

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4339

BY DELEGATES GEARHEART, SMITH, HAMRICK, FERRELL,

AND FOSTER

[Introduced January 21, 2022; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §29-22A-10 and §29-22A-10d of the Code of West Virginia, 1931,
2 as amended, all relating to replacing the racetrack modernization fund provisions with
3 racetrack rebate fund provisions generally; requiring that the amount deducted annually
4 from the gross terminal income of each racetrack for the Lottery Commission's actual
5 costs and expenses incurred in administering racetrack video lottery at the licensed
6 racetrack shall include \$1,500,000, or the entire four percent of the gross terminal income
7 of that racetrack if the amount is less than \$1,500,000, that the commission shall deposit
8 into the Licensed Racetrack Rebate Fund; creating the Licensed Racetrack Rebate Fund;
9 closing the Licensed Racetrack Modernization Fund and providing for the distribution of
10 any amounts remaining in the fund; and requiring the Lottery Commission to pay an equal
11 share of the full amount deposited into the Licensed Racetrack Rebate Fund for each
12 fiscal year to each racetrack facility from which gross terminal income was derived during
13 the fiscal year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; licensed racetrack rebate fund; 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: Provided, That
15 for all fiscal years beginning on or after July 1, 2022, the amount deducted annually from the gross
16 terminal income of each racetrack for its actual costs and expenses incurred in administering
17 racetrack video lottery at the licensed racetrack shall include \$1,500,000 that the commission
18 shall deposit into the Licensed Racetrack Rebate Fund: *Provided, however, That if four percent*
19 of the gross terminal income of any racetrack is less than \$1,500,000, then the commission shall
20 deposit the entire four percent of the gross terminal income of that racetrack into the Licensed
21 Racetrack Rebate Fund as calculated by the commission when it has closed its books for the
22 fiscal year. The amount deducted for administrative costs and expenses of the commission may
23 not exceed four percent of gross terminal income: *Provided, That any amounts deducted by the*
24 *commission for its actual costs and expenses that exceeds its actual costs and expenses shall*
25 *be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011 through June*
26 *30, 2030, the term "actual costs and expenses" may include transfers of up to \$9 million in surplus*
27 *allocations for each fiscal year, as calculated by the commission when it has closed its books for*
28 *the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), of this*
29 *subsection. For the fiscal years ending June 30, 2023, and thereafter, the term "actual costs and*
30 *expenses" does not include transfers of any amount to the Licensed Racetrack Modernization*
31 *Fund created by subdivision (2), of this subsection.* For all fiscal years beginning on or after July

32 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the
33 amount of gross terminal income received during the fiscal year ending on June 30, 2001, but
34 four percent of any amount of gross terminal income received in excess of the amount of gross
35 terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into
36 the fund established in §29-22-18a of this code; and

37 (2) A Licensed Racetrack Modernization Fund is ~~created~~ continued within the lottery fund.
38 For the fiscal years year beginning on or after July 1, ~~2014~~ 2021, ~~and ending with the fiscal year~~
39 ~~beginning July 1, 2030~~ the commission shall deposit such amounts as are available for the
40 modernization fund according to subdivision (1) of this subsection into a separate facility
41 modernization account maintained within the Licensed Racetrack Modernization Fund for each
42 racetrack. Each racetrack's share of each year's deposit shall be calculated in the same ratio as
43 each racetrack's apportioned contribution to the four percent administrative costs and expenses
44 allowance provided for in subdivision (1) of this subsection for that year. For each \$2 expended
45 by a licensed racetrack for facility modernization improvements at the racetrack, having a useful
46 life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall
47 receive \$1 in recoupment from its facility modernization account. If the licensed racetrack's facility
48 modernization account contains a balance in any fiscal year, the unexpended balance from that
49 fiscal year will be available for matching for one additional fiscal year, after which time, the
50 remaining unused balance carried forward shall revert to the lottery fund. For purposes of this
51 section, the term "facility modernization improvements" includes acquisitions of new and unused
52 video lottery terminals and related equipment. Video lottery terminals financed through the
53 recoupment provided in this subdivision must be retained by the licensee in its West Virginia
54 licensed location for a period of not less than five years from the date of initial installation. No
55 further amounts may be deposited in the Licensed Racetrack Modernization Fund for fiscal years
56 beginning July 1, 2022, and thereafter. The commission shall distribute any amounts remaining
57 in the fund in accordance with this subdivision and close the fund.

58 (3) A Licensed Racetrack Rebate Fund is created within the lottery fund. For fiscal years
59 beginning on or after July 1, 2022, the commission shall deposit the amounts required by
60 subdivision (1) of this subsection into the Licensed Racetrack Rebate Fund as calculated by the
61 commission when it has closed its books for the fiscal year. Within 30 days thereafter, the
62 commission shall pay an equal share of the full amount deposited into the rebate fund for that
63 fiscal year to each racetrack facility from which gross terminal income was derived during the
64 fiscal year.

