

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 100**

BY SENATOR NELSON

[Originating in the Committee on Finance; reported on

February 24, 2022]

1 A BILL to amend and reenact §19-23-12a of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §29-22A-12 of said code; to amend and reenact §29-22C-3, §29-22C-  
3 4, §29-22C-6, §29-22C-7, and §29-22C-8 of said code; to amend and reenact §29-22D-  
4 15 of said code, all relating to allowing for the establishment of a secondary location for  
5 pari-mutual wagering on simulcast races, racetrack video lottery terminals, sport wagering  
6 kiosks, and racetrack table games of licensed racetracks at an alternative location within  
7 the current county of the licensed racetrack; providing for a local option election, defining  
8 terms; providing Lottery Commission authority to regulate secondary locations; providing  
9 for rulemaking; and providing for licensing of secondary locations.

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

**CHAPTER 19. AGRICULTURE.**

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

**§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.**

1 (1) Notwithstanding any other provisions of this code, a racing association licensed in this  
2 state to conduct race meetings may, with the consent of the Racing Commission and the written  
3 approval of the authorized representative of a majority of the owners and trainers who hold the  
4 permit required by section two of this article at the horse racetrack, contract with any legal  
5 wagering entity in this or any other state to accept wagers on any race or races conducted by  
6 such legal wagering entity. Unless the wager becomes part of the host licensee's pari-mutuel  
7 pool, such wagering shall be conducted within the confines of such licensee's racetrack or at a  
8 hotel as defined in §16-6-3 of this code, controlled by such licensee and contiguous to the  
9 licensee's property, subject to the following requirements:

10 (a) That such hotel contain at least 100 rooms and be in existence on the effective date of  
11 this section;

12 (b) That the licensee shall have invested at least \$1 million in the hotel; and

13 (c) That such hotel is within one-half mile of the licensee's racetrack surface.

14 (2) Such horse association shall retain a basic commission not to exceed 17 and 25 one-  
15 hundredths percent of all money wagered, plus an additional amount equal to one and 75 one-  
16 hundredths percent of the amount wagered each day on all multiple wagers determined by a  
17 combination of two winning horses, including, but not limited to, the daily double, quinella and  
18 perfecta or plus an additional amount equal to seven and seventy-five one-hundredths percent of  
19 the amount wagered each day on all trifecta wagers or any other multiple wager which involves a  
20 single betting interest on three or more horses. Breakage shall be calculated and distributed in  
21 the manner provided by §19-23-9 (c) of this code.

22 (3) The commission deducted by any licensee from the pari-mutuel pools on dog racing  
23 shall not exceed 16 and one-fourth percent of the total of such pari-mutuel pools for the day.

24 (4) Out of the commission retained or deducted by a licensee under the provisions of  
25 subsections (2) and (3) of this section, the licensee shall pay one tenth of one percent into the  
26 General Fund of the county commission of the county in which the racetrack is located, except if  
27 within a municipality, then to such municipality's general fund.

28 (5) The association shall pay each day a pari-mutuel pools tax calculated under the  
29 provisions of §19-23-10 of this code.

30 (6) After deducting the county or municipal share provided for in subsection (4) of this  
31 section and the pari-mutuel pools tax required by subsection (5) of this section, and the amount  
32 required to be paid under the terms of the contract with the legal wagering entity of this or another  
33 state and the cost of transmission, the horse racing association shall make a deposit equal to 50  
34 percent of the remainder into the purse fund established under the provisions of §19-23-9(1)(b)  
35 of this code.

36 (7) All of the provisions of the Federal Interstate Horseracing Act of 1978, also known as  
37 Public Law 95-515, section 3001-3007 of title 15, U.S. Code, shall be instructive as the intent of  
38 this section.

39 (8) For the purposes of this section the words “legal wagering entity” shall be limited to  
40 any person engaged in horse racing or dog racing pursuant to a license or other permission  
41 granted by the state in which such person’s racetrack is situated and conducting race meetings,  
42 with a pari-mutuel wagering system permitted under that state’s laws and in which the participants  
43 are wagering with each other and not the operator.

