

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 314

(By Mr. Martin)

PASSED March 14 1959

In Effect From Passage



Filed in Office of the Secretary of State
of West Virginia **MAR 20 1959**

JOE F. BURDETT
SECRETARY OF STATE

ENROLLED

Senate Bill No. 314

(By MR. MARTIN)

[Passed March 14, 1959; in effect from passage.]

AN ACT to amend article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section designated section fifteen-a; to further amend said article twenty-three by amending and reenacting sections two, five, six, eight and thirteen thereof; and to further amend said chapter nineteen by amending and reenacting section six-a, article twenty-four thereof, all relating to horse racing and horse race tracks.

Be it enacted by the Legislature of West Virginia:

That article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended by adding thereto a new section designated section fifteen-a; that said article twenty-three be further amended by amending and reenacting sections two, five, six, eight and thirteen thereof, and that said chapter nineteen be further amended by amending and reenacting section six-a, article twenty-four thereof, to read as follows:

Article 23. Horse Racing.

Section 2. Qualifications and Compensation of Members,

2 *Secretary, Steward and Employees.*—The compensation of
3 the members of the commission shall not exceed the sum
4 of forty dollars per day, and actual bona fide expenses,
5 while actually engaged in the business of the commission,
6 and shall not exceed the sum of four thousand dollars per
7 annum in the aggregate for compensation. The commission
8 shall, under the restrictions and within the qualifications
9 hereinafter set forth, appoint a secretary and steward to
10 represent the commission, and such additional help as
11 shall be reasonably necessary to administer the provisions
12 of this article, and shall, within the limits prescribed by
13 the Legislature, fix their compensation and actual ex-
14 penses. The compensation and actual expenses of the

15 members and employees of the commission shall be paid
16 from the funds in the hands of the state treasurer col-
17 lected from the license tax on pari-mutuel wagering and
18 shall be itemized in the budget in the same manner as all
19 other departments of the state government, but no such
20 expense shall be paid unless an itemized account thereof,
21 under oath, be first filed with the state auditor.

22 The commission shall, under the restrictions and with-
23 in the qualifications hereinafter set forth, appoint a vet-
24 erinarian, a patrol judge, a general inspector, and a
25 license clerk to represent it at each race meeting being
26 conducted in this state. The veterinarian, the patrol judge,
27 the general inspector, and the license clerk shall be paid
28 by the association conducting the race meet where such
29 veterinarian, patrol judge, general inspector, and license
30 clerk are employed, at such compensation as the com-
31 mission shall fix.

32 (a) No person who directly or indirectly has an interest
33 in any manner whatsoever, including an interest as owner,
34 lessor, lessee, stockholder or employee, in any race track,
35 where horse race meetings may be held, shall be eligible
36 for appointment to the commission.

37 (b) No person while serving as a member of the Legis-
38 lature, or as an elective officer of this state, shall be eligible
39 for appointment to the commission.

40 (c) No person convicted of an offense, which, under the
41 laws of this state or any other state or of the United States
42 of America, constitutes a felony or a violation of chapter
43 sixty-one, article four of this code, shall be eligible for
44 appointment to the commission.

45 (d) No person shall knowingly be employed by the
46 commission in any capacity whatsoever who shall:

47 1. Directly or indirectly, or in any capacity, own or have
48 an interest in any race track where horse race meetings
49 may be held, including an interest as owner, lessor, lessee,
50 stockholder or employee.

51 2. At the time of his employment as a racing official be
52 or have been within one year prior thereto, a member of
53 the Legislature or an elective officer of this state, unless
54 he is experienced and qualified as a racing official.

55 3. Have been prior to the time of his employment, or
56 shall be during the time of his employment, convicted of
57 an offense, which, under the laws of this state or any other

58 state or of the United States of America, constitutes a
59 felony or a violation of chapter sixty-one, article four of
60 this code.

61 4. In any manner have delegated to him the duties and
62 powers of the members of the commission, as director or
63 supervisor of racing, or in any other manner or capacity
64 whatsoever.

65 Any steward employed by the commission or by a li-
66 censee thereof, shall be a person of integrity, and experi-
67 enced and qualified for such position by the generally ac-
68 cepted practices and customs of horse racing in the United
69 States.

70 At least eighty-five per cent of the persons employed
71 by a licensee at a racing meeting held or conducted by
72 him shall be citizens and residents of the state and shall
73 have been such citizens and residents for at least two
74 years immediately prior to such employment.

75 For the purpose of this section citizens and residents of
76 the state shall be construed to mean persons who main-
77 tain a permanent place of residence in the state of West
78 Virginia, and have been bona fide residents and citizens of

79 West Virginia for a period of two consecutive years im-
80 mediately prior to the filing of their applications for em-
81 ployment.

82 The provisions of this section shall not apply to the
83 construction of a racing plant or the equipping of same,
84 nor to the racing officials as designated by the racing
85 commission or the executive officers of the racing as-
86 sociation.

