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# **WEST VIRGINIA CODE CHAPTER 19**

## **ARTICLE 23**

WV Legislature

**§19-23-1. License required for horse and dog racing and pari-mutuel wagering in connection therewith; exception.**

(a) No association shall hold or conduct any horse or dog race meeting at which horse or dog racing is permitted for any purse unless such association possesses a license therefor from the West Virginia Racing Commission and complies with the provisions of this article and all reasonable rules and regulations of such Racing Commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of this article shall not be construed to prevent in any way the use without a license of any grounds, enclosure or racetrack owned and controlled by any association for any local, county or state fair, horse show or agriculture or livestock exposition, even though horse or dog racing be there conducted, if the pari-mutuel system of wagering upon the results of such horse or dog racing is neither permitted nor conducted with the knowledge or acquiescence of the association conducting such horse or dog racing.

**§19-23-2. Permits required for horse and dog racetrack positions; residency requirements for employees of licensees.**

(a) No person not required to be licensed under the provisions of section one of this article shall participate in or have anything to do with horse or dog racing for a purse or a horse or dog race meeting at any licensee's horse or dog racetrack, place or enclosure, where the pari-mutuel system of wagering upon the results of such horse or dog racing is permitted or conducted, as a horse owner, dog owner, jockey, apprentice jockey, exercise boy, kennel keeper, trainer, groom, plater, stable foreman, valet, veterinarian, agent, clerk of the scales, starter, assistant starter, timer, judge or pari-mutuel employee, or in any other capacity specified in reasonable rules and regulations of the Racing Commission unless such person possesses a permit therefor from the West Virginia Racing Commission and complies with the provisions of this article and all reasonable rules and regulations of such Racing Commission.

(b) At least eighty percent of the individuals employed by a licensee at any horse or dog race meeting must be citizens and residents of this state and must have been such citizens and residents for at least one year. For the purpose of this subsection, citizens and residents of this state shall be construed to mean individuals who maintain a permanent place of residence in this state, and have been bona fide residents and citizens of this state for a period of one year immediately prior to the filing of their applications for employment. The provisions of this subsection shall not apply to individuals engaged in the construction of a horse or dog racetrack or in the equipping of same, nor to racing officials designated by the Racing Commission or racing officials designated by the executive officials of a licensee.

**§19-23-3. Definitions.**

Unless the context clearly requires a different meaning, as used in this article:

- (1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;
- (2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating is a thoroughbred and mounted by a jockey;
- (3) "Harness racing" means horse racing in which the horses participating are harnessed to a sulky, carriage or other vehicle and does not include any form of horse racing in which the horses are mounted by jockeys;
- (4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;
- (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;
- (6) "Purse" means any purse, stake or award for which a horse or dog race is run;
- (7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;
- (8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article or any person making application for a construction permit under the provisions of this article;
- (9) "License" means the license required by the provisions of section one of this article;
- (10) "Permit" means the permit required by the provisions of section two of this article;
- (11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;
- (12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;
- (13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;
- (14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

- (15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";
- (16) "Racing commission" means the West Virginia Racing Commission;
- (17) "Stewards" means the steward or stewards representing the Racing Commission, the steward or stewards representing a licensee and any other steward or stewards whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the Racing Commission which rules shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;
- (18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;
- (19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;
- (20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;
- (21) "Legitimate breakage" is the percentage left over in the division of a pool;
- (22) "To the dime" means that wagers shall be figured and paid to the dime;
- (23) "Code" means the Code of West Virginia, 1931, as heretofore and hereinafter amended;
- (24) "Accredited thoroughbred horse" means a thoroughbred horse that is registered with the West Virginia Thoroughbred Breeders Association and that is:
- (A) Foaled in West Virginia; or
  - (B) Sired by an accredited West Virginia sire; or
  - (C) As a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days' grace: (i) For the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company, or
  - (ii) For obtaining veterinary services, documented by veterinary reports;
- (25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia Thoroughbred

Breeders Association;

(26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;

(27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. In the event the yearling was born in another state and transported to this state, this definition does not apply after the December 31, 2007, to any pari-mutuel racing facility located in Jefferson County nor shall it apply after the December 31, 2012, and thereafter to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out of the state for sales, the raiser must notify the Racing Commission of his or her intentions;

(28) The "owner of an accredited West Virginia sire" is the owner of record at the time the offspring is conceived;

(29) The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided in section thirteen-b of this article;

(30) "Registered greyhound owner" means an owner of a greyhound that is registered with the National Greyhound Association;

(31) "Fund" means the West Virginia Thoroughbred Development Fund established in section thirteen-b of this article; and

(32) "Regular purse" means both regular purses and stakes purses.

**§19-23-4. West Virginia Racing Commission continued as a public corporation; composition; terms; vacancies; qualifications, expenses of members; principal office; meetings; election of officers; quorum; inspection of records; annual report.**

(a) The "West Virginia Racing Commission," is continued in existence as a public corporation and, as such, may contract and be contracted with, plead and be impleaded, sue and be sued and have and use a common seal.

(b) The Racing Commission shall consist of three members, not more than two of whom shall belong to the same political party, to be appointed by the Governor by and with the advice and consent of the Senate. The term of office for the members of the Racing Commission is four years, and until their successors have been appointed and have qualified, and members of the Racing Commission may serve any number of successive terms. The members of the Racing Commission in office on the effective date of the amendment and reenactment of this section in two thousand one shall, unless removed by the Governor after the effective date of this article, continue to serve until their terms expire and until their successors have been appointed and have qualified. Any vacancy in the office of a member of the Racing Commission shall be filled by appointment by the Governor for the unexpired term of the member whose office shall be vacant. No person is eligible for appointment to or to serve upon the Racing Commission:

(1) Unless he or she is an actual and bona fide resident of this state, shall have resided in this state for a period of at least five years next preceding his or her appointment, shall be a qualified voter of this state and be not less than twenty-five years of age;

(2) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner whatever, in any racetrack where horse or dog race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(3) While serving as a member of the Legislature or as an elective officer of this state; or

(4) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony, or is a violation of article four, chapter sixty-one of this code.

(c) Each member of the Racing Commission shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of the Racing Commission.

(d) The Racing Commission shall have its principal office at the seat of government, and shall meet annually at its principal office in the month of January, and at any other times and places designated by its chairman. At the annual meeting the Racing Commission shall elect from its membership a chairman and any other officers that are desired. Other meetings of the Racing Commission may be called by the chairman on such notice to the other members prescribed by the Racing Commission.

(e) A majority of the members of the Racing Commission constitute a quorum for the transaction of its business or the exercise of any of its powers and authority. No person not a bona fide member of the Racing Commission shall vote upon or participate in the deliberations of the Racing Commission on any matter which may come before it. All Racing Commission records, except as otherwise provided by law, shall be open to public inspection during regular office hours.

(f) As soon as possible after the close of each calendar year, the Racing Commission shall submit to the Governor a report of the transactions of the Racing Commission during the preceding calendar year.

**§19-23-5. Executive director and other personnel; qualifications; terms; powers and duties; compensation and expenses.**

(a) The Racing Commission shall appoint an executive director to represent the Racing Commission who shall have the powers and authority and perform such duties as the Racing Commission directs. The executive director shall preserve at the Racing Commission's principal office all books, maps, records, documents and other papers of the Racing Commission. The executive director shall, in addition to all other duties imposed upon him or her by the Racing Commission, serve in a liaison capacity between licensees and the Racing Commission. The Racing Commission may also employ, direct and define the duties of an assistant executive director and such stenographers, clerks and other office personnel as it deems necessary to carry out the duties imposed upon it under the provisions of this article.

(b) In addition to the employees referred to above, the Racing Commission shall employ, direct and define the duties of a chief clerk, director of security, director of audit, chief chemist, stewards to represent the Racing Commission, supervisors of the pari-mutuel wagering conducted under the provisions of this article, veterinarians, inspectors, accountants, guards and all other employees deemed by the Racing Commission to be essential in connection with any horse or dog race meeting. The director of audit shall be a certified public accountant or experienced public accountant.

(c) No individual shall knowingly be employed or be continued in employment by the Racing Commission in any capacity whatever:

(1) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner, in any racetrack where horse or dog race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(2) Who at the time is or has been within one year prior, a member of the Legislature or an elective officer of this state unless he or she is experienced and qualified as a racing official; or

(3) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony or is a violation of article four, chapter sixty-one of this code. Any steward employed by the Racing Commission or by a licensee shall be a person of integrity and experienced and qualified for such position by the generally accepted practices and customs of horse or dog racing in the United States.

(d) The executive director and all other employees of the Racing Commission shall serve at the will and pleasure of the Racing Commission. The executive director and the other employees referred to in this section as employees of the Racing Commission shall receive such compensation as may be fixed by the Racing Commission within the limit of available funds and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(e) All compensation and reimbursement for expenses of the members of the Racing Commission, the executive director and all other employees of the Racing Commission shall be paid from the funds in the hands of the State Treasurer collected under the provisions of this article and shall be itemized in the budget in the same manner as all other departments of state government. No reimbursement for expenses incurred shall be paid unless an itemized account, under oath, is first filed with the State Auditor.

WV Legislature

**§19-23-6. Powers and authority of Racing Commission.**

The Racing Commission has full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings and, in this regard, it has plenary power and authority:

- (1) To investigate applicants and determine the eligibility of the applicants for a license or permit or construction permit under the provisions of this article;
- (2) To fix, from time to time, the annual fee to be paid to the Racing Commission for any permit required under the provisions of section two of this article;
- (3) To promulgate reasonable rules implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the Racing Commission under the provisions of this article, including, but not limited to, reasonable rules under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code except that the Racing Commission shall promulgate separate rules, in accordance with article three, chapter twenty-nine-a, pertaining to the kinds of legal combination wagers which may be placed in connection with the pari-mutuel system of wagering authorized by this article;
- (4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the Racing Commission for any such registration;
- (5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;
- (6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;
- (7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules are being complied with, and for this purpose, the Racing Commission, its executive director, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;
- (8) To investigate alleged violations of the provisions of this article, its reasonable rules, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for a violation or institute appropriate legal action for enforcement or take disciplinary action and institute legal action;
- (9) By reasonable rules, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon a person connected with or involved in any horse or dog racing or any horse or dog race meeting and to authorize stewards to rule off the

grounds of any horse or dog racetrack any tout, bookmaker or other undesirable individual determined inimical to the best interests of horse and dog racing or the pari-mutuel system of wagering in connection therewith;

(10) To require at any time the removal of any racing official or racing employee of any licensee for the violation of any provision of this article, any reasonable rule of the Racing Commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to provide by contract for the maintenance and operation of, a testing laboratory and related facilities for the purpose of conducting saliva, urine and other tests on the horse or dog or horses or dogs run or to be run in any horse or dog race meeting and to purchase all equipment and supplies considered necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse or dog race, the payment of any purse pending a final determination of the results thereof;

(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's horse or dog racing activities in this state together with a list of each licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of the licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the Racing Commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

(16) To take any other action that may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article; and

(18) To mediate on site, upon request of a party, all disputes existing between the racetrack licensees located in this state and representatives of a majority of the horse owners and trainers licensed at the track which threaten to disrupt any scheduled racing event or events. The Racing Commission shall, upon the request of a party, mediate on site all disputes existing between racetrack licensees and representatives of pari-mutuel clerks which threaten to disrupt any scheduled racing event or events. When a request for mediation is made, the commission shall designate from among its members one person to

act as mediator in each dispute that arises. Each opposing party involved in any dispute shall negotiate in good faith with the goal of reaching a fair and mutual resolution. The mediator may issue recommendations designed to assist each side toward reaching a fair compromise. No owner or operator or any horse owner or trainer or any pari-mutuel clerk licensed at the track is required to abide by any recommendation made by any mediator acting pursuant to this subsection.

