is  
79 hereby imposed, upon each racetrack for which a racetrack table games license has been issued  
80 an annual license surcharge, payable to the commission in the amount of \$2,500,000 if that  
81 racetrack does not operate a hotel on its racing property that contains at least 150 guest rooms  
82 with significant amenities within three years of the passage of the local option election in its county

83 authorizing table games at the racetrack, provided the time for completion of the hotel shall be  
84 extended by the same number of days as the completion of the hotel is delayed by a force majeure  
85 events or conditions beyond the reasonable control of the racetrack licensee. The surcharge shall  
86 be paid upon each renewal of its racetrack table games license made after the expiration of the  
87 three year period, and may be extended by the above force majeure events or conditions, until  
88 the racetrack opens a qualifying hotel.

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

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

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

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

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

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

109 liability of the surety on the bond is limited to the amount specified in the bond.

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

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

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

122 (m) Nothing in this section permits a licensed racetrack to operate West Virginia Lottery  
123 table games in more than one location.

**§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 220 live racing dates for each horse or dog race meeting or such  
31 other number of live racing dates as may be approved by the Racing Commission in accordance  
32 with the provisions of §19-23-12b of this code, and otherwise keep in good standing, all licenses  
33 and permits granted by the Racing Commission pursuant to §19-23-6 of this code, and any rules  
34 promulgated thereunder: Provided, That effective July 1, 2021, and thereafter, a racetrack that  
35 held a valid dog racing license prior to January 1, 1994, is not required to race any minimum  
36 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 Racetrack  
2 Table Games Fund is continued and all tax collected under this article shall be deposited with the  
3 State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The fund  
4 shall be an interest-bearing account with all interest or other return earned on the money of the

5 fund credited to and deposited in the fund.

6 (2) Notwithstanding any provision of this article to the contrary, all racetrack table games  
7 license fees received by the commission pursuant to section eight of this article shall be deposited  
8 into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the  
9 fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature  
10 solely for the purpose of enabling the aged and disabled citizens of this state to maintain their  
11 residency in the community-based setting through the provision of home and community-based  
12 services.

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

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

17 (2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred  
18 racetracks with West Virginia Lottery table games to the special funds established by each  
19 thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the  
20 amount being divided on a pro rata basis between the special funds of each thoroughbred  
21 racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts  
22 from all greyhound racetracks with West Virginia Lottery table games to the special funds  
23 established by each greyhound racetrack table games licensees for the payment of regular  
24 racetrack purses, the amount being divided equally between the special funds of each greyhound  
25 racetrack table games licensee: Provided, That effective July 1, 2021, and thereafter, the amount  
26 required by this subdivision to be transferred to the special funds established by each greyhound  
27 racetrack table game licensee for the payment of regular racetrack purses shall instead be  
28 distributed to each respective licensee that discontinued greyhound racing.

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, 2021, and thereafter, the amount required by this  
35 subdivision to be transferred to the West Virginia Greyhound Breeding Development Fund shall  
36 instead be distributed to each respective licensee that discontinued greyhound racing. The  
37 amounts transferred to these funds may not be used for the benefit of any person or activity other  
38 than at or associated 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 75 percent of the total distribution under this  
66 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 25 percent of the total transfers under this paragraph: *Provided, however, That*  
79 the county board of education of a growth county, as that term is defined in §7-20-3 of this code,  
80 which has enacted the Local Powers Act, and in which county a racetrack is located that has  
81 participated in the West Virginia Thoroughbred Development Fund since on or before January 1,  
82 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for

83 the purpose of public projects, as defined in §13-2h-2 of this code, or to make payments on lottery  
84 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 §13-2h-1 *et seq.* 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, 2021, 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 distributed to each respective licensee that discontinued greyhound racing;

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, 2021, and thereafter, the amount required by this subdivision to  
118 be transferred to the West Virginia Greyhound Breeding Development Fund shall instead be  
119 distributed to each respective licensee that discontinued greyhound racing. The total amount  
120 transferred under this subdivision shall be divided pro rata among the development funds for each  
121 racetrack table games licensee based on relative adjusted receipts from each racetrack. The  
122 amounts transferred to these funds may not be used for the benefit of any person or activity other  
123 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 75 percent of the total distribution under this paragraph for the  
148 county in which the municipality is located; and (iii) a municipality receiving moneys under this  
149 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 25 percent of