87 Any person violating any provision of this section shall
88 be guilty of a misdemeanor, and, upon conviction, shall
89 be confined in jail not less than six months nor more than
90 one year or be fined not less than five hundred nor more
91 than one thousand dollars, or, in the discretion of the
92 court, may be punished by both such fine and improson-
93 ment. Venue of such offense shall be in the county, or any
94 one of the counties, wherein the person violating this sec-
95 tion carries out any duties of, or performs any work for,
96 the commission, which constitutes the basis of the charge
97 or complaint against him.

Sec. 5. Application for License; Priority of Racing Dates;

2 *Review.*—Any person desiring to conduct a horse race

3 meeting within the state of West Virginia to permit or
4 conduct pari-mutuel pools shall apply to the West Vir-
5 ginia racing commission for a license to do so. Such appli-
6 cation shall be filed with the commission at a time to be
7 fixed by the commission.

8 The commission shall prescribe blank forms for making
9 such applications. Such application, among other things,
10 shall specify the days upon which said race meeting
11 is to be conducted, the name of the person making
12 the application, the post office address of the person
13 making such application, the number of days such
14 person intends to hold or conduct such meeting (which
15 shall be successive week days, excluding Sundays)
16 and the location of the place, track or enclosure where
17 he proposes to hold or conduct such race meeting.
18 The commission shall grant or reject any such ap-
19 plication within twenty days after receipt of such ap-
20 plication.

21 No license shall be granted to any person, firm or
22 corporation, the owners, members, stockholders, offic-
23 ers or directors of which shall consist of persons any

24 one of whom has heretofore been convicted, within
25 ten years prior to the date of such license applica-
26 tion, of an offense which, under the laws of this
27 state, of any other state, or of the United States of
28 America, shall constitute a felony or a crime involv-
29 ing moral turpitude; for the purposes aforesaid, mem-
30 bers, stockholders, officers or directors shall include
31 the members, stockholders, officers, or directors of any
32 corporation owning, directly or indirectly, any inter-
33 est in said applicant or affiliated therewith, and, mem-
34 ber, person, firm or stockholder shall include the member,
35 person, firm or stockholder for whom such interest in said
36 applicant is held by another, in any capacity.

37 In granting licenses for horse race meetings, the com-
38 mission shall exercise its discretion, but, in order to main-
39 tain and increase the revenues of the state, shall give reas-
40 onable preference and priority as to racing dates to the race
41 tracks or persons who own or operate race tracks, which,
42 during the year of operation next preceding the year for
43 which licenses are applied for, have produced the greatest
44 average daily tax revenues to the state of West Virginia;

45 in fixing such dates the commission shall also take into
46 consideration the racing circuits in neighboring states,
47 with which the race tracks in this state are associated, or
48 to which they are contiguous. The commission may grant
49 licenses for day or night racing in accordance with the
50 application filed by the applicant, but no applicant after
51 having received a license for day racing shall be permitted
52 to operate night racing, nor shall an applicant after hav-
53 ing received a license for night racing, be permitted to
54 operate day racing, within the period for which the li-
55 cense was granted.

56 The commission may, upon application by the licensee,
57 extend or modify any license previously granted to such
58 licensee for any race meeting then in progress, so long as
59 such extension or modification thereof does not affect ad-
60 versely any other licensee.

61 All licenses, temporary licenses or tentative dates to
62 conduct horse race meetings previously granted by the
63 commission for horse race meetings commencing after the
64 effective date of this section are hereby vacated and re-
65 scinded and shall have no further force or effect.

66 The commission shall forthwith, after the effective date
67 of this section, fix a date or dates upon which it will hear
68 and consider applications for tentative days or dates of
69 race meetings to be conducted in the calendar year in
70 which this section becomes effective, and shall, also, within
71 a reasonable time after the effective date of this section,
72 fix, for the calendar year one thousand nine hundred fifty-
73 nine and each calendar year thereafter, by rule or regula-
74 tion, a date or dates upon which it will hear and consider
75 applications for tentative days or dates of race meetings
76 to be conducted in the calendar year following the filing
77 of such application.

78 Any applicant for a license to conduct a horse race meet-
79 ing, aggrieved by the order of the commission granting
80 or denying his application for such license may file a pe-
81 tition for a writ of *certiorari* to the circuit court of Kana-
82 wha county, or the judge thereof in vacation, and such
83 court or the judge thereof in vacation shall require the
84 commission to certify and submit to the clerk of such
85 court all papers, documents, evidence and records which
86 were before the commission and relate to such application

87 for license, and upon such petition and record such court
88 or the judge thereof in vacation, after reasonable and
89 proper notice to the commission and hearing, shall review
90 the action of the commission granting or denying such li-
91 cense and shall affirm, modify or set aside, in whole or in
92 part, such action of the commission. The supreme court
93 of appeals shall have jurisdiction to review the order of
94 the circuit court aforesaid or the judge thereof in vacation,
95 upon application of either the commission or the appli-
96 cant.

Sec. 6. *Procedure for Suspension or Revocation of a Li-*
2 *cense.*—The commission shall not suspend or revoke a li-
3 cense until after a hearing has been held in the county
4 wherein the licensee is or has been conducting race meet-
5 ings. Notice of such hearing shall be served on the licensee
6 at least ten days prior to the hearing. Such notice shall set
7 forth the reasons for such proposed suspension or revoca-
8 tion and be served in the manner set forth in this code for
9 the service of a summons.