44 (9) Notwithstanding any provision of this chapter to the contrary, a licensed racetrack may  
45 establish a secondary location for its business at any building owned or leased by the licensed  
46 racetrack within the county the licensed racetrack is located to conduct pari-mutual wagering on  
47 simulcast races so long as the licensed racetrack receives approval from the State Lottery  
48 Commission, and it has received voter approval pursuant to §29-22C-7 of this code. The total  
49 amount of locations a licensed racetrack may operate within a county is two locations with no  
50 requirement that the second location have a racetrack: *Provided*, That any licensed racetrack  
51 establishing a secondary location shall continue to operate its original facility and continue to  
52 maintain and offer amenities, accommodations, options, and services at such original facility.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

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

#### **§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 pari-mutuel 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 (c) A licensee shall allow video lottery games to be played only on days when live racing  
27 is being conducted at the racetrack and/or on televised racing days: *Provided, That* this restriction  
28 ~~shall~~ may not apply to any racetrack authorized by the commissioner prior to November 1, 1993,  
29 to operate video lottery terminals and conduct video lottery games.

30 (d) Security personnel shall be present during all hours of operation at each video lottery  
31 terminal location. Each license holder shall employ the number of security personnel the  
32 commission determines is necessary to provide for safe and approved operation of the video  
33 lottery facilities and the safety and well-being of the players.

34 (e) Notwithstanding any provision in this chapter to the contrary, a licensed racetrack may

35 establish a secondary location for its business, including authorized operational video lottery  
36 terminals, at any building owned or leased by the licensed racetrack within the county the licensed  
37 racetrack is located so long as the licensed racetrack receives approval from the commission,  
38 and it has received voter approval pursuant to §29-22C-7 of this code. The total amount of  
39 locations a licensed racetrack may operate within a county is two locations: *Provided*, That if any  
40 licensed racetrack relocates operational video lottery terminals outside of a municipality, the  
41 municipality is entitled to receive the share of funds it received under §29-22A-10 and §29-22A-  
42 10b of this code up to the amount received in the fiscal year immediately preceding the relocation  
43 of the operational video lottery terminals and the excess of this amount shall be divided  
44 proportionally to the said municipality and the new municipality, if any, based on the revenues  
45 generated at each location: *Provided, however*, That the total amount of funds transferred to the  
46 municipalities may not be in excess of the percentage provided under §29-22A-10 and §29-22A-  
47 10b of this code: *Provided further*, That any licensed racetrack establishing a secondary location  
48 shall continue to operate its original facility and continue to maintain and offer amenities,  
49 accommodations, options, and services at such original facility.

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

### **§29-22C-3. Definitions.**

1 (a) *Applicability of definitions.* — For the purposes of this article, the words or terms  
2 defined in this section, and any variation of those words or terms required by the context, have  
3 the meanings ascribed to them in this section. These definitions are applicable unless a different  
4 meaning clearly appears from the context in which the word or term is used.

5 (b) *Terms defined.*—

6 (1) “Adjusted gross receipts” means gross receipts from West Virginia Lottery table games  
7 less winnings paid to patrons wagering on the racetrack’s table games.

8 (2) “Applicant” means any person who on his or her own behalf, or on behalf of another,  
9 has applied for permission to engage in any act or activity that is regulated under the provision of

10 this article for which a license is required by this article or rule of the commission.

11 (3) "Application" means any written request for permission to engage in any act or activity  
12 that is regulated under the provisions of this article submitted in the form prescribed by the  
13 commission.

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

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

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

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

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

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

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

36 Virginia Lottery table games.

37 (11) "Director" means the Director of the West Virginia State Lottery Commission  
38 appointed pursuant to §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 owns one percent or more of any class of outstanding securities that are  
48 issued by a party to the matter under consideration by the commission; or

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

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

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

59 (16) "Indirect ownership" means an interest a person owns in an entity or in property solely  
60 as a result of application of constructive ownership rules without regard to any direct ownership  
61 interest (or other beneficial interest) in the entity or property. "Indirect ownership" shall be



62 determined under the same rules applicable to determining whether a gain or loss between  
63 related parties is recognized for federal income tax purposes.

64 (17) "Licensed racetrack" means a thoroughbred horse or greyhound dog racing facility  
65 licensed under both §29-22A-1 *et seq.* and §19-23-1 *et seq.* of this code.

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

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

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

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

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

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

79 (20) "Lottery" means the public gaming systems or games regulated, controlled, owned,  
80 and operated by the state Lottery Commission in the manner provided by general law, as provided  
81 in this article and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, and §29-25-1 *et seq.*  
82 of this code.