The Racing Commission shall not interfere in the internal business or internal affairs of any licensee.

**§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.**

(a) Any racing association desiring to hold or conduct a horse or dog race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the Racing Commission an application for a license to hold or conduct such horse or dog race meeting. A separate application shall be filed for each separate license sought for each horse or dog race meeting which such applicant proposes to hold or conduct. The Racing Commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the Racing Commission and shall disclose, but not be limited to, the following:

- (1) If the applicant be an individual, the full name and address of the applicant;
- (2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;
- (3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;
- (4) The dates, totaling not less than two hundred, such applicant intends to hold or conduct such horse or dog race meeting (which may be on any day including Sundays);
- (5) The location of the horse or dog racetrack, place or enclosure where such applicant proposes to hold or conduct such horse or dog race meeting;
- (6) Whether the applicant, any partner, member, officer or director has previously applied for a license under the provisions of this article or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked; and
- (7) Such other information as the Racing Commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(b) Such application shall be verified by the oath or affirmation of the applicant for such license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be. When required by the Racing Commission, an applicant for a license shall also furnish evidence satisfactory to the Racing Commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials and other expenses incident to the horse or dog race meeting for which a license is sought. In the event the applicant is not able to furnish such satisfactory evidence of such

applicant's ability to pay such expenses and fees, the Racing Commission may require bond or other adequate security before the requested license is issued.

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

WV Legislature

**§19-23-7a. Applicants for licenses and permits to provide fingerprints.**

(a) All new applicants for licenses issued by the Racing Commission, pursuant to section one of this article, shall be required to furnish fingerprints for examination by the criminal identification bureau of the division of public safety and the federal bureau of investigation. The fingerprints shall be furnished by all persons required to be named in the application pursuant to subsection (a) of section seven of this article and shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation.

(b) The Racing Commission may require any applicant seeking the renewal of a license or the issuance or renewal of a permit to furnish fingerprints for examination by the criminal identification bureau of the division of public safety and the federal bureau of investigation. The Racing Commission may require all or any part of the persons required to be named in an application pursuant to section seven of this article to provide fingerprints and the fingerprints shall be accompanied by a signed authorization for the release of information by the criminal investigation bureau and the federal bureau of investigation.

**§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.**

(a) The Racing Commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the Racing Commission shall make and enter an order either approving or denying the application. The application may be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the Racing Commission shall issue a license to conduct a horse or dog race meeting and shall designate on the face of the license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which the horse or dog race meeting is to be held or conducted (which may be any weekdays, or week-nights, including Sundays), the location of the horse or dog racetrack, place or enclosure where the horse or dog race meeting is to be held or conducted, and other information as the Racing Commission shall consider proper. If an application for a permit is approved, the Racing Commission shall issue a permit and shall designate on the face of the permit such information as the Racing Commission considers proper.

(b) The Racing Commission may deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal is final and conclusive unless a hearing is demanded in accordance with the provisions of §19-23-16 of this code, if the Racing Commission finds that the applicant individually, if an individual, or the partners or members, if a partnership, firm, or association, or the owners and directors, if a corporation:

- (1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;
- (2) Is or has been guilty of any corrupt or fraudulent act, practice, or conduct in connection with a horse or dog race meeting in this or any other state;
- (3) Has been convicted, within 10 years prior to the date of the application, of an offense which under the law of this state, of any other state, or of the United States of America, shall constitute a felony: *Provided*, That the Racing Commission shall apply §19-23-8(g) and §19-23-8(h) of this code in determining whether an applicant's prior criminal convictions bear a rational nexus to the license or permit being sought;
- (4) Has failed to comply with the provisions of this article or any reasonable rules of the Racing Commission;
- (5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended, or revoked in any other state;
- (6) Has defaulted in the payment of any obligation or debt due to this state under the

provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the Racing Commission under the provisions of §19-23-7 of this code;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of the applicant.

(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the Racing Commission shall consider the horse racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this state are associated or contiguous to and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and may not permit the holding or conducting of a horse or dog race meeting at any horse or dog racetrack, place, or enclosure not specified thereon. However, if the specified horse or dog racetrack, place, or enclosure becomes unsuitable for the horse or dog race meeting because of flood, fire, or other catastrophe, or cannot be used for any reason, the Racing Commission may, upon application, authorize the horse or dog race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place, or enclosure available for that purpose, provided that the owner of the racetrack, place, or enclosure willingly consents to the use.

(e) No type of horse racing or dog racing shall be conducted by a licensee at any race meeting other than that type for which a license was issued.

(f) Each permit issued under the provisions of this section shall be for a period of one year, unless approved otherwise by the commission. Effective January 1, 2012, each permit shall be renewed according to the following schedule: Permits issued to persons whose date of birth is January 1 through and including April 30 shall be renewed no later than April 30 of each year; permits issued to persons whose date of birth is May 1 through and including August 31 shall be renewed no later than August 31 of each year; and permits issued to persons whose date of birth is September 1 through and including December 31 shall be renewed no later than December 31 of each year. Each permit shall be valid at all horse or dog race meetings during the period for which it was issued unless it be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

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

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

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

- (1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;
- (2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and
- (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commissioner.

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

(j) The Racing Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code which establish the criteria for the approval or denial of a license or permit.

## **PART V-A. SUNDAY RACING.**

### **§19-23-8a. Applications for Sunday racing; local option election procedures; protest procedures against approval.**

(a) A racing association licensed under the provisions of section one of this article and operating a horse or dog race track in a county may make application for permission to conduct horse or dog racing on Sunday, between the hours of one p.m. and six p.m., local time.

Such application shall be filed with the Racing Commission. The Racing Commission shall prescribe blank forms to be used in making such application.

The Racing Commission, if it finds such application to be in order, may grant tentative approval of such application and, if it grants tentative approval of the application, shall prepare and publish a notice to the public that the Racing Commission has granted tentative approval of the application, that the Racing Commission solicits public comment from the citizens of the county and will hold a public hearing in the county on a date specified in the notice in the county wherein the horse racing track or dog racing track is located, that the Racing Commission shall take such comment into consideration in deciding whether or not to grant or deny final approval, and that the Racing Commission will make final approval of such application at the expiration of sixty days from the date of the first publication of such notice, which date shall be specified in said notice, unless within that time in accordance with subsection (c) of this section, the county commission of the county in which such race track is located shall order an election. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the race track is located: Provided, That prior to granting final approval hereunder, the Racing Commission shall solicit public comment from the citizens of the county, and hold a public hearing in the county on a date specified in the hearing notice specified above, in the county wherein the horse racing track or dog racing track is located and shall take such comment into consideration in deciding whether or not to grant final tentative approval. If no such election is ordered, the Racing Commission shall proceed to consider final approval of the application.

(b) The county commission shall, upon the written petition of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, received within the period specified in subsection (a) of this section, which petition may be in any number of counterparts, order an election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county, which election shall be held at the next primary or general election held in such county. The Racing Commission shall permit such racing pending certification of the results of the election.

(c) If such election is ordered, the county commission shall give notice of such election by

publication of such notice as a Class II-0 legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. Such notice shall be published within twenty-one consecutive days next preceding the date of said election.

(d) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve horse racing on Sundays between the hours of one p.m. and six p.m. in \_\_\_\_\_ County, West Virginia?

/ Yes / No

(Place a cross mark in the square opposite your choice.)"

In a county in which dog racing is conducted, the term "dog racing" shall be substituted for "horse racing" on the ballot or ballot label.

(e) Each individual qualified to vote in said county shall be qualified to vote at such election. The votes in said election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such election and certify the results thereof to the Racing Commission, and shall transmit a certified copy of said results to the Secretary of State.

(f) After the certification of the results of such election, the Racing Commission shall: (1) Grant final approval of an application for a license which contains racing dates which fall on Sunday if a majority of the voters voting at such election vote yes, and on such racing dates all racing and other activities authorized by this article shall be lawful, any other provisions of this code to the contrary notwithstanding; or (2) deny final approval of an application for a license which contains racing dates which fall on Sunday if less than a majority of the voters voting at such election vote yes.

(g) After an election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county, another election on such issue shall not be held for a period of five years.

(h) After five years from such final approval, it shall be the duty of the county commission upon a petition in writing of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, to order an election to determine whether it is the will of the voters of said county that racing on Sundays be discontinued in said county. The provisions of subsections (c) and (e) of this section shall govern said election. The ballot, or the ballot labels where voting machines are used, shall

have printed thereon substantially the following:

"Shall racing of horses on Sunday in \_\_\_\_\_ County, West Virginia, be discontinued?

/ Yes / No

(Place a cross mark in the square opposite your choice.)"

In a county in which dog racing is conducted, the word "dogs" shall be substituted for "horses" on the ballot or ballot label. If it be the will of a majority of the voters of said county that Sunday racing be discontinued in said county, it shall be the duty of the Racing Commission thereafter, for a period of at least five years and until a subsequent election shall otherwise direct, to deny applications to race on Sundays in said county.

(i) Upon the written petition of qualified voters residing within the county equal to at least thirty percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, presented to the Racing Commission within sixty days after the expiration of such publication protesting against such tentative approval, the approval may not become effective and another petition may not be filed for a period of five years.

**§19-23-8b. Horse or dog racing after six o'clock postmeridian on Sundays; application therefor; tentative approval; publication of notice; petition for local option election; local option election procedure; effect of such election.**

(a) Notwithstanding any other provisions of this code to the contrary, a racing association licensed under the provisions of section one of this article and operating a horse or dog racetrack in a county in which Sunday racing has been approved under provisions of section eight-a of this article may make applications to the Racing Commission for permission to conduct horse or dog racing after the hour of six o'clock postmeridian on Sundays.