10 Review from the decision of the commission shall lie in
11 the circuit court of Kanawha county or before the judge

12 thereof in vacation upon a petition for a writ of *certiorari*
13 and such court or the judge thereof in vacation, shall re-
14 quire the commission to certify and submit to the clerk of
15 such court all papers, documents, evidence and records
16 which were before the commission and relate to such sus-
17 pension or revocation and upon such petition and record,
18 such court or the judge thereof in vacation after proper
19 and reasonable notice to the commission and hearing, shall
20 review the action of the commission suspending or revok-
21 ing such license and shall affirm, modify or set aside, in
22 whole or in part, such order. The supreme court of appeals
23 shall have jurisdiction to review the order of the circuit
24 court or the judge thereof in vacation upon application of
25 either the commission or the applicant.

Sec. 8. *Disposition of Funds for Payment of Outstand-*
2 *ing Pari-Mutuel Tickets.*—All moneys held by any licensee
3 for payment of outstanding pari-mutuel tickets, if not
4 claimed within one hundred eighty days after the close
5 of any race meeting, shall be turned over by the licensee
6 to the commission within fifteen days after the expira-
7 tion of such one hundred eighty day period, and the

8 licensee shall give such information as the commission
9 may require concerning such outstanding and unredeem-
10 ed tickets. All such moneys shall be deposited by the
11 commission with the treasurer of the state of West Vir-
12 ginia to the credit of the general revenue fund.

13 The commission shall cause to be published one time,
14 during the first week following the close of any race
15 meeting, in some newspaper of general circulation in the
16 county in which such race meeting was held, a notice to
17 the holders of such unredeemed tickets, notifying them to
18 present such tickets for payment to the office of the
19 racing association at which such unredeemed tickets were
20 issued within one hundred eighty days after the close of
21 the race meeting during which they were issued.

Sec. 13. *Licenses for Jockeys, etc.; Relief Fund For.*—

2 The commission may license jockeys, apprentice jockeys,
3 exercise boys, owners, trainers, grooms, plater, stable
4 foremen, valets, veterinarians, authorized agents, jock-
5 eys' agents, mutuel employees, and such other categories
6 employed on a race track as the commission may deem
7 proper; and may charge a fee therefor. The commission

8 may also register colors and assumed names, and may
9 charge a fee therefor. All moneys collected from fees,
10 as well as moneys collected from fines imposed by the
11 stewards, starter, or other racing official, shall be paid
12 into a relief fund and paid out on the order of the com-
13 mission for expenses of hospitalization, medical care, and
14 funeral expenses resulting from injuries received by
15 licensees of the commission while in the discharge of
16 their duties under the jurisdiction of the commission. No
17 such money shall be paid by the commission for such
18 hospitalization, medical care, and funeral expenses of any
19 licensee who is covered under the workmen's compensa-
20 tion fund of this state, or who is covered by any insurance
21 policy.

22 Balances in said fund in excess of five thousand dollars
23 less any relief obligations outstanding, shall be transfer-
24 red to the general revenue fund of this state.

Sec. 15-a. *Inspection by Legislative Auditor.*—The legis-
2 lative auditor is hereby vested with the authority, and di-
3 rected, to periodically examine and inspect the capital
4 stock record books and all other records of any licensee

5 of the commission, and is hereby authorized to make
6 copies thereof and maintain the same on file in his office;
7 for such purposes any licensee of the commission shall,
8 upon demand, make all records available to the legisla-
9 tive auditor; such information shall be made available to
10 the state racing commission.

Article 24. Race Tracks.

Sec. 6-a. *Restrictions on Construction Permits.*—No con-
2 struction permit which may be or has been issued under
3 the provisions of this article shall be transferred or as-
4 signed in any manner whatsoever without the consent of
5 the commission. When a permit is issued for construction
6 of a race track for running, trotting or other particular
7 type or kind of horse race meeting, the owner, holder or
8 other person responsible for the race track constructed
9 under such permit may not convert or change the meeting
10 into a horse race meeting of another type or kind within
11 one year from and after the date on which construction
12 is completed and the first race meeting is held, whichever
13 is the later, but may, after expiration of such one year
14 period, convert or change the type or kind of meeting

15 with the consent of the commission entered of record:
16 *Provided, however,* That any person who has constructed
17 a race track under a construction permit issued under the
18 provisions of this article, may not, after having received
19 a license to conduct day racing, either under this or the
20 next preceding article, be permitted to operate night rac-
21 ing or having received a license for night racing, either
22 under this or the next preceding article, be granted a li-
23 cense for day racing, within the period for which the li-
24 cense was granted.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

W. M. Jasper Jr.
Chairman Senate Committee

Eudora Andrews
Chairman House Committee

Originated in the Senate.

Takes effect From _____ passage.

J. Howard Thayer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ralph J. Bean
President of the Senate

H. R. Pauley
Speaker House of Delegates

The within vetoed this the 20th
day of March, 1959.

Governor