

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 636

By Senators Barrett, Jeffries, Nelson, Phillips, Queen,

Rucker, Takubo, Weld, and Plymale

[Introduced February 15, 2023; referred

to the Committee on Finance]

1 A BILL to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended,
2 relating to racetrack video lottery; providing for certain transfers to and from the Licensed
3 Racetrack Modernization Fund; and specifying the eligible purpose for recoupment of
4 funds on deposit in facility modernization account within the Licensed Racetrack
5 Modernization Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or applicants applying for a
2 manufacturer's permit, the protocol documentation data necessary to enable the respective
3 manufacturer's video lottery terminals to communicate with the commission's central computer for
4 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 of
16 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~~ beginning on or after July 1, 2011 through
19 ~~June 30, 2030~~, the term "actual costs and expenses" may include transfers of up to \$9 million in
20 surplus allocations for each fiscal year, as calculated by the commission when it has closed its
21 books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision
22 (2), of this subsection. For all fiscal years beginning on or after July 1, 2001, the commission shall
23 not receive an amount of gross terminal income in excess of the amount of gross terminal income
24 received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross
25 terminal income received in excess of the amount of gross terminal income received during the
26 fiscal year ending on June 30, 2001, shall be deposited into the fund established in §29-22-18a of
27 this code; 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 ~~2030~~, the commission shall deposit such amounts as are available according to subdivision (1) of
31 this subsection into a separate facility modernization account maintained within the Licensed
32 Racetrack Modernization Fund for each racetrack. Each racetrack's share of each year's deposit
33 shall be calculated in the same ratio as each racetrack's apportioned contribution to the four
34 percent administrative costs and expenses allowance provided for in subdivision (1) of this
35 subsection for that year. For each \$2 expended by a licensed racetrack for ~~facility modernization~~
36 capital improvements at facilities of the licensed racetrack located in this state, having a useful life
37 of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive
38 \$1 in recoupment from its facility modernization account. If the licensed racetrack's facility
39 modernization account contains a balance in any fiscal year, the unexpended balance from that

40 fiscal year will be available for matching for one additional fiscal year, after which time, the
41 remaining unused balance carried forward shall revert to the lottery fund. ~~For purposes of this~~
42 ~~section, the term "facility modernization improvements" includes acquisitions of new and unused~~
43 ~~video lottery terminals and related equipment~~ Video lottery terminals financed through the
44 recoupment provided in this subdivision must be retained by the licensee in its West Virginia
45 licensed location 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 of
49 the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall
50 be divided as set out in §29-22A-10b of this code. The licensed racetrack's share is in lieu of all
51 lottery agent commissions and is considered to cover all costs and expenses required to be
52 expended by the licensed racetrack in connection with video lottery operations. The division shall
53 be made as follows:

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

56 (2) Until July 1, 2005, 14 percent of net terminal income at a licensed racetrack shall be
57 deposited in the special fund established by the licensee, and used for payment of regular purses
58 in addition to other amounts provided for in §19-23-1 *et seq.* of this code, on and after July 1, 2005,
59 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 50
68 percent to be divided among the municipalities on a per capita basis as determined by the most
69 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 subdivision is located and where the racetrack has been located
73 in a municipality within the county since on or before January 1, 1999, shall be divided, if
74 applicable, as follows:

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

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

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

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

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

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

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

90 (8)(A) The Tourism Promotion Fund established in §5B-2-12 of this code shall receive
91 three percent of the net terminal income: *Provided*, That for the fiscal year beginning July 1, 2003,

92 the tourism commission shall transfer from the Tourism Promotion Fund \$5 million of the three
93 percent of the net terminal income described in this section and §29-22A-10b of this code into the
94 fund administered by the West Virginia Economic Development Authority pursuant to §31-15-7 of
95 this code, \$5 million into the Capitol Renovation and Improvement Fund administered by the
96 Department of Administration pursuant to §5A-4-6 of this code, and \$5 million into the Tax
97 Reduction and Federal Funding Increased Compliance Fund; and

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

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

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

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

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

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

117 (9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited

118 into the Workers' Compensation Debt Reduction Fund created in §23-2d-5 of this code: *Provided*,
119 That in any fiscal year when the amount of money generated by this subdivision totals \$11 million,
120 all subsequent distributions pursuant to this subdivision shall be deposited in the special fund
121 established by the licensee and used for the payment of regular purses in addition to the other
122 amounts provided in §19-23-1 *et seq.* of this code;

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

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

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

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

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

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

167 (ii) The remainder of the one percent of net terminal income and all of the one percent of
168 net terminal income described in §29-22A-10b(a)(9)(B) of this code shall be distributed as follows:
169 The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol

170 Improvements Fund created pursuant to §5A-4-2 of this code and the Cultural Facilities and
171 Capitol Resources Matching Grant Program Fund created pursuant to §29-1-3 of this code until a
172 total of \$1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant
173 Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol
174 Improvements Fund.

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

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

191 (f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the
192 commission may make no credit adjustments. For any video lottery terminal reflecting a
193 discrepancy, the licensed racetrack shall submit to the commission the maintenance log which
194 includes current mechanical meter readings and the audit ticket which contains electronic meter
195 readings generated by the terminal's software. If the meter readings and the commission's records

196 cannot be reconciled, final disposition of the matter shall be determined by the commission. Any
197 accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the
198 commission.

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

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

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

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

NOTE: The purpose of this bill relates to racetrack video lottery. The bill provides for certain transfers to and from the Licensed Racetrack Modernization Fund; specifies the eligible purpose for recoupment of funds on deposit in facility modernization account within the

Licensed Racetrack Modernization Fund; and makes the Licensed Racetrack Modernization Fund permanent.

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