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

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

75 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be
76 deposited in the special fund established by the licensee, and used for payment of regular purses
77 in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1,
78 2005, the rate shall be seven percent of net terminal income;

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

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

84 1999, shall be divided as follows:

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

86 (ii) The municipalities of the county shall receive 50 percent of the excess amount, said
87 50 percent to be divided among the municipalities on a per capita basis as determined by the
88 most recent decennial United States census of population; and

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

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

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

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

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

102 (5) The West Virginia Thoroughbred Development Fund created pursuant to §19-23-13b
103 of this code and the West Virginia Greyhound Breeding Development Fund created pursuant to
104 §19-23-10 of this code shall receive an equal share of a total of not less than one and one-half
105 percent of the net terminal income;

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

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

109 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive

110 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,
111 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three
112 percent of the net terminal income described in this section and §29-22A-10b of this code into the
113 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of
114 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the
115 Department of Administration pursuant to §5A-4-6 of this code, and \$5 million into the Tax
116 Reduction and Federal Funding Increased Compliance Fund; and

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

121 (i) 1.375 percent of the total amount of net terminal income described in this section and
122 §29-22A-10b of this code shall be deposited into the Tourism Promotion Fund created pursuant
123 to §5B-2-12 of this code;

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

127 (iii) 0.5 percent of the total amount of net terminal income described in this section and in
128 §29-22A-10b of this code shall be deposited into the Research Challenge Fund created pursuant
129 to §18B-1B-10 of this code;

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

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

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

142 (B) The deposit of the seven percent of net terminal income into the Workers'
143 Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed
144 with respect to these funds and shall be deposited in the special fund established by the licensee
145 and used for payment of regular purses in addition to the other amounts provided in §19-23-1 *et*
146 *seq.* of this code on and after the first day of the month following the month in which the Governor
147 certifies to the Legislature that: (i) The revenue bonds issued pursuant to §23-2D-1 *et seq.* of this
148 code have been retired or payment of the debt service provided for; and (ii) that an independent
149 certified actuary has determined that the unfunded liability of the old fund, as defined in chapter
150 23 of this code, has been paid or provided for in its entirety; and

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

152 (A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive
153 one percent of the net terminal income until sufficient moneys have been received to complete
154 the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia.
155 The moneys shall be deposited in the State Treasury in the Division of Culture and History special
156 fund created pursuant to §29-11-3 of this code: *Provided,* That only after sufficient moneys have
157 been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded
158 indebtedness on the veterans memorial, not more than \$20,000 of the one percent of net terminal
159 income provided in this subdivision shall be deposited into a special revenue fund in the State
160 Treasury, to be known as the John F. 'Jack' Bennett Fund. The moneys in this fund shall be
161 expended by the Division of Veterans Affairs to provide for the placement of markers for the

162 graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall
163 promulgate legislative rules pursuant to the provisions of §29-3-1 *et seq.* of this code specifying
164 the manner in which the funds are spent, determine the ability of the surviving spouse to pay for
165 the placement of the marker and setting forth the standards to be used to determine the priority
166 in which the veterans' grave markers will be placed in the event that there are not sufficient funds
167 to complete the placement of veterans' grave markers in any one year, or at all. Upon payment in
168 full of the bonded indebtedness on the veterans memorial, \$100,000 of the one percent of net
169 terminal income provided in this subdivision shall be deposited in the special fund in the Division
170 of Culture and History created pursuant to §29-11-3 of this code and be expended by the Division
171 of Culture and History to establish a West Virginia veterans memorial archives within the Cultural
172 Center to serve as a repository for the documents and records pertaining to the veterans
173 memorial, to restore and maintain the monuments and memorial on the capitol grounds: *Provided,*
174 however, That \$500,000 of the one percent of net terminal income shall be deposited in the State
175 Treasury in a special fund of the Department of Administration, created pursuant to §5A-4-5 of
176 this code, to be used for construction and maintenance of a parking garage on the State Capitol
177 Complex; and the remainder of the one percent of net terminal income shall be deposited in equal
178 amounts in the Capitol Dome and Improvements Fund created pursuant to §5A-4-2 of this code
179 and Cultural Facilities and Capitol Resources Matching Grant Program Fund created pursuant to
180 §29-1-3 of this code.

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

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

186 (ii) The remainder of the one percent of net terminal income and all of the one percent of
187 net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows:

188 The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol
189 Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and
190 Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until
191 a total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching
192 Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and
193 Capitol Improvements Fund.