161 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 76 percent to the State Debt Reduction Fund which is hereby continued in  
185 the State Treasury. Moneys of the fund shall be expended solely for the purpose of accelerating  
186 the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall

187 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 10 percent, to be divided and paid in equal shares, to each county commission  
193 in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this  
194 section: *Provided, That* funds transferred to county commissions under this subdivision shall be  
195 used only to pay regional jail expenses and the costs of infrastructure improvements and other  
196 capital improvements: *Provided, however, That* up to 50 percent of these funds may be pledged  
197 to make payments on lottery revenue bonds issued pursuant to §13-2h-1 *et seq.* of this code; and

198 (4) Transfer 10 percent, to be divided and paid in equal shares, to the governing bodies  
199 of each municipality in the state that is not eligible to receive a distribution under subdivisions (5)  
200 and (6), subsection (b) of this section: *Provided, That* funds transferred to municipalities under  
201 this subdivision shall be used only to pay for debt reduction in municipal police and fire pension  
202 funds and the costs of infrastructure improvements and other capital improvements: *Provided,*  
203 *however, That* up to 50 percent of these funds may be pledged to make payments on lottery  
204 revenue bonds issued pursuant to §13-2h-1 *et seq.* of this code.

205 (e) All expenses of the commission incurred in the administration and enforcement of this  
206 article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-  
207 enforcement agencies for services performed at the request of the commission pursuant to this  
208 article. The commission's expenses associated with a particular racetrack with authorized table  
209 games under this article may not exceed three percent of the total annual adjusted gross receipts  
210 received from that licensee's operation of table games under this article, including, but not limited  
211 to, all license fees or other amounts attributable to the licensee's operation of table games under  
212 this article, except as provided in subdivision (2), subsection (a) of this section. However, for the

213 fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery  
214 racetrack table games under this article and for the fiscal year thereafter, the commission's  
215 expenses associated with a particular racetrack with authorized table games under this article  
216 may not exceed four percent of the total annual adjusted gross receipts received from that  
217 licensee's operation of table games under this article, including, but not limited to, all license fees  
218 or other amounts attributable to the licensee's operation of table games under this article, except  
219 as provided in subdivision (2), subsection (a) of this section. These expenses shall either be  
220 allocated to the racetrack with West Virginia Lottery table games for which the expense is  
221 incurred, if practicable, or be treated as general expenses related to all racetrack table games  
222 facilities and be allocated pro rata among the racetrack table games facilities based on the ratio  
223 that annual adjusted gross receipts from operation of table games at each racetrack with West  
224 Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table  
225 games at all racetracks with West Virginia Lottery table games during the fiscal year of the state.  
226 From this allowance, the commission shall transfer at least \$100,000 but not more than \$500,000  
227 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 section twenty-seven of this article to the contrary,  
2 for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed  
3 pursuant to subdivision (1), subsection (d) of that section shall be reduced by 100 percent. For  
4 the fiscal year beginning after June 30, 2021, and each fiscal year thereafter, the distribution to  
5 the special fund established by the thoroughbred racetrack table games licensee, and used for  
6 payment of regular purses, pursuant to §29-22C-27(c)(2) of this code only includes amounts to  
7 be distributed to each thoroughbred racetrack table games licensee for the payment of regular  
8 racetrack purses and all amounts that were to be distributed to the special fund established by  
9 the licensee of each greyhound racetrack and used for payment of regular purses, pursuant to

10 §29-22C-27(c)(2) of this code for each greyhound racetrack table games licensee shall be  
11 distributed to the respective licensees that discontinued greyhound racing.

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 §29-22C-27(c)(2) and §29-22C-27(c)(3) of this code shall be reduced by 10 percent,  
16 and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue  
17 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 of this code and the distributions appropriated pursuant to this section shall be paid on a pro  
29 rata basis.

NOTE: The purpose of this bill is to clarify that a licensed racetrack casino must not maintain an active dog racing license in order to receive telecasts and accept wagers on dog and horse races, or to otherwise apply and qualify for a video lottery or racetrack table game licenses.

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