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

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

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

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

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

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

100 (27) "Racetrack table games license" means authorization granted under this article by  
101 the commission to a racetrack that is already licensed under §29-22A-1 *et seq.* of this code to  
102 operate racetrack video lottery terminals and holds a valid racing license granted by the West  
103 Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code, which  
104 permits the racetrack as an agent of the commission for the limited purpose of operation of West  
105 Virginia Lottery table games in one or more designated gaming areas in one or more buildings  
106 owned or leased by the licensed racetrack on the grounds where live pari-mutuel racing is  
107 conducted by the licensee or at a secondary location consisting of any building owned or leased  
108 by the licensed racetrack within the county the licensed racetrack is located so long as the  
109 licensed racetrack receives approval from the commission.

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

112 (29) "Secondary or satellite locations" means a secondary location of a business in any  
113 building owned or leased by a licensed racetrack within the county the licensed racetrack is

114 located to conduct pari-mutual wagering on simulcasts, video lottery terminals, sports wagering  
115 kiosks, and racetrack table games.

116 ~~(30)~~ (29) “Significant influence” means the capacity of a person to affect substantially (but  
117 not control) either, or both, of the financial and operating policies of another person.

118 ~~(31)~~ (30) “Supplier” means a person who the commission has identified under legislative  
119 rules of the commission as requiring a license to provide a racetrack table games licensee with  
120 goods or services to be used in connection with operation of table games.

121 ~~(32)~~ (31) “Wager” means a sum of money or thing of value risked on an uncertain  
122 occurrence.

123 ~~(33)~~ (32) “West Virginia Lottery table game” means any game played with cards, dice or  
124 any mechanical, electromechanical or electronic device or machine for money, credit or any  
125 representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette,  
126 wheel of fortune or any variation of these games similar in design or operation and expressly  
127 authorized by rule of the commission, including multiplayer electronic table games, machines and  
128 devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets,  
129 pull tabs, or similar games.

130 ~~(34)~~ (33) “Winnings” means the total cash value of all property or sums including currency,  
131 tokens, or instruments of monetary value paid to players as a direct result of wagers placed on  
132 West Virginia Lottery table games.

#### **§29-22C-4. Commission duties and powers.**

1 (a) *Duties.* — In addition to the duties set forth elsewhere in this article or in §29-22-1 *et*  
2 *seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, and §29-25-1 *et seq.* of this code, the commission  
3 shall:

4 (1) Establish minimum standards for gaming equipment, including, but not limited to,  
5 electronic and mechanical gaming equipment;

6 (2) Enter into licensing agreements with facilities eligible to operate West Virginia Lottery

7 table games for the state, providing criteria and guidelines for preservation of the state's  
8 ownership, operation, and control interests as provided by general law herein;

9 (3) Approve, modify, or reject game rules of play proposed by the licensee for West  
10 Virginia Lottery table games proposed to be operated at a licensed racetrack;

11 (4) Approve, modify, or reject minimum internal control standards proposed by the  
12 licensee governing racetrack table game operations, including the maintenance of financial  
13 records;

14 (5) Approve staff considered necessary by the director to oversee, inspect and monitor  
15 the operation of table games at any racetrack licensed under this article and §29-22A-1 *et seq.* of  
16 this code, including, but not limited to, inspection of designated gaming areas, gaming equipment  
17 and security equipment used in the operation of table games to assure continuous compliance  
18 with the provisions of this article, required license conditions and terms, and applicable rules of  
19 the commission;

20 (6) Determine eligibility of a person to hold or continue to hold a license issued under this  
21 article;

22 (7) License, establish standards and requirements for operation, and approve operation  
23 of a secondary location once approval of the voters certified in a local option election as set forth  
24 in §29-22C-7 of this article.