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

202 (e) The commission's central control computer shall keep accurate records of all income
203 generated by each video lottery terminal. The commission shall prepare and mail to the licensed
204 racetrack a statement reflecting the gross terminal income generated by the licensee's video
205 lottery terminals. Each licensed racetrack shall report to the commission any discrepancies
206 between the commission's statement and each terminal's mechanical and electronic meter
207 readings. The licensed racetrack is solely responsible for resolving income discrepancies
208 between actual money collected and the amount shown on the accounting meters or on the
209 commission's billing statement.

210 (f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the
211 commission may make no credit adjustments. For any video lottery terminal reflecting a
212 discrepancy, the licensed racetrack shall submit to the commission the maintenance log which
213 includes current mechanical meter readings and the audit ticket which contains electronic meter

214 readings generated by the terminal's software. If the meter readings and the commission's
215 records cannot be reconciled, final disposition of the matter shall be determined by the
216 commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved
217 in favor of the commission.

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

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

231 (i) The commission has the right to examine all accounts, bank accounts, financial
232 statements, and records in a licensed racetrack's possession, under its control or in which it has
233 an interest and the licensed racetrack shall authorize all third parties in possession or in control
234 of the accounts or records to allow examination of any of those accounts or records by the
235 commission.

236 (j) If a court of competent jurisdiction finds that the provisions of this section as amended
237 and reenacted in 2021 and the provisions of §29-22A-10d of this code conflict and cannot be
238 harmonized, the provisions of §29-22A-10d of this code shall control.

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

lottery fund.

1 (a) ~~(1) Notwithstanding any provision of subsection (b), section ten of this article to the~~
2 ~~contrary, for~~ For the fiscal year beginning July 1, 2014 2021, and each fiscal year thereafter the
3 commission may transfer up to \$9 million as actual costs and expenses to the Licensed Racetrack
4 Modernization Fund in accordance with §29-22A-10(b) of this code.

5 (2) For the fiscal year beginning July 1, 2022, and each fiscal year thereafter, the
6 commission may transfer to the Licensed Racetrack Rebate Fund the amounts specified in §29-
7 22A-10(b) of this code for that purpose.

8 (b) Notwithstanding any provision of subsection (c), section ten of this article to the
9 contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each
10 distribution, except those distributions to be made pursuant to ~~subdivisions (1), (2), (3), (4), (5)~~
11 ~~and (7), subsection (c), section ten of this article~~ §29-22A-10 (1), (2), (3), (4), (5), and (7) of this
12 code, shall be reduced by one hundred percent. Payments shall not be made pursuant to section
13 ten 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 (c) The total amount of reductions resulting from subsection (b) of this section shall be
16 paid into the State Excess Lottery Revenue Fund, created by §29-2-18a of this code. For the
17 fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made
18 pursuant to ~~subdivisions (2) and (5), subsection (c), section ten of this article~~ §29-22A-10 (2) and
19 (5) of this code shall be reduced by ten percent, and the amounts resulting from the reduction
20 shall be paid into the State Excess Lottery Revenue Fund.

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

25 (e) Prior to payment of any appropriation made pursuant to this section, debt service

26 payments payable from the State Excess Lottery Fund shall first be paid in accordance ~~with the~~
27 ~~provisions of~~ §29-22A-18a, §29-22A-18d and §29-22A-18e of this code and in the priority as
28 defined by §29-22-18f (c) of this code.

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

33 (g)(1) Except as provided in subdivision (2) of this subsection, notwithstanding ~~the~~
34 ~~provisions of~~ §29-22A-10 (c) (9) (B) of this code, upon certification of the Governor to the
35 Legislature that an independent actuary has determined that the unfunded liability of the Old
36 Fund, as defined in Chapter 23 of this code, has been paid or provided for in its entirety, the
37 transfers made to the Workers' Compensation Debt Reduction Fund pursuant to § 29-22A-10 (c)
38 (9) (A) of this code shall expire and those funds shall remain in the State Excess Lottery Revenue
39 Fund subject to appropriation.

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

48 (B) Notwithstanding any provision of §29-22A-10 (c), (9), (B) of this code or any other
49 provision of this code to the contrary, the Governor may, by Executive Order, redirect one-half of
50 the deposits of revenues derived from net terminal income imposed under this article, for any
51 period commencing after June 30, 2016, and ending before July 1, 2017, to the General Revenue

52 Fund, instead of to the funds otherwise mandated in this article, in §23-2D-1 *et seq.* of this code
53 or in any other provision of this code, until certification of the Governor to the Legislature that an
54 independent actuary has determined that the unfunded liability of the Old Fund, as defined in
55 Chapter 23 of this code, has been paid or provided for in its entirety.

NOTE: The purpose of this bill is to close the Racetrack Modernization Fund, create a new Racetrack Rebate Fund, direct a portion of each racetrack's gross terminal income otherwise used for the Lottery Commission's actual costs and expenses into the new fund, and distribute annual rebates from the new fund to each racetrack without condition.

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