(b) The Racing Commission, if it finds such application to be in order, may grant tentative approval of such application and, if it grants tentative approval, shall prepare and publish a notice to the public and that the Racing Commission has granted tentative approval of the application and that the Racing Commission will make final confirmation of such application at the expiration of sixty days from the date of the first publication of such notice, which date shall be specified in said notice, unless within that time a petition for a local option election has been filed in accordance with subsection (c) of this section with the county commission of the county in which such racetrack is located. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the racetrack is located: Provided, That prior to granting tentative approval hereunder, the Racing Commission shall solicit public comment from the citizens of the county wherein the horse racing track or dog racing track is located and shall take such comment into consideration in deciding whether or not to grant tentative approval.

(c) The county commission, upon the written petition of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, shall order an election to determine whether it is the will of the voters of said county that racing be permitted after the hour of six o'clock postmeridian on Sundays in the county.

(d) No election to determine whether it is the will of the voters of a county that racing be permitted after the hour of six o'clock postmeridian on Sundays in the county may be held at a general or primary election or within sixty days of any such election or in conjunction with any other election.

(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve horse racing on Sundays after the hour of six p.m. in \_\_\_\_\_ County, West Virginia?"

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)"

In a county in which dog racing is conducted, the term "dog racing" shall be substituted for "horse racing" on the ballot or ballot label.

(f) Each individual qualified to vote in the county is qualified to vote at the local option election. The votes in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to the county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the Racing Commission and shall transmit a certified copy of the results to the Secretary of State.

(g) The Racing Commission shall, after the certification of the results of such local option election, thereafter approve an application for a license which contains racing dates which fall on Sunday for any hour or hours after six o'clock postmeridian if a majority of the voters voting at such local option election vote yes and on such racing dates all racing and other activities authorized by this article are lawful, any other provisions of this code to the contrary notwithstanding.

**§19-23-8c. Local option election procedure; form of ballot or ballot labels; effect of such election.**

(a) Notwithstanding any other provision of law to the contrary, no license for dog racing may be issued for dog racing in any county wherein horse racing has been conducted at any time during the fifteen years preceding the application for such license, unless first approved by the voters of the county in which the proposed dog racing track is to be located. The county commission of any county in which horse racing has been conducted at any time during such fifteen-year period and in which a proposed dog racing track is to be located is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to whether the Racing Commission may approve an application for a license for dog racing if the application and the applicant are otherwise in compliance with the provisions of this article and this code.

(b) The county commission may order an election to determine whether it is the will of the voters of said county that dog racing be permitted in said county.

(c) Any election to determine whether it is the will of the voters of said county that dog racing be permitted in said county shall be held at a general or primary election.

(d) The county commission shall give notice of such election by publication of such notice as a Class II-0 legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. Such notice shall be published within twenty-one consecutive days next preceding the date of said election.

(e) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission be authorized to approve dog racing in \_\_\_\_\_ County, West Virginia?"

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)"

Each individual qualified to vote in said county shall be qualified to vote at the local option election. The votes in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to the county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the Racing Commission and shall transmit a certified copy of said results to the Secretary of State.

(f) The Racing Commission may, after the certification of the results of such local option election, thereafter approve an application for a license for dog racing if a majority of the

voters voting at such local option election vote yes.

(g) After an election to determine whether it is the will of the voters of the county that dog racing be permitted in said county, another election on such issue shall not be held for a period of five years.

(h) If at such election a majority of the voters of said county shall approve dog racing in said county, it is lawful for the county commission, after five years from such approval, and it shall be the duty of the county commission upon a petition in writing of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, to order an election to determine whether it is the will of the voters of said county that dog racing be discontinued in said county. The provisions of subsection (c), (d) and (e) of this section shall govern said election. The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall racing of dogs in \_\_\_\_\_ County, West Virginia be discontinued?

Yes  No

(Place a cross mark in the square opposite your choice.)"

**PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;  
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.**

**§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.**

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized if, and only if, such pari-mutuel wagering is conducted by the licensee within the confines of the licensee's horse racetrack or dog racetrack and the provisions of section one, article ten, chapter sixty-one of this code relating to gaming shall not apply to the pari-mutuel system of wagering in manner and form as provided in this article at any horse or dog race meeting within this state where horse or dog racing is permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall pay one tenth of one percent of the pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; and (iv) Any licensee which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeders awards, restrictive races and stakes purses as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. The remainder of the commission shall be retained by the licensee.

Each licensee that permits or conducts pari-mutuel wagering at the licensee's thoroughbred

horse racetrack shall annually pay \$500,000 from the special fund required by this section to be established by the licensee for the payment of regular purses offered for thoroughbred racing by the licensee into a special fund established by the Racing Commission for transfer to a pension plan established by the Racing Commission for all back stretch personnel, including, but not limited to, exercise riders, trainers, grooms and stable forepersons licensed by the Racing Commission to participate in horse racing in this state and their dependents.

Each thoroughbred racetrack licensee is authorized to enter into an agreement with its local Horsemen's Benevolent and Protective Association under which an agreed upon percentage of up to two percent of purses actually paid during the preceding month may be paid to the local Horsemen's Benevolent and Protective Association from the special fund required by this section for their respective medical trusts for backstretch personnel and administrative fees.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of the commission, as is mentioned in this paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December, for pools involving a combination of two winning horses shall be eight and twenty-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and seventy-five one-hundredths percent of the pari-mutuel pools, and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of the fund shall be eleven and twenty-five one-hundredths percent of the pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be ten and seventy-five one-hundredths percent of the pari-mutuel pools; (iii) shall pay one tenth of one percent of the pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; and (iv) any licensee which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeder awards, for restrictive races and stakes purses which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. The remainder of the commission shall be retained by the licensee.

The commission deducted by the licensee under this subdivision may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. The

reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the reduction shall be retained by the licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of this subdivision. The Racing Commission shall promulgate any reasonable rules that are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of the pari-mutuel pools for the day. Out of the commission the licensee shall pay the pari-mutuel pools tax provided in subsection (c), section ten of this article and shall pay one tenth of one percent into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty one-hundredths percent of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent, by a combination of three winning dogs shall not exceed twenty percent and by a combination of four or more winning dogs shall not exceed twenty-one percent of the total of such pari-mutuel pools for the day. The foregoing commissions are in effect for the fiscal years 1990 and 1991. Thereafter, the commission shall be at the percentages in effect prior to the effective date of this article unless the Legislature, after review, determines otherwise. Out of the commissions, the licensee shall pay the pari-mutuel pools tax provided in subsection (d), section ten of this article and one tenth of one percent of such pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located. In addition, out of the commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the Municipal General Fund; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the state Road Fund for use by the Division of Highways in accordance with the provisions of this subdivision. The remainder of the commission shall be retained by the licensee.

For the purposes of this section, "municipality" means and includes any Class I, Class II and Class III city and any Class IV town or village incorporated as a municipal corporation under the laws of this state prior to January 1, 1987.

Each dog racing licensee, when required by the provisions of this subdivision to pay a percentage of its commissions to the state Road Fund for use by the Division of Highways, shall transmit the required funds, in such manner and at such times as the Racing Commission shall by procedural rule direct, to the state Treasurer for deposit in the state

Treasury to the credit of the Division of Highways State Road Fund. All funds collected and received in the state Road Fund pursuant to the provisions of this subdivision shall be used by the Division of Highways in accordance with the provisions of article seventeen-a, chapter seventeen of this code for the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road in the state. If on July 1, 1989, any area encompassing a dog racetrack has incorporated as a Class I, Class II or Class III city or as a Class IV town or village, whereas such city, town or village was not incorporated as such on January 1, 1987, then on and after July 1, 1989, any balances in the state Road Fund existing as a result of payments made under the provisions of this subdivision may be used by the state Road Fund for any purpose for which other moneys in the fund may lawfully be used and in lieu of further payments to the state Road Fund, the licensee of a racetrack which is located in the municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the General Fund of the municipality. If no incorporation occurs before July 1, 1989, then payments to the state Road Fund shall thereafter continue as provided under the provisions of this subdivision.

A dog racing licensee, before deducting the commissions authorized by this subdivision, shall give written notification to the Racing Commission not less than thirty days prior to any change in the percentage rates for the commissions. The Racing Commission shall prescribe blank forms for filing the notification. The notification shall disclose the following: (A) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple bettings; (B) the dates to be included in the revised betting; and (C) such other information as may be required by the Racing Commission.

The licensee shall establish a special fund to be used only for capital improvements or long-term debt amortization or both: Provided, That any licensee, heretofore licensed for a period of eight years prior to the effective date of the amendment made to this section during the regular session of the Legislature held in the year 1987, shall establish the special fund to be used only for capital improvements or physical plant maintenance, or both, at the licensee's licensed facility or at the licensee's commonly owned racing facility located within this state. Deposits made into the funds shall be in an amount equal to twenty-five percent of the increased rate total over and above the applicable rate in effect as of January 1, 1987, of the pari-mutuel pools for the day. Any amount deposited into the funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not expended shall be transferred immediately into the state General Fund after expiration of the two-year period.

The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the licensee's commissions for each day shall be three and seventy-five one-hundredths percent of the pari-mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and

promotion programs; the funds shall be in an amount equal to five percent over and above the applicable rates in effect as of January 1, 1987, of the total pari-mutuel pools for the day.

The Racing Commission shall prepare and transmit annually to the Governor and the Legislature a report of the activities of the Racing Commission under this subdivision. The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the Division of Highways Dog Racing Fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization and a certified statement of the financial condition of any licensee depositing into the fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the Racing Commission may consider appropriate for review.

(c) In addition to any commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from the breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of the breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.

(d) The director of audit, and any other Auditors employed by the Racing Commission who are also certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to the pari-mutuel system of wagering and shall report to the Racing Commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that the individual is under the age of eighteen years.

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one percent of the pari-mutuel pools into the General Fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; (iii) the licensee shall pay one half of the

remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the licensee shall retain the amount remaining after making the payments required in this subsection.

