

WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1969



ENROLLED

HOUSE BILL No. 11

(By Mr. *Speaker, Mr. Bevan*
and Mr. Sisk)



PASSED July 25 1969

In Effect from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 8-5-69

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House Bill No. 11

(By MR. SPEAKER, MR. BOIARSKY, and MR. SEIBERT)

[Passed July 25, 1969: in effect from passage.]

AN ACT to repeal articles twenty-three and twenty-four, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article twenty-three of said chapter, relating to horse racing; relating to the West Virginia racing commission, its organization and operation; providing for the regulation and control of horse racing; requiring a license to hold or conduct a horse race meeting; requiring a permit to engage in certain types of employment in connection with a horse race meeting and establishing certain citizenship and residency requirements; providing definitions; establishing qualifications for members and em-

ployees of the West Virginia racing commission; specifying the powers and authority of the West Virginia racing commission; providing for applications for and the issuance of licenses and permits; authorizing the West Virginia racing commission to promulgate reasonable rules and regulations; providing that the West Virginia racing commission may by reasonable rules and regulations authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions and stewards to rule individuals off the grounds of any horse race track; relating to the compensation and expenses of members and of other employees of the West Virginia racing commission; relating to purses in connection with horse race meetings; authorizing the West Virginia racing commission to refuse, suspend or revoke a license or permit and establishing the grounds therefor; authorizing stewards to suspend or revoke a permit; relating to the determination of racing dates; authorizing the pari-mutuel system of wagering upon horse races held or conducted under the regulation and control of the West Virginia racing commission and excepting such wagering from the gaming statutes; pro-

1. prohibiting minors from wagering at any horse race track;
2. establishing the maximum commission which may be
3. deducted from pari-mutuel pools by licensees of the West
4. Virginia racing commission; establishing a different maxi-
5. mum commission which may be deducted from pari-mutuel
6. pools resulting from harness racing than the maximum
7. commission which may be deducted from the pari-mutuel
8. pools resulting from thoroughbred racing; imposing a
9. daily license tax and a pari-mutuel pool tax on horse racing
10. conducted under the regulation and control of the West
11. Virginia racing commission; establishing a different tax
12. on pari-mutuel pools resulting from harness racing than
13. the tax on pari-mutuel pools resulting from thoroughbred
14. racing; relating to the remitting of all daily license taxes
15. and pari-mutuel pool taxes to the West Virginia racing
16. commission; providing that such license tax is in lieu of
17. other taxes except a license tax which may be imposed
18. by a municipality on a horse race track located within or
19. partly within such municipality; relating to the financial
20. responsibility of licensees of the West Virginia racing
21. commission; relating to the disposition of funds for the

payment of outstanding and unredeemed pari-mutuel tickets; establishing procedures for making such tickets irredeemable and providing for certain awards from the resulting funds; authorizing certain permit and registration fees; providing a relief fund; authorizing the West Virginia racing commission to hold hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern the promulgation of all reasonable rules and regulations and the holding of hearings; authorizing the West Virginia racing commission to issue subpoenas and subpoenas duces tecum; relating to hearing costs; providing an automatic stay or suspension of execution of certain orders; providing for judicial review of the decisions of the West Virginia racing commission made following hearings; relating to the stay or suspension of execution of decisions pending judicial determination; authorizing certain appeals to the supreme court of appeals; providing for legal counsel for the West Virginia racing commission; authorizing injunctive relief; relating to the construction and establishment of horse race tracks for horse race meetings; requiring construction permits therefor; re-

lating to administrative procedures and hearings in connection therewith; providing for local option elections and procedures in connection with and incidental to the construction and establishment of horse race tracks; relating to criminal offenses and providing criminal penalties; providing a repealer; relating to the effect of article on existing rules and regulations, licenses, permits and construction permits; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That articles twenty-three and twenty-four, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that a new article twenty-three of said chapter be enacted in lieu thereof, to read as follows:

ARTICLE 23. HORSE RACING.

PART I. LICENSE REQUIRED FOR HORSE RACING AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH; PERMITS REQUIRED FOR CERTAIN HORSE RACE TRACK POSITIONS.

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

(a) No association shall hold or conduct any horse race meeting at which horse 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 race track owned and controlled by any association for any local, county or state fair, horse show or agriculture or livestock exposition, even though horse racing be there conducted, if the pari-mutuel system of wagering upon the results of such horse racing is neither permitted nor conducted with the knowledge or acquiescence of the association conducting such horse racing.