25 ~~(7)~~ (8) Issue all licenses;

26 ~~(8)~~ (9) Maintain a record of all licenses issued;

27 ~~(9)~~ (10) Levy and collect the taxes imposed by this article and the fees, surcharges and  
28 civil penalties authorized, required or specified in this article or the legislative rules of the  
29 commission, and receive, accept and pay all taxes, fees, surcharges and civil penalties collected  
30 under this article into the Racetrack Table Games Fund, except as otherwise provided under this  
31 article; and

32 ~~(10)~~ (11) Keep a public record of all commission actions and proceedings with respect to

33 West Virginia Lottery table games.

34 (b) *Powers.*— In addition to the powers set forth elsewhere in this article or in §29-22-1 *et*  
35 *seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, and §29-25-1 *et seq.* of this code, the commission  
36 may:

37 (1) Sue to enforce any provision of this article or any rule of the commission, whether by  
38 civil action or petition for injunctive relief;

39 (2) Hold hearings, administer oaths, and issue subpoenas for attendance of witnesses to  
40 testify or subpoenas duces tecum for the production of documents or other evidence;

41 (3) Enter a licensed racetrack with West Virginia Lottery table games at any time and  
42 without notice to ensure strict compliance with this article and with the rules of the commission;

43 (4) Bar, for cause, any person from:

44 (A) Entering a designated gaming area of a licensed racetrack with table games, or the  
45 grounds of a racetrack licensed under this article; or

46 (B) Participating in any capacity in the play of any West Virginia Lottery table game, or in  
47 the operation of West Virginia Lottery table games;

48 (5) (A) Promulgate, or propose for promulgation, in accordance with the provision of §29A-  
49 3-1 *et seq.* of this code, any legislative, interpretive, and procedural rules the commission  
50 considers necessary for the successful implementation, administration, and enforcement of this  
51 article, and to amend or revoke any promulgated rule, in accordance with provisions of §29A-3-1  
52 *et seq.* of this code, at the discretion of the commission.

53 (B) Promulgate rules for the operation of secondary or satellite locations. These rules may  
54 include the maximum number of allowable table games and video lottery terminals that are  
55 permissible at a secondary or satellite location.

56 (C) Any rule proposed by the commission before September 1, 2007 may be promulgated  
57 as an emergency rule;

58 (6) Upon the effective date of this article and prior to promulgation of emergency rules, the

59 commission may accept applications, evaluate qualifications of applicants, and undertake initial  
60 review of licenses for: Racetracks under §29-22C-8 of this code; suppliers §29-22C-11 of this  
61 code; racetrack employees under §29-22C-12 of this code; and providers of management  
62 services under §29-22C-13 of this code; and

63 (7) Exercise any other powers necessary to effectuate the provisions of this article and the  
64 rules of the commission.

**§29-22C-6. Licenses required.**

1 (a) No person may engage in any activity in connection with a racetrack with West Virginia  
2 Lottery table games in this state for which a license is required by this article or rules of the  
3 commission unless all necessary licenses have been obtained in accordance with this article and  
4 rules of the commission.

5 (b) Licenses are required for the following purposes:

6 (1) For any person operating a racetrack West Virginia Lottery table game in the state;

7 (2) For any person supplying a racetrack table games licensee with gaming equipment or  
8 gaming equipment services;

9 (3) For any individual employed by a racetrack table games licensee in connection with  
10 the operation of West Virginia Lottery table games in the state; and

11 (4) For any person providing management services under a contract to a racetrack table  
12 games licensee.

13 (c) The commission may not grant a license to an applicant until the commission  
14 determines that each person who has control of the applicant also meets all of the qualifications  
15 the applicant must meet to hold the license for which application is made. The following persons  
16 are considered to have control of an applicant:

17 (1) Each person associated with a corporate applicant, including any corporate holding  
18 company, parent company or subsidiary company of the applicant, but not including a bank or  
19 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary

20 course of business, who has the ability to control the activities of the corporate applicant or elect  
21 a majority of the board of directors of that corporation;

22 (2) Each person associated with a noncorporate applicant who directly or indirectly holds  
23 any beneficial or proprietary interest in the applicant or who the commission determines to have  
24 the ability to control the applicant; and

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

28 (d) Notwithstanding any provision of this code to the contrary, any license granted  
29 pursuant to the provisions of this section would also authorize a secondary location once approval  
30 of the voters certified in a local option election as set forth in §22-29C-7 of this code.

31 ~~(d)~~ (e) Any license required by this article or rules of the commission is in addition to all  
32 other licenses or permits required by applicable federal, state or local law.

**§29-22C-7. Local option election.**

1 PART ONE. WEST VIRGINIA LOTTERY TABLE GAMES.

2 (a) No racetrack may be licensed under this article to operate West Virginia Lottery table  
3 games until a local option election is held in the county in which pari-mutuel wagers are received  
4 at a racetrack licensed under §19-23-1 *et seq.* of this code and the voters of that county voting on  
5 the question approve having West Virginia Lottery table games at the racetrack.