(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the Commission a surety bond in an amount to be determined by the Commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

**PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.****§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.**

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of \$250. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of \$150. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of \$150. In the event thoroughbred racing, harness racing, dog racing or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of \$250 shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall be calculated at four-tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at one and four-tenths percent of the pool: Provided, That out of the amount realized from the three tenths of one percent decrease in the tax effective for fiscal year 1991 and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate: (i) One half of the realized amount for capital improvements in its barn area at the track, subject to the Racing Commission's prior approval of the plans for the improvements; and (ii) the remaining one half of the realized amount for capital improvements as the licensee may determine appropriate at the track. The term "capital improvement" shall be as defined by the Internal Revenue Code: Provided, however, That any racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of \$280,000 or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding \$300,000 the daily pari-mutuel pool tax shall be \$1,000 plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of \$300,000: Provided further, That upon the effective date of the reduction of the daily pari-mutuel pool tax to \$1,000 from the former \$2,000, the

association or licensee shall daily deposit \$500 into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to thirteen races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: And provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: And provided further, That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years prior to December 31, 1992.(c) Any racing association licensed by the Racing Commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first \$100,000 wagered, or any part thereof; four percent of the next \$150,000; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the Racing Commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first \$50,000 or any part thereof of the pari-mutuel pools, five percent of the next \$50,000 of the pari-mutuel pools, six percent of the next \$100,000 of the pari-mutuel pools, seven percent of the next \$150,000 of the pari-mutuel pools, and eight percent of all over \$350,000 wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year 1990; fifteen hundredths of one percent in fiscal year 1991; two tenths of one percent in fiscal year 1992; one quarter of one percent in fiscal year 1993; and three tenths of one percent in fiscal year 1994 and every fiscal year thereafter. The amounts deducted shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding, training track facilities and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to participate and be eligible to receive an award or purse through the fund, the registered greyhound owner must have an appropriate license from the Racing Commission to race in West Virginia. The registered greyhound dam at the time of breeding must be wholly or solely owned or leased by a bona fide resident or residents of West Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned by a bona fide resident or residents of this state. To qualify as a bona fide resident of

West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the State of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The Racing Commission shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses for stake races, training track facilities, supplemental purse awards, administration, promotion, education and greyhound adoption programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the Racing Commission. The Racing Commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of \$75,000 for the fiscal year ending June 30, 1994. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the Racing Commission.

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

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

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

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

In no event shall points earned at a meet held at a track which did not make contributions to the West Virginia Greyhound Breeding Development Fund out of the daily pool on the day

the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: Provided, That not more than \$2 million from the balance in the purse supplemental fund shall be used for the construction and maintenance of two dog training track facilities if such be approved by the Racing Commission: Provided, however, That not more than \$1 million may be allocated for the construction and maintenance of each training track: Provided further, That both training track facilities must be located in West Virginia. The West Virginia Racing Commission shall be authorized to promulgate rules governing dog training tracks: And provided further, That the Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the construction or maintenance, or both, of the training tracks; and (2) set standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

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

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

may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel's racing license. The Racing Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the "administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account". The Racing Commission is authorized to expend the moneys deposited in the administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: Provided, That beginning with fiscal year 1995 and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering. The commission shall make an annual report to the Legislature on the status of the administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account, including the previous year's expenditures and projected expenditures for the next year.

The Racing Commission, for the fiscal year 1994 only, may expend up to \$35,000 from the West Virginia Greyhound Breeding Development Fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

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

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the Racing Commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

**§19-23-11. Revenues from horse racing and dog racing to be paid into a special account to fund commission expenses.**

All revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pools taxes on horse racing and dog racing shall be paid by the Racing Commission to the State Treasurer who shall deposit the revenues in a special account to be denominated by him or her. The revenues in the special account shall first be available to the commission to pay salaries and other budgeted expenses for the commission, not to exceed the amounts appropriated for such purposes in the budget bill for each fiscal year. Revenues in excess of the budgeted expenses of the commission shall be accumulated and transferred to the General Revenue Fund. The Racing Commission shall remit all collected revenues to the State Treasurer at least one time during each thirty-day period of each racing season, and a final remittance as to any particular horse race or dog race meeting shall be made within thirty days from and after the close of each horse race or dog race meeting.

**§19-23-12. License to be in lieu of all other license, etc., taxes; exception.**

The license tax imposed in section ten of this article shall be in lieu of all other license, income, excise, special or franchise taxes of this state, and no county or municipality or other political subdivision of this state shall be empowered to levy or impose any license, income, pari-mutuel, excise, special or franchise tax on any racing association engaged in the business of conducting a horse or dog race meeting at which horse or dog races are run for purses under the jurisdiction of and being licensed by the Racing Commission, or on the operation or maintenance of the pari-mutuel system of wagering, or on the sale of any commodity during a horse or dog race meeting at which horse or dog races are run, or at any such horse or dog racetrack nor shall there be, hereafter, any imposition of tax pursuant to articles twelve, thirteen or fifteen of chapter eleven of this code on the income or receipts of owners, trainers or jockeys directly arising from their services which are essential to the effective conduct of a horse or dog racing meeting: Provided, That the foregoing provisions of this section shall in no way affect, abridge or abolish the authority of a municipality to impose the license tax authorized by the provisions of section eight, article thirteen, chapter eight of this code.

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

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

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

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

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

(2) Such horse association shall retain a basic commission not to exceed seventeen and twenty-five one-hundredths percent of all money wagered, plus an additional amount equal to one and seventy-five one-hundredths percent of the amount wagered each day on all multiple wagers determined by a combination of two winning horses, including, but not limited to, the daily double, quinella and perfecta or plus an additional amount equal to seven and seventy-five one-hundredths percent of the amount wagered each day on all trifecta wagers or any other multiple wager which involves a single betting interest on three or more horses. Breakage shall be calculated and distributed in the manner provided by subsection (c), section nine of this article.

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

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

(5) The association shall pay each day a pari-mutuel pools tax calculated under the provisions of section ten of this article.

(6) After deducting the county or municipal share provided for in subsection (4) of this section and the pari-mutuel pools tax required by subsection (5) of this section, and the amount required to be paid under the terms of the contract with the legal wagering entity of

this or another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b), subsection (1), section nine of this article.

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

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

**§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.**

(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at other racetracks in this state or at racetracks outside of this state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article; and

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

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state Racing Commission, contract with any legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and accept wagers on races conducted by the legal wagering entity: Provided, That at those thoroughbred racetracks the licensee, in applying for racing dates, shall apply for not less than two hundred ten live racing dates for each horse race meeting: Provided, however, That at those thoroughbred racetracks that have participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to December 31, 1992, the licensee may apply for not less than one hundred fifty-nine live racing dates during the calendar year 1997. If, thereafter, for reasons beyond the licensee's control, related to adverse weather conditions, unforeseen casualty occurrences or a shortage of thoroughbred horses eligible to compete for purses, the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the Racing Commission to reduce the authorized live racing days. Upon receipt of the request the Racing Commission shall within seventy-two hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track and the representative of the majority of the mutuel clerks at the requesting track that such request has been received and that if no objection to the request is received within ten days of the notification the request will be approved: Provided further, That the commission shall give consideration to whether there existed available unscheduled potential live racing dates following the adverse weather or casualty and prior to the end of the race meeting which could be used as new live racing dates in order to maintain the full live racing schedule previously approved by the Racing Commission. If an objection is received by the commission within the time limits, the commission shall, within thirty days of receipt of such objection, set a hearing on the question of reducing racing days, which hearing shall be conducted at a convenient place in the county in which the requesting racetrack is located. The commission shall hear from all parties concerned and, based upon testimony and documentary evidence presented at the hearing, shall determine the required number of live racing days: And provided further, That the commission shall not reduce the number of live racing days below one hundred eighty-five days for a horse race meeting unless the licensee

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

(c) The commission may allow the licensee to commingle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack and must be distributed in a manner agreed to between the licensee and the sending racetrack. For the televised racing services it provides, the host racing association shall receive a fee to be paid by the receiving licensee racetrack which shall be in an amount to be agreed upon by the receiving licensee racetrack and the host racing association.

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

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

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

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

(f) After deducting the tax and other payments required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the host racing association and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article. After deducting the tax and other payments required by subsection (e) of this section, dog racetracks shall pay an amount equal to two tenths of one percent of the daily simulcast pari-mutuel pool to the "West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund".

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

**§19-23-12c. Interstate simulcasts by licensed racetracks.**

(a) Any licensed racing association may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state, which legal wagering entities located outside this state shall not be subject to the provisions of subsection (e), section twelve-b of this article: Provided, That as consideration for the televised racing services it provides, the host racing association shall receive a signal transmission fee to be paid by the receiving legal wagering entity which shall be in an amount agreed upon by the receiving legal wagering entity and the host racing association. All broadcasts of horse races shall be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978," also known as Public Law 95-515, Section 3001-3007 of Title 15 of the United States Code.

(b) One percent of the total signal transmission fee provided in subsection (a) of this section shall be paid into a special fund to be established by the Racing Commission for and on behalf of all employees of the licensed racing association to be used for payments into the pension plan for all employees of the licensed racing association, and any thoroughbred horse racetrack which has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to December 31, 1992, shall pay seven and one-half percent of the signal transmission fee into the West Virginia thoroughbred development fund established by the Racing Commission according to section thirteen-b of this article. After deducting: (i) The amounts required to be placed into the pension plan for all employees of the licensed racing association under this section; (ii) the amounts, if any, required to be paid into the West Virginia thoroughbred development fund under this section; and (iii) the direct costs necessary to send a live audio and visual signal of horse races or dog races from any racetrack licensed under the provisions of section one of this article to any legal wagering entities outside this state for the purpose of pari-mutuel wagering, which direct costs shall include the cost of satellite equipment necessary to transmit the signal, a satellite operator and the satellite time necessary to broadcast the signal and the cost of telecommunication and facsimile services needed to communicate necessary information to all legal wagering entities for the purpose of pari-mutuel wagering, thoroughbred horseracing associations shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article: Provided, That the funds deposited in the purse fund pursuant to this section may be used for the payment of regular purses or, upon agreement between the horse racing association and the representative of the majority of owners and trainers at a particular thoroughbred racetrack, may be used for capital improvements supporting simulcast operations.

**§19-23-12d. Simulcast races and pari-mutuel wagering at authorized gaming facility in historic resort hotel.**

(a) Definitions. -- In addition to the words and phrases defined in section three of this article, the words and phrases defined in subsection (b) of this section have the meanings provided in that subsection when used in this section, unless the context in which the term or phrase is used clearly indicates that a different meaning is intended.

(b) Defined words and phrases. --

(1) "Applicant" means any gaming licensee who is licensed under article twenty-five, chapter twenty-nine of this code, applying for a license under this section to conduct pari-mutuel wagering on televised horse and dog races.

(2) "Designated pari-mutuel wagering area" means one or more specific areas of an existing historic resort hotel within which the Racing Commission has authorized the gaming licensee to offer pari-mutuel wagering to patrons of the hotel.

(3) "Gaming facility" means a designated area on the premises of an existing historic resort hotel in which pari-mutuel wagering is conducted by a gaming licensee.

(4) "Gaming licensee" means the licensed operator of a gaming facility under article twenty-five, chapter twenty-nine of this code, who is also licensed under this article to offer pari-mutuel wagering on simulcast horse or dog races or on both types of races.

(5) "Historic resort hotel" means a historic resort hotel as defined in section two, article twenty-five, chapter twenty-nine of this code.

(6) "In-state host track" means a racetrack within this state licensed to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is an in-state sending track.

(7) "In-state sending track" means a racetrack in this state licensed under this article to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is equipped to conduct simulcasting of those races and intertrack pari-mutuel wagering on those races.

(8) "In-state track" means an in-state host track or an in-state sending track.