§19-23-2. Permits required for horse race track 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 racing for a purse or a horse race meeting at any licensee's horse race track, place or enclosure, where the pari-mutuel system of wagering upon the results of such horse racing is permitted or conducted, as a horse owner, jockey, apprentice jockey, exercise boy,

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 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 race track 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.

**PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—
ORGANIZATION AND OPERATION.**

§19-23-3. Definitions.

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

(1) "Horse racing" shall mean any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

(2) "Thoroughbred racing" shall mean flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

(3) "Harness racing" shall mean horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle, and shall not include any form of horse racing in which the horses are mounted by jockeys;

(4) "Horse race meeting" shall mean the whole consecutive period of time, Sundays excluded, for which a license is required by the provisions of section one of this article;

(5) "Purse" shall mean any purse, stake or award for which a horse race is run;

(6) "Racing association" or "person" shall mean any individual, partnership, firm, association, corporation or other

entity or organization of whatever character or description;

(7) "Applicant" shall mean 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, as the case may be;

(8) "License" shall mean the license required by the provisions of section one of this article;

(9) "Permit" shall mean the permit required by the provisions of section two of this article;

(10) "Construction permit" shall mean the construction permit required by the provisions of section eighteen of this article;

(11) "Licensee" shall mean any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(12) "Permit holder" shall mean any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(13) "Construction permit holder" shall mean any person

holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(14) "Hold or conduct" shall include "assist, aid or abet in holding or conducting";

(15) "Racing commission" shall mean the West Virginia racing commission;

(16) "Stewards" shall mean the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it shall be to supervise any horse race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and such reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(17) "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 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;

(18) "Pool" shall mean a combination of interests in a joint wagering enterprise, or a stake in such enterprise;

(19) "Legitimate breakage" is the percentage left over in the division of a pool;

(20) "To the dime" shall mean that wagers shall be figured and paid to the dime; and

(21) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended.

§19-23-4. West Virginia racing commission continued; public corporation; vacancies in office; qualifications of members; compensation and expenses of members; organization and meetings of racing commission; transaction of business; annual report.

(a) The "West Virginia racing commission," heretofore created, shall continue 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 such racing commission shall be 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 this article 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 individual shall be eligible for appointment to or to serve upon the racing commission:

(1) Unless he 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 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 race track where horse 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 receive a salary of five thousand dollars per annum to be paid in monthly installments and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his 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 such other times and places as shall be designated by its chairman. At such annual meeting the racing commission shall elect from its membership a chairman and such other officers as may be

desired. Other meetings of the racing commission may be called by the chairman on such notice to the other members as may be prescribed by the racing commission.

(e) A majority of the members of the racing commission shall constitute a quorum for the transaction of its business or the exercise of any of its powers and authority. No individual 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.

PART III. RACING SECRETARY AND OTHER PERSONNEL AND EMPLOYEES OF RACING COMMISSION.

§19-23-5. Racing secretary; stewards and employees; qualifications; compensation and expenses; payment of compensation and expenses generally.

(a) The racing commission shall appoint a racing secretary to represent the racing commission and such racing sec-

retary shall possess such powers and authority and perform such duties as the racing commission may direct or prescribe. The racing secretary shall preserve at the racing commission's principal office all books, maps, records, documents and other papers of the racing commission. The racing secretary shall, in addition to all other duties imposed upon him 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 racing secretary and such stenographers, clerks and other office personnel as it may deem 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 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 whatever, in any race track where horse 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 thereto a member of the Legislature or an elective officer of this state, unless he 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 racing in the United States.

(d) The racing secretary and all other employees of the racing commission shall serve at the will and pleasure of the racing commission. The racing secretary 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 racing secretary 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, but no reimbursement for expenses incurred shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.

§19-23-6. Powers and authority of racing commission.

(a) The racing commission shall have full jurisdiction over

and shall supervise all horse race meetings and all persons involved in the holding or conducting of horse race meetings, and, in this regard, it shall have plenary power and authority:

(1) To investigate applicants and determine the eligibility of such 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 and regulations 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 and regulations under which all horse races and horse race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(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 race meeting;
- (6) To fix a minimum and a maximum number of horse races to be held on any respective racing day;
- (7) To enter the office, horse race track, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse race track, facilities and other places of business;
- (8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;
- (9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person connected with or

involved in any horse racing or any horse race meeting; and to authorize stewards to rule off the grounds of any horse race track any tout, bookmaker or other undesirable individual deemed inimicable to the best interests of horse 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 and regulation 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 horses run or to be run in any horse race meeting, and to purchase all equipment and supplies deemed necessary or desirable in connection with the acquisition, establishment, maintenance and operation of any such testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse 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 such licensee's horse racing activities in this state, together with a list of each such licensee's stockholders or other persons having any beneficial interest in the horse racing activities of such 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; and

(16) To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations.