6 (b) The county commission shall place the question on the ballot upon the receipt of a  
7 written notice from a licensed racetrack located within that county requesting that the question be  
8 placed on the ballot.

9 (c) The county commission of the county in which table games would be located shall give  
10 notice to the public of the election by publication of the notice as a Class II-0 legal advertisement  
11 in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the  
12 publication shall be the county in which the election is to be held. The date of the last publication

13 of the notice shall fall on a date at least 30 days preceding the day of the election. A local option  
14 election shall be effective even though the date of the order of the county commission setting the  
15 election or the date of publication of notice of the election is prior to the effective date of this article  
16 if the election is otherwise held in accordance with the provisions of this section.

17 (d) On the local option election ballot shall be printed the following:

18 Shall West Virginia Lottery table games be permitted at the [name of licensed racetrack]?

19  Yes  No

20 (Place a cross mark in the square next to your choice.)

21 (e) The local option election shall be held in conjunction with the next primary or general  
22 election scheduled more than 90 days following receipt by the county commission of the notice  
23 required by this section or at a special election: *Provided*, That upon written request by the  
24 licensed racetrack that a special election be called, the county commission shall order a special  
25 election to be held on the question within 90 days after the receipt by the county commission of  
26 that request. The county commission may require the licensed racetrack to pay the entire cost  
27 incurred by the county to hold the special election. Approval shall be by a majority of the voters  
28 casting votes at the election on the question of approval or disapproval of West Virginia Lottery  
29 table games at a licensed racetrack.

30 (f) If the majority votes against allowing table games at a licensed racetrack, no election  
31 on the issue shall be held for a period of 104 weeks. A local option election may thereafter be  
32 held in the manner provided in this section. The process to hold another election on the question  
33 shall start anew, as if no prior request for an election on the question had been filed with county  
34 commission and as if there had been no prior election on the question.

35 (g) If the majority votes for allowing West Virginia Lottery table games at a licensed  
36 racetrack facility in a county, another local option election on the issue shall not be held for a  
37 period of five years. A local option election may thereafter be held if a written petition of qualified  
38 voters residing within the county equal to at least five percent of the number of persons who were



39 registered to vote in the next preceding general election is received by the county commission of  
40 the county in which the horse or dog racetrack is located. The petition may be in any number of  
41 counterparts. The petition shall be in the following form:

42           Petition For Local Option Election

43           We, the undersigned legally qualified voters, resident within the County of  
44 \_\_\_\_\_, do hereby petition that a special election be held within the County of  
45 \_\_\_\_\_ upon the following question: Shall West Virginia Lottery table games be  
46 permitted at the [name of racetrack]?

47           Name	Address	Date
		(Post office or street address)

49                                   PART TWO. SECONDARY OR SATILLITE LOCATIONS.

50           (a) No secondary location may be licensed pursuant to this article to operate West Virginia  
51 Lottery table games, pari-mutual wagering on simulcast, sports wagering kiosks, and video lottery  
52 terminals until a local option election is held in the county in which pari-mutual wagers are received  
53 at a racetrack licensed pursuant to §19-23-1 et seq. of this code and §29-23-1 et seq. of this code  
54 and the voters of that county voting on the question approve having a secondary location of a  
55 West Virginia Lottery table games, pari-mutual wagering on simulcast, and video lottery terminals  
56 at a secondary location operated by a racetrack licensed pursuant to §19-23-1 et seq. of this code  
57 and §29-23-1 et seq. of this code.

58           (b) The county commission shall place the question on the ballot upon the receipt of a  
59 written notice from a licensed racetrack located within that county requesting that the question be  
60 placed on the ballot.

61           (c) The county commission of the county in which the secondary location would be located  
62 shall give notice to the public of the election by publication of the notice as a Class II-0 legal  
63 advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication  
64 area for the publication shall be the county in which the election is to be held. The date of the last

65 publication of the notice shall fall on a date at least 30 days preceding the day of the election. A  
66 local option election shall be effective even though the date of the order of the county commission  
67 setting the election or the date of publication of notice of the election is prior to the effective date  
68 of this article if the election is otherwise held in accordance with the provisions of this section.

69 (d) On the local option election ballot shall be printed the following:

70 Shall secondary or satellite locations for gaming be permitted to be operated by [name of  
71 licensed racetrack]?

72 [ ] Yes [ ] No

73 (Place a cross mark in the square next to your choice.)

74 (e) The local option election shall be held in conjunction with the next primary or general  
75 election scheduled more than 90 days following receipt by the county commission of the notice  
76 required by this section or at a special election: *Provided*, That upon written request by the  
77 licensed racetrack that a special election be called, the county commission shall order a special  
78 election to be held on the question within 90 days after the receipt by the county commission of  
79 that request. The county commission may require the licensed racetrack to pay the entire cost  
80 incurred by the county to hold the special election. Approval shall be by a majority of the voters  
81 casting votes at the election on the question of approval or disapproval of secondary or satellite  
82 locations operated by a licensed racetrack.

83 (f) If the majority votes against allowing operation of secondary or satellite locations by a  
84 licensed racetrack, no election on the issue shall be held for a period of 104 weeks. A local option  
85 election may thereafter be held in the manner provided in this section. The process to hold another  
86 election on the question shall start anew, as if no prior request for an election on the question had  
87 been filed with county commission and as if there had been no prior election on the question.

88 (g) If the majority votes for allowing operation of secondary or satellite locations by a  
89 licensed racetrack facility in a county, another local option election on the issue shall not be held  
90 for a period of five years. A local option election may thereafter be held if a written petition of

91 qualified voters residing within the county equal to at least five percent of the number of persons  
92 who were registered to vote in the next preceding general election is received by the county  
93 commission of the county in which the horse or dog racetrack is located. The petition may be in  
94 any number of counterparts. The petition shall be in the following form:

95 Petition For Local Option Election

96 We, the undersigned legally qualified voters, resident within the County of  
97 \_\_\_\_\_ , do hereby petition that a special election be held within the County of  
98 \_\_\_\_\_ upon the following question: Shall secondary or satellite locations for  
99 gaming be permitted to be operated by [name of licensed racetrack]?

100 Name \_\_\_\_\_ Address \_\_\_\_\_ Date \_\_\_\_\_

101 (Post office or street address)

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

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

5 (b) *Grant of license.* — Upon the passage of a local option election in a county in  
6 accordance with the provisions of §29-22C-7 of this code, the commission shall immediately grant  
7 a West Virginia Lottery table games license, and a license for the right to conduct West Virginia  
8 Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee  
9 to conduct West Virginia table games at the licensed pari-mutuel racetrack identified on the local  
10 option election ballot, provided that racetrack holds a valid racetrack video lottery license issued  
11 by the commission pursuant to §29-22A-1 *et seq.* of this code and a valid racing license granted  
12 by the West Virginia Racing Commission pursuant to the provision of §19-23-1 *et seq.* of this code  
13 and has otherwise met the requirements for licensure under the provisions of this article and the  
14 rules of the commission.

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

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

27           (e) *Management service contracts.* —

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

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

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

38           (4) *Other commission approvals and licenses.* — The duties and responsibilities of a  
39 management services provider under a management services contract may not be assigned,  
40 delegated, subcontracted, or transferred to a third party to perform without the prior approval of

41 the commission. Third parties must be licensed under this article before providing service. The  
42 commission may by rule clarify application of this subdivision and provide exceptions to its  
43 application. The commission shall license and require the display of West Virginia Lottery game  
44 logos on appropriate game surfaces and other gaming items and locations as the commission  
45 considers appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

93 and all final orders of the commission applicable to the licensee.

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

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

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

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

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

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

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

118 (l) *Commission office space.* — A racetrack table games licensee shall provide to the

119 commission, at no cost to the commission, suitable office space at the racetrack facility for the  
120 commission to perform the duties required of it by this article and the rules of the commission.

121 (m) Notwithstanding anything in this chapter to the contrary, a licensed racetrack may  
122 establish a secondary location for its business, including authorized racetrack table games, video  
123 lottery terminals, sports wagering kiosks, and pari-mutual wagering on simulcasts at any building  
124 owned or leased by the licensed racetrack within the county the licensed racetrack is located so  
125 long as such licensed racetrack receives approval from the commission and it has received voter  
126 approval pursuant to §29-22C-7 of this code. The total amount of locations a licensed racetrack  
127 may operate within a county is two locations: *Provided*, That if any licensed racetrack relocates  
128 racetrack table games outside of a municipality, said municipality shall be entitled to receive the  
129 share of funds it received under §29-22C-27 of this code up to the amount received in the fiscal  
130 year immediately preceding the relocation of the racetrack table games and the excess of this  
131 amount shall be divided proportionally to that municipality and the new municipality, if any, based  
132 on the revenues generated at each location: *Provided, however*, That the total amount of funds  
133 transferred to the municipalities may not be in excess of the percentage provided for under §29-  
134 22C-27 of this code: *Provided further*, That any licensed racetrack establishing a secondary  
135 location shall continue to operate its original facility and continue to maintain and offer amenities,  
136 accommodations, options, and services at the original facility.

137 (n) No additional license would be required, no additional fees would be required, and  
138 further surety bond would not be required to operate a secondary or satellite location. Any license  
139 obtained pursuant to this section and any licensing fees as incident to either of those licenses and  
140 any required surety bond would allow operation of a secondary or satellite location. Any license  
141 issued pursuant to §29-22A-1 *et seq.* of this code, §29-22D-1 *et seq.* of this code, and §19-23-1  
142 *et seq.* of this code would also extend to any secondary or satellite location as those terms are  
143 defined in §29-22C-3 of this code. The secondary location is not required to operate a racetrack.

**§29-22D-15. Authorization of sports wagering in this state; requirements.**



1 (a) An operator shall accept wagers on sports events and other events authorized under  
2 this article from persons physically present in a licensed gaming facility where authorized sports  
3 wagering occurs, or from persons not physically present who wager by means of electronic  
4 devices. A person placing a wager shall be at least 21 years of age.

5 (b) An operator may accept wagers from an individual physically located within this state  
6 using a mobile or other digital platform or a sports wagering device, approved by the commission,  
7 through the patron's sports wagering account.

8 (c) An operator may accept wagers from an individual physically located in a state or  
9 jurisdiction with which the commission has entered into a sports wagering agreement using a  
10 mobile or other digital platform or a sports wagering device through the patron's sports wagering  
11 account, so long as the device or platform is approved by the commission and all other  
12 requirements of the agreement are satisfied.

13 (d) The commission or operator may ban any person from entering a gaming area of a  
14 gaming facility conducting sports wagering or the grounds of a gaming facility licensed under this  
15 article or from participating in the play or operation of any West Virginia Lottery sports wagering.  
16 A log of all excluded players shall be kept by the commission and each licensee, and no player  
17 on the commission's exclusion list or the licensed operator's exclusion list shall wager on any  
18 West Virginia Lottery sports wagering under this article.

19 (e) The commission shall promulgate regulations implementing the provisions of §29-22D-  
20 15(a) of this code by interpretive rule and minimum internal control standards.

21 (f) The commission shall, when a federal law is enacted or repealed or when a federal  
22 court decision is issued that permits a state to regulate sports wagering, publish a notice in the  
23 State Register notifying the public of the enactment or repeal of federal law or of the issuance of  
24 such court decision. The commission shall not be authorized to conduct sports wagering in this  
25 state until the notice prescribed in this subsection is published in the State Register.

26 (g) No licensed gaming facility employee may place a wager on any sports wagering at  
27 the employer's facility or through any other mobile application or digital platform of their employer.

28 (h) No commission employee may knowingly wager or be paid any prize from any wager  
29 placed at any licensed gaming facility with West Virginia Lottery sports wagering within this state  
30 or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a sports  
31 wagering licensee.

32 (i) Notwithstanding any provision of this chapter to the contrary, a licensed racetrack may  
33 establish a secondary location for its business at any building owned or leased by the licensed  
34 racetrack within the county the licensed racetrack is located to provide sports wagering kiosks so  
35 long as the licensed racetrack receives approval from the State Lottery Commission, and it has  
36 received voter approval pursuant to §29-22C-7 of this code. The total amount of locations a  
37 licensed racetrack may operate within a county is two locations: *Provided*, That any licensed  
38 racetrack establishing a secondary location shall continue to operate its original facility and  
39 continue to maintain and offer amenities, accommodations, options, and services at such original  
40 facility: *Provided, however*, That a secondary or satellite location is not required to operate a  
41 racetrack.