(9) "Interstate common pool" means a pari-mutuel pool established within this state or in another state or foreign nation within which is combined comparable pari-mutuel pools of one or more receiving legal wagering entities located in one or more states or foreign nations upon a race at a sending track located within or outside of this state for the purpose of establishing payoff prices in the various jurisdictions.

(10) "Intertrack wagering" means parimutuel wagering on simulcast horse or dog races held

at an in-state sending track by patrons at a gaming facility licensed under this section and the electronic transmission of the wagers to the in-state sending track.

(11) "License" means a license issued by the Racing Commission pursuant to this section, including:

(A) A license to operate a gaming facility in which pari-mutuel wagering on simulcast races will be available to patrons;

(B) A license to be employed in connection with the operation of a gaming facility at which pari-mutuel wagering is offered on simulcast races; or

(C) A license to provide management services under a contract to a gaming facility licensed under this article.

(12) "Licensed gaming facility employee" means any individual licensed or registered to be employed by a gaming licensee in connection with the operation of a pari-mutuel wagering pursuant to this section.

(13) "Out-of-state host track" means a racetrack in a jurisdiction other than this state, the operator of which is lawfully permitted to conduct a horse or dog race meeting and which conducts horse or dog races upon which pari-mutuel wagers may be placed.

(14) "Out-of-state track" means an out-of-state host track or an out-of-State sending track.

(15) "Out-of-state sending track" means a racetrack in a jurisdiction other than the State of West Virginia which is lawfully permitted to conduct a horse or dog race meeting and to provide simulcast horse or dog races to a racetrack in this state.

(16) "Participation agreement" means the written contract that provides for the establishment or implementation of simulcasting of horse or dog races and pari-mutuel wagering. Each contract shall set forth the manner in which the pari-mutuel wagering system shall be managed, operated and capitalized, as well as how expenses and revenues shall be allocated and distributed by and among the licensed gaming facility under this section and the other eligible participants in the contract.

(17) "Premises of an existing historic resort hotel" means the historic resort hotel, attachments of the historic resort hotel, and the traditional, immediate grounds of the historic resort hotel.

(18) "Receiving gaming facility" means a licensed racetrack or authorized gaming facility within this state licensed under this article which is equipped to receive simulcast horse and dog races and to conduct intertrack or interstate wagering on those races.

(19) "Simulcast horse or dog races" means horse or dog races conducted at an in-state sending track or an out-of-state sending track, as the case may be, and transmitted

simultaneously by picture to the authorized gaming facility licensed under this section or other legal wagering facility.

(20) "Simulcasting" means the simultaneous audio or visual transmission of horse or dog races conducted at in-state and out-of-state racetracks to the gaming facility licensee under this section and pari-mutuel wagering on the results of those races.

(c) Application for license. -- An applicant who is licensed under article twenty-five, chapter twenty-nine of this code may apply to the West Virginia Racing Commission for a license to conduct at the historic resort hotel pari-mutuel wagering on simulcast horse and dog races held at a licensed racetrack in this state, or in another jurisdiction, where pari-mutuel wagering is permitted and conducted. The application shall be submitted in the form prescribed by the commission and provide the information required by the commission.

(d) Issuance of license. -- Within sixty days after an application is filed pursuant to subsection (b) of this section, the Racing Commission shall act on the application and either grant or deny the application: Provided, That issuance of the license shall not be unreasonably withheld. Once issued, the license shall expire, be renewed, revoked or suspended on the same basis as licenses issued under this article to racetracks to hold live racing and conduct pari-mutuel wagering.

(e) Transmission of races from in-state sending tracks. -- An in-state sending track may transmit to a gaming licensee under this section all or some of the live races conducted at the racetrack. (f) Receipt of simulcasts transmitted from out-of-state tracks. -- The gaming licensee under this section may, in accordance with this article, and any applicable rules of the Racing Commission and with the approval of the commission, receive at the facility simulcast horse or dog races, or both, conducted at out-of-state sending tracks.

(g) Payments to sending track. - The authorized gaming facility receiving a simulcast horse or dog race from an out-of-state sending track shall pay to the out-of-state sending track for the transmission such amount, if any, as may be agreed upon by the authorized gaming facility and the out-of-state sending track. The authorized gaming facility accepting pari-mutuel wagers on a horse or dog race conducted at an out-of-state host track shall pay to the out-of-state host track such amount, if any, as provided for in the agreement, if any, between the authorized gaming facility and the out-of-state host track.

(h) Conditions for participation by out-of-state tracks; interstate common pools. --

(1) Except as provided in subdivision (2) of this subsection, the Racing Commission shall not permit an out-of-state sending track or an out-of-state host track to participate in simulcast pari-mutuel wagering or qualify as an out-of-state host track, respectively, unless the pari-mutuel pools respecting the authorized gaming facility under this article are combined with comparable pari-mutuel pools at the out-of-state track. The types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and the percentage of deposits remaining undistributed from a pari-mutuel pool after payment is made to

winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-state track.

(2) With the prior approval of the Racing Commission and the concurrence of the out-of-state track, an authorized gaming facility under this article and receiving tracks or entities in other states other than the state in which the out-of-state track is located may form an interstate common pool. With respect to such interstate common pools, the Racing Commission may approve types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and a percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders which are different from those which would otherwise be applied in this state but which are consistent for all parties to the interstate common pool.

(i) Licensing or registration of persons conducting wagering-related activities. -- All persons engaged in conducting wagering-related activities at the authorized gaming facility licensed under this section, whether employed directly by the licensee or by a person or entity conducting or operating the simulcast racing and pari-mutuel wagering facility under an agreement with the licensee, shall be licensed or registered in accordance with such rules as may be promulgated by the Racing Commission. All other employees at the simulcast racing and pari-mutuel wagering facility shall be licensed or registered in accordance with regulations of the Racing Commission: Provided, That when the employee is licensed by the Lottery Commission, that employee must register with the Racing Commission is not required to have a separate license issued by the Racing Commission. The Racing Commission shall have the authority to promulgate rules, regulations and conditions under which all such licenses are issued, or registrations made, in this state and to revoke or refuse to issue a license, or revoke or refuse to accept a registration, if in the opinion of the commission the revocation or refusal is in the public interest: Provided, That the rules, regulations and conditions are uniform in their application to both the gaming facility licensed under this section and racetracks licensed under this article to hold race meetings at which pari-mutuel wagering is conducted. The fees under this subsection may not be in excess of the fee charge for a similar occupational permit or license at a licensed racetrack.

(j) Retainage of gaming licensee. -- The gaming licensee under this section shall retain from pari-mutuel wagers a basic commission of seventeen and twenty-five one-hundredths percent on horse races and a basic commission of sixteen and twenty-five one-hundredths percent on dog races. Breakage shall be calculated and distributed in the manner provided in subsection (c), section nine of this article.

(k) Payments by the licensee. -- Out of the commission retained or deducted by a gaming licensee under the provisions of subsection (j) of this section, the gaming licensee shall pay:

(1) One-tenth of one percent into the General Revenue Fund of county commission of the county in which the historic resort hotel is located;

(2) Each day, the daily pari-mutuel pools tax calculated under section ten of this article; and

(3) The amount required to be paid under the terms of a contract with a host licensed racing association in this state or in another jurisdiction that permits pari-mutual wagering on horse or dog races held or conducted in that jurisdiction.

(l) After making the payments required by subsection (k) of this section, the remaining balance may be retained by the gaming licensee under this section.

(m) Compliance with federal law. -- The federal Interstate Horseracing Act of 1978, P. L. 95-515, 15 U.S.C. §§3001-3007, is instructive as the legislative intent of this section.

(n) Promulgation of rules. -- The Racing Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, it deems necessary to implement and efficiently administer this section: Provided, That the rules are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at the racetracks.

(o) Pari-mutuel wagers and equipment exempt from sales tax. -- Notwithstanding any provision of this code to the contrary, the license tax imposed in section ten of this article shall be in lieu of payment of the tax imposed by article fifteen, chapter eleven of this code, on pari-mutuel wagering and on the purchase of equipment, services and supplies directly used in pari-mutual wagering under this section.

**§19-23-12e. Licensing of advance deposit account wagering.**

(a) As used in this section:

“Account” means an advance deposit wagering (ADW) account owned by an account holder and managed by an ADW licensee that the Racing Commission has determined will maintain a specific identifiable record of account deposits, wagers, credits, debits, and withdrawals, and protect the account holder’s confidential information.

“Account holder” means a resident individual, at least 18 years of age who applies for and successfully opens an account with an ADW licensee.

“Advance deposit account wagering” means a method of pari-mutuel wagering that is permissible under the Interstate Horseracing Act, 15 U.S.C. §3001 *et seq.*, in which an individual may establish an account with a person or entity, licensed by the Racing Commission, to place pari-mutuel wagers on horse or greyhound racing with the ADW licensee via electronic media or by telephone, but not including account wagering conducted through a licensee under §19-23-9(a) of this code, and the Racing Commission’s rules thereunder with respect to wagering conducted pursuant to Racing Commission Rule §178-5-5.

“Advance deposit account wagering licensee” means an entity licensed by the Racing Commission to conduct advance deposit account wagering that accepts deposits and wagers, issues a receipt or other confirmation to the account holder evidencing the deposits and wagers, and transfers credits and debits to and from an account.

“ADW” means advance deposit account wagering.

“Confidential information” means: (A) The amount of money credited to, debited from, withdrawn from, or present in an account; (B) the amount of money wagered by an account holder on any race or series of races, or the identities of racing associations on which the account holder is wagering or has wagered; (C) the account number and secure personal identification information of an account holder; and (D) unless authorized by the account holder, the name, address, or other information that would identify the account holder to any person or entity other than the Racing Commission or the ADW licensee that manages the account.

“Electronic media” means any electronic communication device or combination of devices, including, but not limited to, personal computers, the Internet, private networks, interactive televisions, and wireless communication technologies or other technologies approved by the Racing Commission.

“Licensee” means any racing association holding a license as defined by §19-23-3 of this code;

“Located” means, in regard to a resident account holder, where his or her principal

residence is located.

“Principal residence” means the street address identified by a resident account holder as that individual’s residential address, as the address may be verified by the ADW licensee to the satisfaction of the Racing Commission.

“Resident” is an individual who: (A) Is domiciled in West Virginia; (B) maintains a place of abode and spends at least 183 days within a calendar year in West Virginia; or (C) lists an address in West Virginia as his or her principal residence when opening an account.

“Source market fee” means a fee paid by the ADW licensee which shall be four percent of the total amount wagered through the ADW licensee by residents under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission and distributed as set forth in subsection (b) of this section.

“Total handle” means the total annual dollar sales amount of all pari-mutuel wagering on horse and greyhound races conducted at, or generated from, imports or exports of simulcast horse and greyhound races to or from a licensee, including all moneys from wagering conducted under §19-23-9, §19-23-12a, §19-23-12b, and §19-23-12c of this code, but excluding refunds, cancellations, and advance deposit account wagering under this section.

(b) The source market fee shall be paid by the ADW licensee on a monthly basis to the Racing Commission and distributed as provided in this subsection. The Racing Commission shall prorate all source market fees derived from wagers of account holders between the licensees by dividing each licensee’s total handle by the total handle of all West Virginia licensees in the prior calendar year, and distribute the prorated amounts as follows:

(1) Ten percent of each horse racing licensee’s prorated amount to the West Virginia Thoroughbred Development Fund or 10 percent of each dog racing licensee’s prorated amount to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund;

(2) Forty-five percent to the purse fund of each prorated licensee; and

(3) Forty-five percent to each prorated licensee.

(c) The advance deposit account wagers placed by account holders with an ADW licensee licensed by the Racing Commission in accordance with this section are authorized, and the provisions of §61-10-1 *et seq.* of this code relating to gaming do not apply to advance deposit account wagering conducted in accordance with this section.

(d) The Racing Commission is vested with jurisdiction over any person or entity that solicits account holders or offers advance deposit account wagering in West Virginia. Any person or entity that solicits account holders or offers advance deposit account wagering in West Virginia shall be licensed and the Racing Commission may impose a nonrefundable initial and annual renewal licensing application fee not to exceed \$5,000. The Racing Commission

may also require any applicant for an initial or renewal ADW license to bear the costs involved in conducting background checks and reviews. If a licensee or an affiliate of a licensee applies for an ADW license under this section, all fees under this subsection shall be deemed paid and an ADW license issued as part of a licensee's annual licensing, or, if the license application is submitted apart from annual licensing, an ADW license shall be issued at the time the application is submitted.

(e) A person or entity may not conduct advance deposit account wagering in West Virginia unless the person or entity has applied for and been granted an ADW license by the Racing Commission. The Racing Commission shall also ensure that, except for advance deposit account wagering authorized under this section, all pari-mutuel wagering on racing is conducted within the confines of a licensee's racetrack or licensed contiguous hotel, as permitted under §19-23-9(a) and §19-23-12a(1) of this code and implementing rules thereunder, including Racing Commission Rule §178-5-5, or within an authorized gaming facility in a historic resort hotel, as permitted under §19-23-12d of this code and implementing rules thereunder.

(f) Any person who is not licensed as an advance deposit account wagering licensee by the Racing Commission who accepts an advance deposit account wager from a resident is guilty of a felony and, upon conviction thereof, shall be fined not more than \$50,000 or imprisoned in a state correctional facility not more than five years, or both fined and imprisoned. Further, the court shall order any convicted person to pay restitution to recover all amounts that would have been payable to the Racing Commission under this section.

(g) The Racing Commission may seek injunctive relief against any person who is not licensed as an advance deposit account wagering licensee by the Racing Commission who accepts or attempts to accept an advance deposit account wager from a resident. The Racing Commission may also seek recovery of all amounts that would have been payable to the Racing Commission under this section, damages equal to three times the amount of recovery, and reasonable costs and attorney fees. Damages recovered by the Racing Commission shall be distributed as source market fees under this section.

(h) There is hereby assessed a regulatory fee paid by the ADW licensee, which shall be one-half percent of the total amount wagered through the ADW licensee by residents under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission for deposit into the Racing Commission's general administrative account.

(i) There is further assessed an additional fee paid by the ADW licensee, which shall be one and one-half percent of the total amount wagered through the ADW licensee by residents under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission for deposit into a special revenue account in the State Treasury to be known as the "Advance Deposit Wagering Account" to be expended pursuant to appropriation of the Legislature.

(j) Advance deposit account wagers placed by residents are considered to be wagering

conducted in this state and subject to the laws of this state and the rules of the Racing Commission.

(k) The Racing Commission shall submit a report by December 31, 2020, and annually thereafter to the Joint Committee on Government and Finance detailing the operation of ADW in this state. The report shall include, but is not limited to, the following:

- (1) A complete list of ADW licensees offering ADW services;
  - (2) The total amount of funds paid to the Racing Commission pursuant to subsection (h) of this section;
  - (3) The total amount deposited in the preceding 12-month period in the special revenue account set forth in subsection (i) of this section;
  - (4) The amounts distributed as set forth in subdivision (b) of this section;
  - (5) Beginning with the report due December 31, 2021, a statistical comparison of ADW services to the preceding year; and
  - (6) The total amount of wagering by West Virginia residents through ADW Licensees.
- (l) The Racing Commission may propose legislative rules for promulgation, pursuant to §29A-3-1 *et seq.* of this code, to implement this section and may propose emergency rules to provide conditions for the licensing of advance deposit account wagering. Those rules may include, but are not limited to: (1) Standards, qualifications, and procedures for the issuance of an advance deposit account wagering license in West Virginia; (2) rules establishing initial and renewal license fees and payment of same to the Racing Commission to cover the costs of licensing ADW licensees; (3) provisions regarding the collection and distribution of those fees; (4) provisions regarding access to books and records and submission to investigations and audits by the Racing Commission; (5) standards and procedures for opening, maintaining, operating, and securing ADW accounts, as well as protecting confidential information therein; and (6) any other conditions to ensure an orderly process of accepting ADW wagers in acting in the best interests of the West Virginia horse and dog racing industries.

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

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of the ninety-day period, and the licensee shall give any information required by the racing commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets." Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of the notice. The notice shall be published within fifteen days following the receipt of the outstanding and unredeemed pari-mutuel ticket moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for payment within ninety days from the date of the publication of the notice are thereafter irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in subsections (c) and (d) of this section. The racing commission shall maintain separate accounts for each licensee and shall record in each separate account the moneys turned over by the licensee and the amount expended at the licensee's track for the purposes set forth in this subsection.

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

(1) The unredeemed pari-mutuel tickets attributable to each licensee horse racetrack together with funds distributed pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code shall be used for claims received pursuant to this subsection by the Racing Commission each calendar quarter: Provided, That the first distribution after the effective date of amendments to this section made during the 2010 regular legislative session shall not occur until February 2011 and then each calendar quarter thereafter. Any

claims made pursuant to this subsection must be submitted to the racing commission no later than fifteen days after the race where the funds are awarded. The funds in the two special accounts - unredeemed pari-mutuel tickets shall be distributed based on claims received from each horse racetrack as follows:

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

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

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

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

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

account achieves the surplus.

(d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be combined into a single balance and distributed quarterly to the West Virginia racing commission special account - West Virginia greyhound breeding development fund. The deposit made pursuant to this subsection does not create a continuing obligation of payment except to the extent that there are unredeemed pari-mutuel tickets from the licensee dog racetracks.

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

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

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

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

(g) The commission shall submit to the legislative auditor a quarterly report and accounting of the income and expenditures in the special account created by this section known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets.

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

(i) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools' tax provided for in section ten of this article, when not otherwise provided in the budget; but no such

costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

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

WV Legislature

**§19-23-13a. West Virginia bonus race fund.**

An association licensed by the West Virginia Racing Commission to conduct horse race meetings may establish at its track a special fund to be known as the "Bonus Race Fund," in the manner hereinafter provided by this section.

The fund shall be established only if written approval is given by the duly authorized representative of a majority of the owners and trainers who hold the permit required by section eight of this article at the horse racetrack and by the authorized agent of the association.

The association shall deposit each day, into the fund hereby established, an amount equal to one tenth of one percent of the total daily pari-mutuel pool or pools, which sum shall be appropriated from the special purse fund established in subsection (b) (1), section nine of this article. In addition thereto, the association shall, from the commission retained by the association under the provisions of said section nine of this article, deposit into the "Bonus Race Fund" the following sums: Each day an amount equal to four one hundredths of one percent of the total daily pari-mutuel pool during the fiscal year beginning July 1, 1982 and each year thereafter; an additional three one hundredths of one percent of the total daily pari-mutuel pools for the fiscal year beginning July 1, 1983 and each year thereafter; and an additional three one hundredths of one percent of the total daily pari-mutuel pools for the fiscal year beginning July 1, 1984 and each year thereafter.

To be eligible to participate in purses to be paid from the proceeds of this fund, each horse must be registered with the West Virginia thoroughbred breeders association. To qualify for such registration the said horse must have been foaled in the State of West Virginia or sired by a stallion standing in the State of West Virginia or both foaled in West Virginia and sired by a stallion standing in West Virginia.

(a) A horse is bred where it is foaled. The breeder is the owner of the dam at the time of foaling.

(b) Any owner or breeder may appeal from the refusal of the West Virginia thoroughbred breeders association to register a horse under this rule to the West Virginia Racing Commission, and the decision of the commission shall be final.

(c) To be considered a West Virginia stallion, it is required that he be in the State of West Virginia for at least one full breeding season, commonly understood to be the first six months of a year, or if the stallion is brought in subsequent to the start of the breeding season, he must be approved as a West Virginia stallion by the West Virginia thoroughbred breeders association.

At each horse racetrack at which such fund is created, the funds shall be administered by a committee comprised of the following members: Two elected members of the West Virginia thoroughbred breeders association, one elected member of the local horsemen's benevolent

protective association, the general manager of the local track or his representative and a member of the West Virginia Racing Commission or someone designated by the Racing Commission.

The powers and authority of the Racing Commission established under the provisions of section six of this article are extended to supervision of the fund created by this section and to the promulgation of reasonable rules and regulations for implementing and making effective the provisions of this section.

WV Legislature

**§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.**

(a) The Racing Commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as West Virginia Racing Commission Special Account - West Virginia Thoroughbred Development Fund: Provided, That after the West Virginia Lottery Commission has divided moneys between the West Virginia Thoroughbred Development Fund and the West Virginia Greyhound Breeding Development Fund, pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning October 1, 2005, deposit the remaining moneys required to be withheld from an association or licensee designated to the Thoroughbred Development Fund under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B), subdivision (3), subsection (b), section thirteen-c of this article and sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred racetrack licensee with a banking institution of its choice with a separate account for each association or licensee. Each separate account shall be a special account to be known as West Virginia Racing Commission Special Account - West Virginia Thoroughbred Development Fund and shall name the licensee for which the special account has been established: Provided, however, That the Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, from July 8, 2005, until the effective date of the amendment to this section passed during the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack licensee: Provided further, That the moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall be transferred into that licensee's purse fund until April 1, 2006. Notice of the amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby continued in the State Treasury called the Administration and Promotion Account: Provided, however, That four and one-half percent of the deposits into the Thoroughbred Development Fund shall be placed in the Administration and Promotion Account, except that of this percentage, no more than \$305,000 shall be placed in the account in any year.

(b) The Racing Commission is authorized to expend the moneys deposited in the

administration and promotion account at times and in amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year's expenditures and projected expenditures for the next year.

(c) The fund or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section. Annually, the first \$800,000 shall be available for distribution for a minimum of fourteen accredited stakes races at a racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992. The weights for all accredited stakes races shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia Futurity only, all mares, starting with the breeding season beginning February 1 through July 31, 2004, and each successive breeding season thereafter, shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders Association. The accredited stake races shall be chosen by the committee set forth in subsection (f) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the participating races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision may only be paid on the first \$100,000 of any purse and not on any amounts in excess of the first \$100,000.

(2) The owner of an accredited West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the participating races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the participating races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only be paid on the first \$100,000 of any purse and not on any amounts in excess of the first \$100,000.

(3) The owner of an accredited thoroughbred horse that earns a purse in any participating race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the participating races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first \$100,000 of any purse and not on any amounts in excess of the first \$100,000.

(4) In no event may purses earned at a meet held at a track which did not make a contribution to the Thoroughbred Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this subsection.

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be used to fund the races established in subsection (f) of this section. Any amount not so used shall revert into the general account of the Thoroughbred Development Fund for each racing association or licensee for distribution in the next year.

Distribution shall be made on the fifteenth day of each February for the preceding year's achievements.

(f)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per racing day: Provided, That sufficient horses and funds are available. For purposes of the one restricted race required by this subdivision, there are sufficient horses if there are at least seven single betting interests received for the race: Provided, however, That, if sufficient horses and funds are available, any thoroughbred horse racetrack whose licensee participated in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall provide three restricted races per racing day, at least one of which may be split at the discretion of the racing secretary. For the purposes of a second restricted race there shall be at least seven single betting interests and for purposes of a third restricted race there must be at least nine single betting interests in one

of the restricted races run that day. The restricted race required by this section must be included in the first nine races written in the condition book for that racing day.

(2) The restricted races established in this subsection shall be administered by a three-member committee at each track consisting of:

(A) The racing secretary at each track;

(B) A member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and

(C) A member appointed by the West Virginia Thoroughbred Breeders Association.

(3) Restricted races shall be funded by each racing association from:

(A) Moneys placed in the general purse fund: Provided, That a thoroughbred horse racetrack which did not participate in the West Virginia Thoroughbred Development fund for a period of more than four consecutive years prior to December 31, 1992, may fund restricted races in an amount not to exceed \$1,000,000 per year.

(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the West Virginia Accredited Race Fund.

(4) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia Racing Commission.

(g) As used in this section, "West Virginia-bred foal" means a horse that was born in the State of West Virginia.

(h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia-bred foal is a West Virginia resident;

(2) The breeder of the West Virginia-bred foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

(3) The breeder of the West Virginia-bred foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia-bred foal is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or stallions before December 31 of the calendar year following the birth of that West Virginia-bred foal.

(i) From July 1, 2001, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred race track at which the licensee participates in the West Virginia Thoroughbred Development Fund.

(j) Beginning July 1, 2006, any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article must have a West Virginia Thoroughbred Racing Breeders Program.

WV Legislature

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

(a) Funds received by the Racing Commission pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, and subdivision (5), subsection (a), section ten-b, article twenty-two-a, chapter twenty-nine of this code, after the effective date of this section together with the balance in the bank account previously established by the Commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Racetrack Video Lottery Account". Notice of the amount, date and place of each deposit shall be given by the Racing Commission, in writing, to the state Treasurer.

(b) Funds in this account shall be allocated and expended as follows:

(1) For each fiscal year, the first \$800,000 deposited in the separate account plus the amount then remaining of the June 30, 1997, balance in the separate account previously established for the West Virginia breeders classic under section thirteen of this article, shall be used by the Commission for promotional activities, advertising, administrative costs and purses for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings.

(2) For each fiscal year, the next \$200,000 deposited into the separate account shall be used by the Commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia Derby to be held at a thoroughbred racetrack which does not participate in the West Virginia Breeders Classic.

(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection have been deposited into separate bank accounts for use in connection with the West Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the Commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:

(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund.

(B) At those thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia Thoroughbred Development Fund.

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia Breeders Classic, one half of the returned excess funds shall be used for capital improvements at the licensee's racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia Derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia Racing Commission before the funds are expended for any of the purposes authorized by this section.

**§19-23-14. Disposition of permit fees, registration fees and civil penalties.**

(a) All permit fees and fees paid for the registration of colors or assumed names collected by the Racing Commission shall be paid by the commission to the State Treasurer for deposit in the Racing Commission's general administrative account.

(b) All civil penalties imposed by the stewards, or the commission against thoroughbred horse racing licensees or permit holders shall be paid into a fund for expenses associated with the post-mortem examination of thoroughbreds that suffer breakdowns on a racetrack, in training or in competition, and that are euthanized, or thoroughbreds that expire while stabled on a racetrack under the jurisdiction of the Racing Commission: Provided, That any balance in the fund at the end of any fiscal year in excess of \$10,000, less any outstanding obligations, shall be divided equally and may be expended by the Racing Commission for the following:

(1) To aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state pursuant to rules promulgated by the Racing Commission to govern such expenditures.

(2) To aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state pursuant to rules promulgated by the Racing Commission to govern such expenditures: Provided, That no payment shall be made for any hospitalization, medical care or funeral expenses to any thoroughbred racing permit holder who is covered under workers compensation insurance or who is covered under any insurance policy that provides full or partial payments for hospitalization, medical care or funeral expenses.

(c) All civil penalties imposed by the judges or the commission against greyhound racing licensees or permit holders shall be paid into a fund to be expended for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state pursuant to rules promulgated by the Racing Commission.

**§19-23-15. Investigation by Racing Commission; suspension or revocation of license or permit.**

(a) The Racing Commission may conduct an investigation to determine whether any provisions of this article or any of its reasonable rules and regulations have been or are about to be violated by a licensee or permit holder. The Racing Commission may suspend or revoke a license or permit if the licensee or permit holder, as the case may be:

(1) Is convicted of an offense which, under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(2) Is, if a corporation, dissolved under the law of this state or ceases to be qualified to do business within this state; or

(3) Has a license or permit to which such licensee or permit holder is not lawfully entitled.

(b) The Racing Commission may also suspend or revoke a license or permit of a licensee or permit holder, as the case may be, if it finds the existence of any ground upon which the license or permit could have been refused, or any ground which would be cause for refusing a license or permit to such licensee or permit holder were such licensee or permit holder then applying for the same.

(c) A majority of the stewards at any horse or dog race meeting may suspend or revoke a permit for any reason for which the Racing Commission may suspend or revoke a permit, as specified in subsections (a) and (b) of this section, or for any other reason authorized by reasonable rules and regulations promulgated by the Racing Commission.

(d) Whenever a licensee fails to keep the bond required, if any, under the provisions of section seven of this article in full force and effect, the license of such licensee shall automatically be suspended unless and until a bond or other security, if required, is furnished to the Racing Commission, in which event the suspension shall be vacated.

(e) Any suspension of a license or permit shall continue for the period specified in the order of suspension, or until the cause therefor has been eliminated or corrected, as set forth in the order of suspension. Revocation of a license or permit shall not preclude application for a new license or permit, which application shall be processed in the same manner and the application approved or denied and the license or permit issued or refused on the same grounds as any other application for a license or permit is processed, considered and passed upon, except that any previous suspension and the revocation may be given such weight in deciding whether to approve or deny such application and issue or refuse such license or permit as is meet and proper under all of the circumstances.

**§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.**

(a) Whenever the Racing Commission shall deny an application for a license or a permit or shall suspend or revoke a license or a permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant, licensee or permit holder, as the case may be, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken, and, in the case of an order of suspension or revocation, shall state the effective date of such suspension or revocation.

(b) Whenever a majority of the stewards or judges at any horse or dog race meeting shall suspend or revoke a permit, such suspension or revocation shall be effective immediately. The stewards or judges shall, as soon as thereafter practicable, make and enter an order to that effect and serve a copy thereof on the permit holder, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken.

(c) Any person adversely affected by any such order shall be entitled to a hearing thereon if, within twenty days after service of a copy thereof if served in any manner in which a summons may be served as aforesaid or within twenty days after receipt of a copy thereof if served by certified mail as aforesaid, such person files with the Racing Commission a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license, but a demand for hearing shall not operate automatically to stay or suspend the execution of any order suspending or revoking a permit. Upon the written request of any permit holder who has been adversely affected by an order of the stewards or judges, a stay may be granted by the Racing Commission, its chairman, or by a member of the commission designated by the chairman. A request for a stay must be filed with the Racing Commission's executive director no later than the deadline for filing a written demand for a hearing before the commission. If a stay is granted, it is not a presumption that the order of the stewards or judges is invalid. The Racing Commission may require the person demanding a hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against such person and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a written demand for such hearing, the Racing Commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any hearing may be continued by the Racing Commission or its appointed hearing examiner for good cause shown.

(e) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(f) Any such hearing shall be conducted by a quorum of the Racing Commission or by a hearing examiner appointed by the Racing Commission who is licensed to practice law in the State of West Virginia. For the purpose of conducting any such hearing, any member of the Racing Commission or its appointed hearing examiner has the power and authority to issue subpoenas and subpoenas duces tecum as provided in section six of this article. Any such subpoenas and subpoenas duces tecum shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(g) At any such hearing the person who demanded the same may represent such person's own interests or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the Racing Commission, it shall be represented at any such hearing by the Attorney General or his or her assistants without additional compensation. The Racing Commission, with the written approval of the Attorney General, may employ special counsel to represent the Racing Commission at any such hearing.

(h) After any such hearing and consideration of all of the testimony, evidence and record in the case, the Racing Commission shall render its decision in writing. The written decision of the Racing Commission shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his or her attorney of record, if any. If a hearing is conducted by a hearing examiner appointed by the Racing Commission, he or she shall prepare a written recommended decision for the commission's consideration. The Racing Commission, in its discretion, may accept the recommendation in its entirety, modify it, or reject it. If the Racing Commission modifies or rejects a recommended decision of an appointed hearing examiner, either in whole or in part, it shall issue a reasoned, articulate explanation and a recitation of the underlying evidence or other matters upon which it bases its decision, including findings of fact and conclusions of law.

(i) The decision of the Racing Commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section seventeen of this article.

**§19-23-17. Judicial review; appeal to Supreme Court of Appeals; legal representation for Racing Commission.**

Any person adversely affected by a decision of the Racing Commission rendered after a hearing held in accordance with the provisions of section sixteen of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section, except that execution of a decision of suspension or revocation of a license shall be stayed or suspended pending a final judicial determination, and except that execution of a decision of suspension or revocation of a permit shall not be stayed or suspended pending a final judicial determination.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the Racing Commission in all appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The Racing Commission, with the written approval of the Attorney General, may employ special counsel to represent the Racing Commission at any such appeal proceedings.

## **PART XI. CONSTRUCTION AND ESTABLISHMENT OF HORSE AND DOG RACETRACKS.**

### **§19-23-18. Horse and dog racetrack construction permits; application therefor.**

(a) No person shall construct and establish a horse or dog racetrack where horse or dog race meetings are to be held or conducted and the pari-mutuel system of wagering permitted or conducted without a construction permit issued by the Racing Commission in accordance with the provisions of this article.

(b) Any person desiring to obtain a construction permit shall file with the Racing Commission an application therefor. The Racing Commission shall prescribe blank forms to be used in making such application. Such application shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) Whether the applicant, any partner, member, officer or director has previously applied for a construction permit under the provisions of this article or for a similar construction permit in this or any other state, and if so, whether such construction permit was issued or refused;

(5) The name and address of any person who has agreed to lend the applicant money for use in connection with such proposed horse or dog racetrack;

(6) The name and address of any other person who is financially interested in the proposed horse or dog racetrack;

(7) The county where the proposed horse or dog racetrack is to be constructed and established, and if such proposed horse or dog racetrack is to be constructed and established across county lines, the identification of each such county;

(8) Plans showing, in such detail as the Racing Commission may require, the proposed horse or dog racetrack and all buildings and improvements to be used in connection therewith; and

(9) Such other information as the Racing Commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(c) Such application shall be verified by the oath or affirmation of the applicant for such construction permit, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be.

(d) No application for a construction permit for the construction and establishment of a dog racetrack shall be received or acted upon by or a construction permit issued by the Racing Commission for the construction and establishment of a dog racetrack which is to be located within fifty-five air miles of an existing horse racetrack: Provided, That nothing herein contained shall be construed to prohibit establishment of a dog racetrack in conjunction with harness racetrack facilities existing on and operating as a harness racetrack February 1, 1974, if such facilities are or can be made suitable: Provided, That nothing in this section exempts any such county from the local option provisions of this article.

**§19-23-19. Tentative approval of application for construction permit; denial of application; publication of notice.**

(a) Upon the basis of the application and all other information before it, the Racing Commission shall make and enter an order granting tentative approval of the application if it finds:

(1) That the applicant intends to proceed in good faith to construct and establish a horse or dog racetrack complying in all particulars with the law of this state, the provisions of this article and any reasonable rules and regulations of the Racing Commission;

(2) That the plans for such proposed horse or dog racetrack are adequate and have been prepared with due regard to the safety of all persons who will use such horse or dog racetrack;

(3) That the applicant is financially able to complete such horse or dog racetrack in accordance with the plans submitted with such application; and

(4) That the construction and establishment of such proposed horse or dog racetrack would be in the best interests of horse or dog racing within this state.

(b) Otherwise, the Racing Commission shall deny the application and refuse to grant tentative approval thereof. The Racing Commission shall make and enter an order to that effect and all of the provisions of section sixteen pertaining to the denial of any application for a license and an order in connection therewith and the provisions of section seventeen pertaining to judicial review of a decision of the Racing Commission shall govern and control. The denial and refusal shall be final and conclusive unless a hearing thereon shall be demanded pursuant to the provisions of section sixteen of this article considered in pari materia with the preceding sentence of this subsection (b).

(c) If the Racing Commission grants tentative approval of such application, it shall prepare and publish a notice to the public that the Racing Commission has granted tentative approval of the application and that the Racing Commission will confirm such tentative approval and issue a construction permit to the applicant at the expiration of sixty days from the date of the first publication of such notice (which date shall be specified in said notice), unless within said time a petition for a local option election shall have been filed, in accordance with the provisions of this article, with the county commission of the county in which any integral part of said horse or dog racetrack is proposed to be constructed and established. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which any integral part of such proposed horse or dog racetrack is to be constructed and is established.

**§19-23-20. Petition for local option election.**

A petition for a local option election on the question of the proposed construction and establishment of a horse or dog racetrack must be signed by qualified voters residing within the county equal to at least fifteen percent of the qualified voters within said county at the last general election. Said petition may be in any number of counterparts, but must be filed with the county commission prior to the expiration of the sixty-day period specified in the notice published by the Racing Commission in accordance with the provisions of section nineteen of this article. Said petition shall be sufficient if in substantially the following form:

"PETITION FOR LOCAL OPTION ELECTION CONCERNING THE PROPOSED CONSTRUCTION AND ESTABLISHMENT OF A (HORSE OR DOG) RACETRACK IN \_\_\_\_\_ COUNTY, WEST VIRGINIA.

"Each of the undersigned certifies that he or she is an individual residing in \_\_\_\_\_ County, West Virginia, and is a qualified voter in said county under the laws of this state, and that his or her name, address and the date of signing this petition are correctly set forth below.

"The undersigned petition the county commission to call and hold a local option election as required by article twenty- three, chapter nineteen of the Code of West Virginia, 1931, as amended, upon the following question: 'Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a (horse or dog) racetrack where (horse or dog) race meetings may be held or conducted and the pari-mutuel system of wagering permitted and conducted in \_\_\_\_\_ County, West Virginia?'

Name Address Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Each individual signing must specify either his post-office address or his street name and number.)"

**§19-23-21. Local option election procedure; form of ballots or ballot labels.**

(a) Upon the timely filing of a proper petition for a local option election in accordance with the provisions of section twenty of this article, the county commission of the county in which all or any integral part of a proposed horse or dog racetrack is to be constructed and established is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to the construction and establishment of all or any integral part of such horse or dog racetrack within said county. Upon the timely filing of a proper petition as aforesaid, the county commission shall enter an order calling for a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. A copy of the order so entered by the county commission shall be served upon the Racing Commission and the Racing Commission shall take no further action in connection with the issuance of such construction permit until said local option election shall be held. Said county commission shall give notice of such local option election by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding the date of said election.

(b) The local option election ballots, or ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a (horse or dog) racetrack where (horse or dog) race meetings may be held or conducted and the pari- mutuel system of wagering permitted and conducted?

// Yes // No (Place a cross mark in the square opposite your choice.)"

(c) Each individual qualified to vote in said county at a primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The votes in said local option election shall be counted and returns made by the election officers, the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of this state relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the Racing Commission.

**§19-23-22. Issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of construction permit.**

(a) The Racing Commission shall, after the certification of the results of such local option election, issue such construction permit if a majority of the legal votes cast at such election were in favor of the issuance of a construction permit. If a majority of the legal votes cast at such election were opposed to the issuance of a construction permit, the commission shall not issue a construction permit.

(b) A construction permit issued as aforesaid shall remain valid only for a three-month period, except that if the Racing Commission is satisfied that the construction permit holder has in good faith started and is continuing construction of the proposed horse or dog racetrack, the Racing Commission may extend the construction permit for additional successive three-month periods, but in no event shall the aggregate time of such construction permit exceed a period of twenty-four months from the date of the issuance of the construction permit.

(c) No construction permit which may be or has been issued under provisions of this article or the former provisions of this article shall be transferred or assigned in any manner whatever without the written consent of the Racing Commission.

**§19-23-23. Further elections restricted.**

When a local option election in accordance with the provisions of this article or the former provisions of this article shall have been held in a county, another such election shall not be held in said county for a period of five years, and within that time the Racing Commission shall not accept or act upon any application for any other construction permit within said county, except that if an election be held seeking the approval of a permit for the construction of a horse racetrack another election may be held within such five-year period seeking the approval of a permit for the construction of a dog racetrack, and the reverse shall also be true. In the event a horse or dog racetrack shall be constructed in a county pursuant to a construction permit issued by the Racing Commission in accordance with the provisions of this article, no local option election shall thereafter be held as to any horse or dog racetrack constructed and established pursuant to such construction permit: Provided, That a local option election has been held for the type of racing to be conducted.

**§19-23-24. §§19-23-18 to 19-23-23 inapplicable to horse racetracks already constructed and established.**

Nothing contained in sections eighteen through twenty-three of this article shall apply to any horse racetrack heretofore constructed and established in this state and at which horse race meetings have been held or conducted by the owners or operators thereof under and pursuant to licenses issued by the Racing Commission in accordance with the provisions of this article or the former provisions of this article. The construction and establishment of any new or additional horse racetrack within a county in which a horse racetrack has heretofore been constructed and established and operated under licenses issued by the Racing Commission, whether by the persons owning and operating such existing horse racetrack or others, shall be subject to all of the provisions of this article.

## **PART XII. INJUNCTIVE RELIEF.**

### **§19-23-25. Application to enjoin violations.**

Whenever it appears to the Racing Commission that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the Racing Commission, the Racing Commission may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section twenty-six of this article.

Upon application by the Racing Commission, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated hereunder and all orders and final decisions of the Racing Commission. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The Racing Commission shall be represented in all such proceedings by the Attorney General or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation. The Racing Commission, with the written approval of the Attorney General, may employ special counsel to represent the Racing Commission in any such proceedings.

## **PART XIII. OFFENSES AND PENALTIES**

### **§19-23-26. Offenses and penalties.**

(a) Any person holding or conducting, or assisting, aiding or abetting in the holding or conducting, of any horse or dog race meeting at which horse or dog racing and the pari-mutuel system of wagering on the same is permitted or conducted, without a license issued by the Racing Commission, which license remains unexpired, unsuspended and unrevoked, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$1,000 for each day of such unauthorized horse or dog race meeting, or by imprisonment in jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That no conviction shall be had or punishment imposed upon any licensee, whose license has been suspended or revoked, for holding or conducting a horse or dog race meeting while execution of the order of suspension or revocation is stayed or suspended as provided in this article.

(b) Any person violating any provision of section four or section five of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$500 nor more than \$1,000, or by imprisonment in jail for not less than six months nor more than one year, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said section four or section five carries out any duties of, or performs any work for, the Racing Commission, which constitute the basis of the charge or complaint.

(c) Any person violating any provision of subsection (b), section two of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment in jail for not less than one month nor more than two months, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said subsection (b) carries out any duties of, or performs any work for, the Racing Commission, which constitute the basis of the charge or complaint.

(d) False swearing before the Racing Commission on the part of any witness shall be deemed perjury and shall be punished as such.

**§19-23-27. Repealer.**

All acts, whether general or local, public or private, inconsistent with the provisions of this article are hereby repealed to the extent of their inconsistency.

WV Legislature

**§19-23-28. Effect of article on existing rules and regulations, licenses and permits.**

All rules and regulations promulgated by the Racing Commission and in effect on the effective date of this article shall remain in full force and effect until superseded, or except as amended or repealed, in accordance with the provisions of this article.

Any license or permit issued by the Racing Commission under the former provisions of article twenty-three of this chapter, which has not expired and which has not been suspended or revoked prior to the effective date of this article, shall be governed by the provisions of this article and shall remain valid until the expiration thereof, unless such license or permit is sooner suspended or revoked in accordance with the provisions of this article.

**PART XV. SEVERABILITY**

**§19-23-29. Severability.**

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

WV Legislature

**§19-23-30. Continuation of the Racing Commission.**

Pursuant to the provisions of article ten, chapter four of this code, the Racing Commission shall continue to exist until July 1, 2005, unless sooner terminated, continued or reestablished by act of the Legislature.

WV Legislature