(b) The racing commission shall not interfere in the internal business or internal affairs of any licensee.

PART V. LICENSE AND PERMIT PROCEDURES.

§19-23-7. Application for license; time for filing; disclosure required; verification.

(a) Any racing association desiring to hold or conduct a

horse 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 race meeting. A separate application shall be filed for each separate license sought for each horse 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 such applicant intends to hold or conduct such horse race meeting (which shall be successive week days, excluding Sundays);

(5) The location of the horse race track, place or enclosure where such applicant proposes to hold or conduct such horse 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 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.

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

(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 such application. The application shall 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 race meeting, and shall designate on the face of such license the kind or type of horse racing for which the same is issued, the racing association to which the same is issued, the dates upon which such horse race meeting is to be held or conducted (which shall be successive week days, excluding Sunday, the location of the horse race track, place or enclosure where such horse race meeting is to be held or conducted and such other information as the racing commission shall deem proper. If an application for a permit is approved, the racing commission

shall issue a permit and shall designate on the face of such permit such information as the racing commission shall deem proper.

(b) The racing commission shall deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal shall be final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, 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 any horse race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of such 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 or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules and regulations of the racing commission;

(5) Has had a license to hold or conduct a horse 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 section seven of this article;

(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 such applicant.

(c) In issuing licenses and fixing dates for horse race meetings at the various horse race tracks in this state, the racing

commission shall consider the horse racing circuits with which the horse race tracks 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.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and shall not permit the holding or conducting of a horse race meeting at any horse race track, place or enclosure not specified thereon. However, if the specified horse race track, place or enclosure becomes unsuitable for the horse 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 race meeting, or any remaining portion thereof, to be conducted at any other horse race track, place or enclosure available for that purpose, provided that the owner of such horse race track, place or enclosure willingly consents to the use thereof.

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

(f) Each permit issued under the provisions of this section

shall be for the period ending December thirty-first of the year for which it was issued, and shall be valid at all horse 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.

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

§19-23-9. Pari-mutuel system of wagering authorized; no other wagering to be permitted; commissions of licensees on pari-mutuel pools; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse race at any horse race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by such licensee within the confines of such licensee's horse race track, 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 for in this article at any horse race meeting within this state where horse racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wager-

ing within the confines of such licensee's horse race track at which any horse 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 racing shall not exceed sixteen percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, and shall deposit one percent of such commission in a special fund to be established by the licensee and to be used for the augmentation of the regular purses offered by the licensee. The remainder of the commission shall be retained by the licensee.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article. The remainder of the commission shall be retained by the licensee.

(c) In addition to any such commission, a licensee shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime.

(d) The director of audit, and any other auditors employed by the racing commission who shall also be 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 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 such 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 twenty-one years to wager at any horse race track,

knowing or having reason to believe that such individual is under the age of twenty-one years.

PART VII. TAXATION OF HORSE RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

(a) Any racing association conducting thoroughbred racing at any horse race track in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse race track in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing and harness racing are conducted on the same day at the same horse race track by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such 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 aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on thoroughbred racing, as a tax, five and three-fourths percent of the total contribution to all such pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article: *Provided*, That any such racing association operating a horse race track in this state having an average daily pari-mutuel pool on horse racing of one hundred fifty thousand dollars or less, per day, for the race meetings, of the preceding calendar year, shall, in lieu of payment of the five and three-fourths percent pari-mutuel pool tax as aforesaid be permitted to conduct pari-mutuel wagering at such horse race track on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding one hundred fifty thousand dollars the daily pari-mutuel pool tax shall be four thousand dollars plus five and three-fourths percent of the daily pari-mutuel pool, if any, in excess of one hundred fifty thousand dollars.

(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 aforementioned daily license tax, 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 one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all such pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) 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 and every day of each and every horse 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.

§19-23-11. Revenues to be paid into general revenue fund.

All revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pool taxes shall be paid by the racing commission to the state treasurer and be deposited by him to the credit of the general revenue fund of the state. Remittance of all such collected and accrued revenues shall be made by the racing commission to the state treasurer at least one time during each thirty-day period of the racing season, and a final remittance as to any particular horse race meeting shall be made within thirty days from and after the close of each such horse race meeting.

§19-23-12. License tax 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 race meeting at which horse 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 race meeting at which horse races are run, or at any such horse race track: *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.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING AND UNREDEEMABLE PARI-MUTUEL TICKETS; IRREDEEMABLE TICKETS; AWARDS.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; irredeemable tickets; awards to resident owners, etc., of winning horses.

(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 the horse race meeting 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 such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such 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 such 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 such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published in the week following the close of such horse race meeting 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 such publication shall be the county in which such horse race meeting was held.

(b) Any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication of the notice shall thereafter be irredeemable, and the moneys theretofore held for the redemption of such pari-mutuel tickets shall become the property of the racing commission, and shall be expended as follows:

(1) 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 such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse;

(2) 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 such breeder was at the time such winning horse was foaled a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse; and

(3) 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 such winning horse was served by such stallion in this state, and the owner of such stallion was at the time of such service a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse.

(c) One person may qualify for any one or all of the awards aforesaid.

(d) 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.

PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION FEES AND FINES.

§19-23-14. Disposition of permit fees, registration fees and fines.

All permit fees, fees paid for the registration of colors or assumed names and fines imposed by the stewards, starters or other racing officials shall be paid into a relief fund and paid out on the order of the racing commission for hospitalization, medical care and funeral expenses occasioned by injuries or death resulting from an accident sustained by any permit holder while in the discharge of his duties under the jurisdiction of the racing commission. No payment shall be made, however, for any hospitalization, medical care or funeral expenses as to any permit holder who is covered under the workmen's compensation fund of this state, or any insurance policy providing payments for hospitalization, medical care

or funeral expenses. Any balance in said relief fund at any time in excess of five thousand dollars, less any relief obligations than outstanding, shall thereupon be transferred by the racing commission to the state treasurer for deposit to the credit of the general revenue fund of this state.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. 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 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 subsection (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. Procedures for hearing.

(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 at any horse race meeting shall suspend or revoke a permit, such suspension or revocation shall be effective immediately. The stewards 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 to stay or suspend the execution of any order suspending or revoking a permit. The racing commission may require the person demanding such 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 scheduled hearing may be continued by the racing commission upon its own motion or for good cause shown by the person demanding the hearing.

(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. For the purpose of conducting any such hearing, any member of the racing commission shall have the power and authority to issue subpoenas and subpoenas duces tecum as provided for 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 assistants without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission any 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 conclu-

sions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(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 appeals proceedings.

**PART XI. CONSTRUCTION AND ESTABLISHMENT OF
HORSE RACK TRACKS.**

§19-23-18. Horse race track construction permits; application therefor.

(a) No person shall construct and establish a horse race track where horse 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 race track;

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

(7) The county where the proposed horse race track is to be constructed and established, and if such proposed horse race track 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 race track 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.

§19-23-19. Determination by racing commission; tentative approval of application for construction permit; publication.

(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 race track 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 race track are adequate and have been prepared with due regard to the safety of all persons who will use such horse race track;

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

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

(b) Otherwise, the racing commission shall deny the ap-

plication 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 court of

the county in which any integral part of said horse race track 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 race track 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 race track 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 court 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 ESTABLISH-

MENT OF A HORSE RACE TRACK 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 court to call and hold a local option election as required by article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, upon the following question: ‘Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a horse race track where horse 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 court of the county in which all or any integral part of a proposed horse race track 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 race track within said county. Upon the timely filing of a proper petition as aforesaid, the county court 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 court 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 court 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 race track where horse 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 said 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 and the results certified by the commissioners of election to said county court 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 court 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 a construction permit; duration of a construction permit; transfer and assignment of a 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 race track, 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 the 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. In the event a horse race track 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 race track constructed and established pursuant to such construction permit.

§19-23-24. Applicability of certain sections of article to horse race tracks already constructed and established.

Nothing contained in sections eighteen through twenty-three of this article shall apply to any horse race track 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 race track within a county in which a horse race track 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 race track or others, shall be subject to all of the provisions of this article.

PART XII. INJUNCTIVE RELIEF.

§19-23-25. Actions 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 race meeting at which horse 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 re-

mains unexpired, unsuspended and unrevoked, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one thousand dollars for each day of such unauthorized horse 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 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 five hundred dollars nor more than one thousand dollars, 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 commis-

sion, which constitute the basis of the charge or complaint.

(c) Any person violating any provision of subsection (b) of section two of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, 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.

PART XIV. REPEALER; EFFECT ON EXISTING RULES AND REGULATIONS, LICENSES AND PERMITS.

§18-23-27. 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.

§19-23-28. Effect 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.

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

William Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Thomas Murray
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lloyd B. Jackson
President of the Senate

Ovar F. Borsky
Speaker House of Delegates

The within appeared this the 31st
day of July, 1969.

Arch. A. Shreve, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 7/31/69

Time 4:20 p.m.

RECEIVED

AUG 5 10 25 AM '69

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA