

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 118

(By Mr. Mc Court)

PASSED March 7, 1969

In Effect for Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-17-69

#118

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Senate Bill No. 118

(By MR. McCOURT)

[Passed March 7, 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-

hibiting minors from wagering at any horse race track; establishing the maximum commission which may be deducted from pari-mutuel pools by licensees of the West Virginia racing commission; establishing a different maximum commission which may be deducted from pari-mutuel pools resulting from harness racing than the maximum commission which may be deducted from the pari-mutuel pools resulting from thoroughbred racing; imposing a daily license tax and a pari-mutuel pool tax on horse racing conducted under the regulation and control of the West Virginia racing commission; establishing a different tax on pari-mutuel pools resulting from harness racing than the tax on pari-mutuel pools resulting from thoroughbred racing; relating to the remitting of all daily license taxes and pari-mutuel pool taxes to the West Virginia racing commission; providing that such license tax is in lieu of other taxes except a license tax which may be imposed by a municipality on a horse race track located within or partly within such municipality; relating to the financial responsibility of licensees of the West Virginia racing 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 a new article twenty-three of said chapter 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.

- 1 (a) No association shall hold or conduct any horse
- 2 race meeting at which horse racing is permitted for any

3 purse unless such association possesses a license there-
4 for from the West Virginia racing commission and com-
5 plies with the provisions of this article and all reason-
6 able rules and regulations of such racing commission.

7 (b) Notwithstanding the provisions of subsection (a)
8 of this section, the provisions of this article shall not
9 be construed to prevent in any way the use without
10 a license of any grounds, enclosure of race track owned
11 and controlled by any association for any local, county
12 or state fair, horse show or agriculture or livestock ex-
13 position, even though horse racing be there conducted,
14 if the pari-mutuel system of wagering upon the results
15 of such horse racing is neither permitted nor conducted
16 with the knowledge or acquiescence of the association
17 conducting such horse racing.

**§19-23-2. Permits required for horse race track positions; resi-
dency requirements for employees of licensees.**

1 (a) No person not required to be licensed under the
2 provisions of section one of this article shall participate
3 in or have anything to do with horse racing for a purse
4 or a horse race meeting at any licensee's horse race track,

5 place or enclosure, where the pari-mutuel system of
6 wagering upon the results of such horse racing is per-
7 mitted or conducted, as a horse owner, jockey, appren-
8 tice jockey, exercise boy, trainer, groom, plater, stable
9 foreman, valet, veterinarian, agent, clerk of the scales,
10 starter, assistant starter, timer, judge or pari-mutuel
11 employee, or in any other capacity specified in reason-
12 able rules and regulations of the racing commission
13 unless such person possesses a permit therefor from
14 the West Virginia racing commission and complies with
15 the provisions of this article and all reasonable rules and
16 regulations of such racing commission.

17 (b) At least eighty percent of the individuals em-
18 ployed by a licensee at any horse race meeting must
19 be citizens and residents of this state and must have
20 been such citizens and residents for at least one year.
21 For the purpose of this subsection, citizens and residents
22 of this state shall be construed to mean individuals who
23 maintain a permanent place of residence in this state,
24 and have been bona fide residents and citizens of this
25 state for a period of one year immediately prior to the

26 filing of their applications for employment. The pro-
27 visions of this subsection shall not apply to individuals
28 engaged in the construction of a horse race track or in
29 the equipping of same, nor to racing officials designated
30 by the racing commission or racing officials designated
31 by the executive officials of a licensee.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—

ORGANIZATION AND OPERATION.

§19-23-3. Definitions.

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

3 (1) "Horse racing" shall mean any type of horse rac-
4 ing, including, but not limited to, thoroughbred racing
5 and harness racing;

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

9 (3) "Harness racing" shall mean horse racing in which
10 the horses participating therein are harnessed to a sulky,
11 carriage or other vehicle, and shall not include any form

12 of horse racing in which the horses are mounted by
13 jockeys;

14 (4) "Horse race meeting" shall mean the whole con-
15 secutive period of time, Sundays excluded, for which a
16 license is required by the provisions of section one of this
17 article;

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

20 (6) "Racing association" or "person" shall mean any
21 individual, partnership, firm, association, corporation or
22 other entity or organization of whatever character or
23 description;

24 (7) "Applicant" shall mean any racing association
25 making application for a license under the provisions of
26 this article, or any person making application for a permit
27 under the provisions of this article, or any person making
28 application for a construction permit under the provisions
29 of this article, as the case may be;

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

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

34 (10) "Construction permit" shall mean the construc-
35 tion permit required by the provisions of section eighteen
36 of this article;

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

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

44 (13) "Construction permit holder" shall mean any
45 person holding a construction permit required by the
46 provisions of section eighteen of this article and issued
47 under the provisions of this article;

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

50 (15) "Racing commission" shall mean the West Vir-
51 ginia racing commission;

52 (16) "Stewards" shall mean the steward or stewards
53 representing the racing commission, the steward or stew-
54 ards representing a licensee and any other steward or
55 stewards, whose duty it shall be to supervise any horse
56 race meeting, all as may be provided by reasonable rules
57 and regulations of the racing commission, and such rea-
58 sonable rules and regulations shall specify the number of
59 stewards to be appointed, the method and manner of their
60 appointment and their powers, authority and duties;

61 (17) "Pari-mutuel" means a mutuel or collective pool
62 that can be divided among those who have contributed
63 their wagers to one central agency, the odds to be reck-
64 oned in accordance to the collective amounts wagered
65 upon each contestant running in a horse race upon which
66 the pool is made, but the total to be divided among the
67 first three contestants on the basis of the number of
68 wagers on these;

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

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

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

75 (21) "Code" shall mean the code of West Virginia, one
76 thousand nine hundred thirty-one, as heretofore and here-
77 after 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.**

1 (a) The "West Virginia racing commission," hereto-
2 fore created, shall continue in existence as a public cor-
3 poration, and, as such, may contract and be contracted
4 with, plead and be impleaded, sue and be sued and have
5 and use a common seal.

6 (b) The racing commission shall consist of three mem-
7 bers, not more than two of whom shall belong to the
8 same political party, to be appointed by the governor by
9 and with the advice and consent of the Senate. The term
10 of office for the members of such racing commission shall
11 be four years, and members of the racing commission may

12 serve any number of successive terms. The three mem-
13 bers of the racing commisison in office on the effective
14 date of this article shall, unless sooner removed, continue
15 to serve until their terms expire and until their succes-
16 sors have been appointed and have qualified. Any vacancy
17 in the office of a member of the racing commission shall
18 be filled by appointment by the governor for the unex-
19 pired term of the member whose office shall be vacant.
20 No individual shall be eligible for appointment to or to
21 serve upon the racing commission:

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

27 (2) Who directly or indirectly, or in any capacity,
28 owns or has any interest, in any manner whatever, in any
29 race track where horse race meetings may be held, in-
30 cluding, but not limited to, an interest as owner, lessor,
31 lessee, stockholder or employee;

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

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

39 (c) Each member of the racing commission shall re-
40 ceive a salary of five thousand dollars per annum to be
41 paid in monthly installments and shall be reimbursed
42 for all reasonable and necessary expenses actually in-
43 curred in the performance of his duties as a member of
44 the racing commission.

45 (d) The racing commission shall have its principal
46 office at the seat of government, and shall meet annually
47 at its principal office in the month of January, and at
48 such other times and places as shall be designated by its
49 chairman. At such annual meeting the racing commis-
50 sion shall elect from its membership a chairman and such
51 other officers as may be desired. Other meetings of the
52 racing commission may be called by the chairman on

53 such notice to the other members as may be prescribed
54 by the racing commission.

55 (e) A majority of the members of the racing com-
56 mission shall constitute a quorum for the transaction of
57 its business or the exercise of any of its powers and
58 authority. No individual not a bona fide member of the
59 racing commission shall vote upon or participate in the
60 deliberations of the racing commission on any matter
61 which may come before it. All racing commission records,
62 except as otherwise provided by law, shall be open to
63 public inspection during regular office hours.

64 (f) As soon as possible after the close of each calendar
65 year, the racing commission shall submit to the governor a
66 report of the transactions of the racing commission dur-
67 ing the preceding calendar year.

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

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

1 (a) The racing commission shall appoint a racing sec-
2 retary to represent the racing commission and such rac-

3 ing secretary shall possess such powers and authority and
4 perform such duties as the racing commission may direct
5 or prescribe. The racing secretary shall preserve at the
6 racing commission's principal office all books, maps,
7 records, documents and other papers of the racing com-
8 mission. The racing secretary shall, in addition to all
9 other duties imposed upon him by the racing commission,
10 serve in a liaison capacity between licensees and the rac-
11 ing commission. The racing commission may also employ,
12 direct and define the duties of an assistant racing secre-
13 tary and such stenographers, clerks and other office per-
14 sonnel as it may deem necessary to carry out the duties
15 imposed upon it under the provisions of this article.

16 (b) In addition to the employees referred to above,
17 the racing commission shall employ, direct and define the
18 duties of a chief clerk, director of security, director of
19 audit, chief chemist, stewards to represent the racing
20 commission, supervisors of the pari-mutuel wagering con-
21 ducted under the provisions of this article, veterinarians,
22 inspectors, accountants, guards and all other employees
23 deemed by the racing commission to be essential in con-

24 nection with any horse race meeting. The director of
25 audit shall be a certified public accountant or experienced
26 public accountant.

27 (c) No individual shall knowingly be employed or be
28 continued in employment by the racing commission in
29 any capacity whatever:

30 (1) Who directly or indirectly, or in any capacity,
31 owns or has any interest, in any manner whatever, in any
32 race track where horse race meetings may be held, in-
33 cluding, but not limited to, an interest as owner, lessor,
34 lessee, stockholder or employee;

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

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

43 Any steward employed by the racing commission or by a
44 licensee shall be a person of integrity, and experienced

45 and qualified for such position by the generally accepted
46 practices and customs of horse racing in the United States.

47 (d) The racing secretary and all other employees of
48 the racing commission shall serve at the will and pleasure
49 of the racing commission. The racing secretary and the
50 other employees referred to in this section as employees
51 of the racing commission shall receive such compensation
52 as may be fixed by the racing commission within the limit
53 of available funds, and shall be reimbursed for all reason-
54 able and necessary expenses actually incurred in the per-
55 formance of their official duties.

56 (e) All compensation and reimbursement for expenses
57 of the members of the racing commission, the racing
58 secretary and all other employees of the racing commis-
59 sion shall be paid from the funds in the hands of the state
60 treasurer collected under the provisions of this article
61 and shall be itemized in the budget in the same manner
62 as all other departments of state government, but no
63 reimbursement for expenses incurred shall be paid unless
64 an itemized account thereof, under oath, be first filed
65 with the state auditor.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.**§19-23-6. Powers and authority of racing commission.**

1 (a) The racing commission shall have full jurisdiction
2 over and shall supervise all horse race meetings and all
3 persons involved in the holding or conducting of horse
4 race meetings, and, in this regard, it shall have plenary
5 power and authority:

6 (1) To investigate applicants and determine the eli-
7 gibility of such applicants for a license or permit or
8 construction permit under the provisions of this article;

9 (2) To fix, from time to time, the annual fee to be
10 paid to the racing commission for any permit required
11 under the provisions of section two of this article;

12 (3) To promulgate reasonable rules and regulations
13 implementing and making effective the provisions of this
14 article and the powers and authority conferred and the
15 duties imposed upon the racing commission under the
16 provisions of this article, including, but not limited to,
17 reasonable rules and regulations under which all horse
18 races and horse race meetings shall be held and con-

19 ducted, all of which reasonable rules and regulations shall
20 be promulgated in accordance with the provisions of
21 article three, chapter twenty-nine-a of this code;

22 (4) To register colors and assumed names and to fix,
23 from time to time, the annual fee to be paid to the
24 racing commission for any such registration;

25 (5) To fix and regulate the minimum purse to be
26 offered during any horse race meeting;

27 (6) To fix a minimum and a maximum number of
28 horse races to be held on any respective racing day;

29 (7) To enter the office, horse race track, facilities and
30 other places of business of any licensee to determine
31 whether the provisions of this article and its reasonable
32 rules and regulations are being complied with, and for
33 this purpose, the racing commission, its racing secretary,
34 representatives and employees may visit, investigate
35 and have free access to any such office, horse race track,
36 facilities and other places of business;

37 (8) To investigate alleged violations of the provisions
38 of this article, its reasonable rules and regulations, orders
39 and final decisions and to take appropriate disciplinary

40 action against any licensee or permit holder or construc-
41 tion permit holder for the violation thereof or institute
42 appropriate legal action for the enforcement thereof or
43 take such disciplinary action and institute such legal
44 action;

45 (9) By reasonable rules and regulations, to authorize
46 stewards, starters and other racing officials to impose
47 reasonable fines or other sanctions upon any person con-
48 nected with or involved in any horse racing or any horse
49 race meeting; and to authorize stewards to rule off the
50 grounds of any horse race track any tout, bookmaker
51 or other undesirable individual deemed inimicable to
52 the best interests of horse racing or the pari-mutuel
53 system of wagering in connection therewith;

54 (10) To require at any time the removal of any
55 racing official or racing employee of any licensee, for
56 the violation of any provision of this article, any rea-
57 sonable rule and regulation of the racing commission
58 or for any fraudulent practice;

59 (11) To acquire, establish, maintain and operate, or
60 to provide by contract for the maintenance and operation

61 of, a testing laboratory and related facilities, for the
62 purpose of conducting saliva, urine and other tests on
63 the horse or horses run or to be run in any horse race
64 meeting, and to purchase all equipment and supplies
65 deemed necessary or desirable in connection with the
66 acquisition, establishment, maintenance and operation of
67 any such testing laboratory and related facilities and all
68 such tests;

69 (12) To hold up, in any disputed horse race, the pay-
70 ment of any purse, pending a final determination of
71 the results thereof;

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

78 (14) To issue subpoenas for the attendance of wit-
79 nesses and subpoenas duces tecum for the production
80 of any books, records and other pertinent documents,

81 and to administer oaths and affirmations to such wit-
82 nesses, whenever, in the judgment of the racing com-
83 mission, it is necessary to do so for the effective dis-
84 charge of its duties under the provisions of this article;

85 (15) To keep accurate and complete records of its
86 proceedings and to certify the same as may be appro-
87 priate; and

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

91 (b) The racing commission shall not interfere in the
92 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.**

1 (a) Any racing association desiring to hold or con-
2 duct a horse race meeting, where the pari-mutuel system
3 of wagering is permitted and conducted, during any
4 calendar year, shall file with the racing commission an
5 application for a license to hold or conduct such horse

6 race meeting. A separate application shall be filed for
7 each separate license sought for each horse race meeting
8 which such applicant proposes to hold or conduct. The
9 racing commission shall prescribe blank forms to be used
10 in making such application. Such application shall be
11 filed on or before a day to be fixed by the racing com-
12 mission and shall disclose, but not be limited to, the
13 following:

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

16 (2) If the applicant be a partnership, firm or associa-
17 tion, the full name and address of each partner or mem-
18 ber thereof, the name of the partnership, firm or associa-
19 tion and its post-office address;

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

25 (4) The dates such applicant intends to hold or con-

26 duct such horse race meeting (which shall be succes-
27 sive week days, excluding Sundays);

28 (5) The location of the horse race track, place or en-
29 closure where such applicant proposes to hold or conduct
30 such horse race meeting;

31 (6) Whether the applicant, any partner, member,
32 officer or director has previously applied for a license
33 under the provisions of this article or for a similar license
34 in this or any other state, and if so, whether such license
35 was issued or refused, and, if issued, whether it was ever
36 suspended or revoked; and

37 (7) Such other information as the racing commission
38 may reasonably require which may include information
39 relating to any criminal record of the applicant, if an in-
40 dividual, or of each partner or member, if a partnership,
41 firm or association, or of each officer and director, if a
42 corporation.

43 (b) Such application shall be verified by the oath or
44 affirmation of the applicant for such license, if an in-
45 dividual, or if the applicant is a partnership, firm, as-

46 sociation or corporation, by a partner, member or officer
47 thereof, as the case may be. When required by the racing
48 commission, an applicant for a license shall also furnish
49 evidence satisfactory to the racing commission of such
50 applicant's ability to pay all taxes due the state, purses,
51 salaries of officials and other expenses incident to the
52 horse race meeting for which a license is sought. In the
53 event the applicant is not able to furnish such satisfactory
54 evidence of such applicant's ability to pay such expenses
55 and fees, the racing commission may require bond or
56 other adequate security before the requested license is
57 issued.

58 (c) Any person desiring to obtain a permit, as re-
59 quired by the provisions of section two of this article,
60 shall make application therefor on a form prescribed by
61 the racing commission. The application for any such per-
62 mit shall be accompanied by the fee prescribed therefor
63 by the racing commission. Each applicant for a permit
64 shall set forth in the application such information as the
65 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.

1 (a) The racing commission shall promptly consider any
2 application for a license or permit, as the case may be.
3 Based upon such application and all other information
4 before it, the racing commission shall make and enter an
5 order either approving or denying such application. The
6 application shall be denied for any reason specified in
7 subsection (b) of this section. If an application for a
8 license is approved, the racing commission shall issue a
9 license to conduct a horse race meeting, and shall design-
10 nate on the face of such license the kind or type of horse
11 racing for which the same is issued, the racing associa-
12 tion to which the same is issued, the dates upon which
13 such horse race meeting is to be held or conducted (which
14 shall be successive week days, excluding Sundays), the
15 location of the horse race track, place or enclosure where

16 such horse race meeting is to be held or conducted and
17 such other information as the racing commission shall
18 deem proper. If an application for a permit is approved, the
19 racing commission shall issue a permit and shall designate
20 on the face of such permit such information as the racing
21 commission shall deem proper.

22 (b) The racing commission shall deny the application
23 and refuse to issue the license or permit, as the case may
24 be, which denial and refusal shall be final and conclusive
25 unless a hearing is demanded in accordance with the
26 provisions of section sixteen of this article, if the racing
27 commission finds that the applicant (individually, if an
28 individual, or the partners or members, if a partnership,
29 firm or association, or the owners and directors, if a
30 corporation):

31 (1) Has knowingly made false statement of a material
32 fact in the application or has knowingly failed to dis-
33 close any information called for in the application;

34 (2) Is or has been guilty of any corrupt or fraudulent
35 act, practice or conduct in connection with any horse
36 race meeting in this or any other state;

37 (3) Has been convicted, within ten years prior to the
38 date of such application, of an offense which under the
39 law of this state, of any other state or of the United States
40 of America, shall constitute a felony or a crime involving
41 moral turpitude;

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

45 (5) Has had a license to hold or conduct a horse race
46 meeting or a permit to participate therein denied for
47 just cause, suspended or revoked in any other state;

48 (6) Has defaulted in the payment of any obligation or
49 debt due to this state under the provisions of this article;

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

53 (8) In the case of an application for a license, has
54 failed to furnish bond or other adequate security, if
55 the same is required by the racing commission under
56 the provisions of section seven of this article;

57 (9) In the case of an application for a permit, is un-
58 qualified to perform the duties required for the permit
59 sought; or

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

63 (c) In issuing licenses and fixing dates for horse race
64 meetings at the various horse race tracks in this state,
65 the racing commission shall consider the horse racing
66 circuits with which the horse race tracks in this state are
67 associated or contiguous to, and shall also consider dates
68 which are calculated to increase the tax revenues accruing
69 from horse racing.

70 (d) A license issued under the provisions of this article
71 is neither transferable nor assignable to any other racing
72 association and shall not permit the holding or conduct-
73 ing of a horse race meeting at any horse race track, place
74 or enclosure not specified thereon. However, if the speci-
75 fied horse race track, place or enclosure becomes unsuit-
76 able for the horse race meeting because of flood, fire or

77 other catastrophe, or cannot be used for any reason, the
78 racing commission may, upon application, authorize the
79 horse race meeting, or any remaining portion thereof,
80 to be conducted at any other horse race track, place or
81 enclosure available for that purpose, provided that the
82 owner of such horse race track, place or enclosure will-
83 ingly consents to the use thereof.

84 (e) No type of horse racing shall be conducted by a
85 licensee at any horse race meeting other than that type
86 for which a license for such horse race meeting was is-
87 sued.

88 (f) Each permit issued under the provisions of this
89 section shall be for the period ending December thirty-
90 first of the year for which it was issued, and shall be
91 valid at all horse race meetings during the period for
92 which it was issued, unless it be sooner suspended or re-
93 voked in accordance with the provisions of this article.
94 A permit issued under the provisions of this article is
95 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.**

1 (a) The pari-mutuel system of wagering upon the
2 results of any horse race at any horse race meeting con-
3 ducted or held by any licensee is hereby authorized, if
4 and only if such pari-mutuel wagering is conducted by
5 such licensee within the confines of such licensee's horse
6 race track, and the provisions of section one, article ten,
7 chapter sixty-one of this code, relating to gaming, shall
8 not apply to the pari-mutuel system of wagering in
9 manner and form as provided for in this article at any
10 horse race meeting within this state where horse racing
11 shall be permitted for any purse by any licensee. A li-
12 censee shall permit or conduct only the pari-mutuel sys-
13 tem of wagering within the confines of such licensee's
14 horse race track at which any horse race meeting is con-
15 ducted or held.

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

18 (1) The commission deducted by any licensee from
19 the pari-mutuel pools on thoroughbred racing shall not
20 exceed fifteen and one-half percent of the total of such
21 pari-mutuel pools for the day. Out of such commission,
22 the licensee shall pay the pari-mutuel pools tax provided
23 for in subsection (b), section ten of this article, and shall
24 deposit one half of one percent of such commission in a
25 special fund to be established by the licensee and to be
26 used for the augmentation of the regular purses offered
27 by the licensee. The remainder of the commission shall
28 be retained by the licensee.

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

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

39 (d) The director of audit, and any other auditors em-
40 ployed by the racing commission who shall also be certi-
41 fied public accountants or experienced public accountants,
42 shall have free access to the space or enclosure where the
43 pari-mutuel system of wagering is conducted or calculated
44 at any horse race meeting for the purpose of ascertaining
45 whether or not the licensee is deducting and retaining
46 only a commission as provided in this section and is other-
47 wise complying with the provisions of this section. They
48 shall also, for the same purposes only, have full and free
49 access to all records and papers pertaining to such pari-
50 mutuel system of wagering, and shall report to the racing
51 commission in writing, under oath, whether or not the
52 licensee has deducted and retained any commission in
53 excess of that permitted under the provisions of this sec-
54 tion or has otherwise failed to comply with the provisions
55 of this section.

56 (e) No licensee shall permit or allow any individual
57 under the age of twenty-one years to wager at any horse

58 race track, knowing or having reason to believe that such
59 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.**

1 (a) Any racing association conducting thoroughbred
2 racing at any horse race track in this state shall pay each
3 day upon which horse races are run a daily license tax
4 of two hundred fifty dollars. Any racing association con-
5 ducting harness racing at any horse race track in this
6 state shall pay each day upon which horse races are
7 run a daily license tax of one hundred fifty dollars. In the
8 event thoroughbred racing and harness racing are con-
9 ducted on the same day at the same horse race track
10 by the same racing association, only one daily license
11 tax in the amount of two hundred fifty dollars shall be
12 paid for that day. Any such daily license tax shall not
13 apply to any local, county or state fair, horse show or
14 agricultural or livestock exposition at which horse racing
15 is conducted for not more than six days.

16 (b) Any racing association licensed by the racing
17 commission to conduct thoroughbred racing and per-
18 mitting and conducting pari-mutuel wagering under the
19 provisions of this article shall, in addition to the afore-
20 mentioned daily license tax, pay to the racing commis-
21 sion, from the commission deducted each day by such
22 licensee from the pari-mutuel pools on thoroughbred
23 racing, as a tax, five and three-fourths percent of the
24 total contribution to all such pari-mutuel pools conducted
25 or made at any and every thoroughbred race meeting
26 of the licensee licensed under the provisions of this
27 article: *Provided*, That any such racing association operat-
28 ing a horse race track in this state having an average daily
29 pari-mutuel pool on horse racing of one hundred fifty
30 thousand dollars or less, per day, for the race meetings, of
31 the preceding calendar year, shall, in lieu of payment of
32 the five and three-fourths percent pari-mutuel pool tax as
33 aforesaid be permitted to conduct pari-mutuel wagering at
34 such horse race track on the basis of a daily pari-mutuel
35 pool tax fixed as follows: On the daily pari-mutuel pool
36 not exceeding one hundred fifty thousand dollars the

37 daily pari-mutuel poll tax shall be four thousand dollars
38 plus five and three-fourths percent of the daily pari-
39 mutuel pool, if any, in excess of one hundred fifty thous-
40 and dollars.

41 (c) Any racing association licensed by the racing
42 commission to conduct harness racing and permitting
43 and conducting pari-mutuel wagering under the pro-
44 visions of this article shall, in addition to the aforemen-
45 tioned daily license tax, pay to the racing commission,
46 from the commission deducted each day by the licensee
47 from the pari-mutuel pools on harness racing, as a tax,
48 three percent of the first one hundred thousand dollars
49 wagered, or any part thereof; four percent of the next
50 one hundred fifty thousand dollars; and five and three-
51 fourths percent of all over that amount wagered each day
52 in all such pari-mutuel pools conducted or made at any
53 and every harness race meeting of the licensee licensed
54 under the provisions of this article.

55 (d) All daily license and pari-mutuel pools tax pay-
56 ments required under the provisions of this section shall
57 be made to the racing commission or its agent after the
58 last race of each and every day of each and every horse

59 race meeting, and the pari-mutuel pools tax payments
60 shall be made from all contributions to all pari-mutuel
61 pools to each and every race of the day.

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

1 All revenues collected pursuant to the provisions of
2 this article as license taxes or pari-mutuel pool taxes
3 shall be paid by the racing commission to the state
4 treasurer and be deposited by him to the credit of the
5 general revenue fund of the state. Remittance of all
6 such collected and accrued revenues shall be made by
7 the racing commission to the state treasurer at least
8 one time during each thirty-day period of the racing
9 season, and a final remittance as to any particular horse
10 race meeting shall be made within thirty days from and
11 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.**

1 The license tax imposed in section ten of this article
2 shall be in lieu of all other license, income, excise, spe-
3 cial or franchise taxes of this state, and no county or
4 municipality or other political subdivision of this state
5 shall be empowered to levy or impose any license, income,

6 pari-mutuel, excise, special or franchise tax on any rac-
7 ing association engaged in the business of conducting a
8 horse race meeting at which horse races are run for
9 purses under the jurisdiction of and being licensed by
10 the racing commission, or on the operation or mainte-
11 nance of the pari-mutuel system of wagering, or on the
12 sale of any commodity during a horse race meeting at
13 which horse races are run, or at any such horse race track:
14 *Provided*, That the foregoing provisions of this section
15 shall in no way affect, abridge or abolish the authority
16 of a municipality to impose the license tax authorized by
17 the provisions of section eight, article thirteen, chap-
18 ter eight of this code.

**PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUT-
STANDING AND UNREDEEMED 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 win-
ning horses.

- 1 (a) All moneys held by any licensee for the payment
- 2 of outstanding and unredeemed pari-mutuel tickets, if

3 not claimed within ninety days after the close of the
4 horse race meeting in connection with which the tickets
5 were issued, shall be turned over by the licensee to the
6 racing commission within fifteen days after the expir-
7 ation of such ninety-day period, and the licensee shall
8 give such information as the racing commission may re-
9 quire concerning such outstanding and unredeemed
10 tickets. All such moneys shall be deposited by the racing
11 commission in a banking institution of its choice in a
12 special account to be known as "West Virginia Racing
13 Commission Special Account—Unredeemed Pari-Mutuel
14 Tickets." Notice of the amount, date and place of such
15 deposit shall be given by the racing commission, in
16 writing, to the state treasurer. The racing commission
17 shall then cause to be published a notice to the holders
18 of such outstanding and unredeemed pari-mutuel tickets,
19 notifying them to present such tickets for payment at
20 the principal office of the racing commission within ninety
21 days from the date of the publication of such notice.
22 Such notice shall be published in the week following
23 the close of such horse race meeting as a Class I legal

24 advertisement in compliance with the provisions of ar-
25 ticle three, chapter fifty-nine of this code, and the pub-
26 lication area for such publication shall be the county in
27 which such horse race meeting was held.

28 (b) Any such pari-mutuel tickets that shall not be
29 presented for payment within ninety days from the date
30 of the publication of the notice shall thereafter be ir-
31 redeemable, and the moneys theretofore held for the re-
32 demption of such pari-mutuel tickets shall become the
33 property of the racing commission, and shall be expended
34 as follows:

35 (1) To the owner of the winning horse in any horse
36 race at a horse race meeting held or conducted by any
37 licensee, provided that the owner of such horse is at the
38 time of such horse race a bona fide resident of this state,
39 a sum equal to ten percent of the purse won by such
40 horse;

41 (2) To the breeder (that is, the owner of the mare)
42 of the winning horse in any horse race at a horse race
43 meeting held or conducted by any licensee, provided

44 that such breeder was at the time such winning horse
45 was foaled a bona fide resident of this state, a sum equal
46 to ten percent of the purse won by such horse; and

47 (3) To the owner of the stallion which sired the win-
48 ning horse in any horse race at a horse race meeting
49 held or conducted by any licensee, provided that the
50 mare which foaled such winning horse was served by
51 such stallion in this state, and the owner of such stallion
52 was at the time of such service a bona fide resident of
53 this state, a sum equal to ten percent of the purse won
54 by such horse.

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

57 (d) The cost of publication of the notice provided for
58 in this section shall be paid from the funds in the hands
59 of the state treasurer collected from the pari-mutuel
60 pools tax provided for in section ten of this article, when
61 not otherwise provided in the budget; but no such costs
62 shall be paid unless an itemized account thereof, under
63 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.

1 All permit fees, fees paid for the registration of colors
2 or assumed names and fines imposed by the stewards,
3 starters or other racing officials shall be paid into a re-
4 lief fund and paid out on the order of the racing com-
5 mission for hospitalization, medical care and funeral ex-
6 penses occasioned by injuries or death resulting from
7 an accident sustained by any permit holder while in the
8 discharge of his duties under the jurisdiction of the
9 racing commission. No payments shall be made, how-
10 ever, for any hospitalization, medical care or funeral ex-
11 penses as to any permit holder who is covered under
12 the workmen's compensation fund of this state, or any
13 insurance policy providing payments for hospitalization,
14 medical care or funeral expenses. Any balance in said
15 relief fund at any time in excess of five thousand dollars,
16 less any relief obligations then outstanding, shall there-
17 upon be transferred by the racing commission to the
18 state treasurer for deposit to the credit of the general
19 revenue fund of this state.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.**§19-23-15. Suspension or revocation of license or permit.**

1 (a) The racing commission may conduct an investi-
2 gation to determine whether any provisions of this ar-
3 ticle or any of its reasonable rules and regulations have
4 been or are about to be violated by a licensee or permit
5 holder. The racing commission may suspend or revoke
6 a license or permit if the licensee or permit holder, as
7 the case may be:

8 (1) Is convicted of an offense which under the law
9 of this state, of any other state or of the United States
10 of America, shall constitute a felony or a crime involv-
11 ing moral turpitude;

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

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

17 (b) The racing commission may also suspend or re-
18 voke a license or permit of a licensee or permit holder,
19 as the case may be, if it finds the existence of any ground

20 upon which the license or permit could have been re-
21 fused, or any ground which would be cause for refusing
22 a license or permit to such licensee or permit holder
23 were such licensee or permit holder then applying for
24 the same.

25 (c) A majority of the stewards at any horse race meet-
26 ing may suspend or revoke a permit for any reason for
27 which the racing commission may suspend or revoke a
28 permit, as specified in subsections (a) and (b) of this
29 section, or for any other reason authorized by reasonable
30 rules and regulations promulgated by the racing com-
31 mission.

32 (d) Whenever a licensee fails to keep the bond re-
33 quired, if any, under the provisions of section seven
34 of this article in full force and effect, the license of such
35 licensee shall automatically be suspended unless and
36 until a bond or other security, if required, is furnished
37 to the racing commission, in which event the suspension
38 shall be vacated.

39 (e) Any suspension of a license or permit shall con-
40 tinue for the period specified in the order of suspension,

41 or until the cause therefor has been eliminated or cor-
42 rected, as set forth in the order of suspension. Revoca-
43 tion of a license or permit shall not preclude application
44 for a new license or permit, which application shall be
45 processed in the same manner and the application ap-
46 proved or denied and the license or permit issued or
47 refused on the same grounds as any other application for
48 a license or permit is processed, considered and passed
49 upon, except that any previous suspension and the revo-
50 cation may be given such weight in deciding whether to
51 approve or deny such application and issue or refuse such
52 license or permit as is meet and proper under all of the
53 circumstances.

§19-23-16. Procedures for hearing.

1 (a) Whenever the racing commission shall deny an
2 application for a license or a permit or shall suspend or
3 revoke a license or a permit, it shall make and enter
4 an order to that effect and serve a copy thereof on the
5 applicant, licensee or permit holder, as the case may be,
6 in any manner in which a summons may be served in a
7 civil action or by certified mail, return receipt requested.

8 Such order shall state the grounds for the action taken,
9 and, in the case of an order of suspension or revocation,
10 shall state the effective date of such suspension or
11 revocation.

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

21 (c) Any person adversely affected by any such order
22 shall be entitled to a hearing thereon if, within twenty
23 days after service of a copy thereof if served in any
24 manner in which a summons may be served as afore-
25 said or within twenty days after receipt of a copy thereof
26 if served by certified mail as aforesaid, such person files
27 with the racing commission a written demand for such
28 hearing. A demand for hearing shall operate automati-

29 cally to stay or suspend the execution of any order sus-
30 pending or revoking a license, but a demand for hearing
31 shall not operate to stay or suspend the execution of
32 any order suspending or revoking a permit. The racing
33 commission may require the person demanding such
34 hearing to give reasonable security for the costs thereof
35 and if such person does not substantially prevail at such
36 hearing such costs shall be assessed against such per-
37 son and may be collected by an action at law or other
38 proper remedy.

39 (d) Upon receipt of a written demand for such hear-
40 ing, the racing commission shall set a time and place
41 therefor not less than ten and not more than thirty days
42 thereafter. Any scheduled hearing may be continued by
43 the racing commission upon its own motion or for good
44 cause shown by the person demanding the hearing.

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

51 (f) Any such hearing shall be conducted by a quorum
52 of the racing commission. For the purpose of conducting
53 any such hearing, any member of the racing commission
54 shall have the power and authority to issue subpoenas
55 and subpoenas duces tecum as provided for in section
56 six of this article. Any such subpoenas and subpoenas
57 duces tecum shall be issued and served within the time,
58 for the fees and shall be enforced, as specified in section
59 one, article five of said chapter twenty-nine-a, and all
60 of the said section one provisions dealing with subpoenas
61 and subpoenas duces tecum shall apply to subpoenas
62 and subpoenas duces tecum issued for the purpose of a
63 hearing hereunder.

64 (g) At any such hearing the person who demanded
65 the same may represent such person's own interests or
66 be represented by an attorney at law admitted to prac-
67 tice before any circuit court of this state. Upon request
68 by the racing commission, it shall be represented at any
69 such hearing by the attorney general or his assistants
70 without additional compensation. The racing commission,
71 with the written approval of the attorney general, may

72 employ special counsel to represent the racing commis-
73 sion at any such hearing.

74 (h) After any such hearing and consideration of all
75 of the testimony, evidence and record in the case, the
76 racing commission shall render its decision in writing.
77 The written decision of the racing commission shall be
78 accompanied by findings of fact and conclusions of law
79 as specified in section three, article five, chapter twenty-
80 nine-a of this code, and a copy of such decision and
81 accompanying findings and conclusions shall be served
82 by certified mail, return receipt requested, upon the
83 person demanding such hearing, and his attorney of
84 record, if any.

85 (i) The decision of the racing commission shall be
86 final unless reversed, vacated or modified upon judicial
87 review thereof in accordance with the provisions of
88 section seventeen of this article.

**§19-23-17. Judicial review; appeal to supreme court of appeals;
legal representation for racing commission.**

1 Any person adversely affected by a decision of the
2 racing commission rendered after a hearing held in ac-

3 cordance with the provisions of section sixteen of this
4 article shall be entitled to judicial review thereof. All
5 of the pertinent provisions of section four, article five,
6 chapter twenty-nine-a of this code shall apply to and
7 govern such judicial review with like effect as if the
8 provisions of said section four were set forth in this
9 section, except that execution of a decision of suspension
10 or revocation of a license shall be stayed or suspended
11 pending a final judicial determination, and except that
12 execution of a decision of suspension or revocation of a
13 permit shall not be stayed or suspended pending a final
14 judicial determination.

15 The judgment of the circuit court shall be final unless
16 reversed, vacated or modified on appeal to the supreme
17 court of appeals in accordance with the provisions of
18 section one, article six, chapter twenty-nine-a of this code.

19 Legal counsel and services for the racing commission
20 in all appeal proceedings in any circuit court and the
21 supreme court of appeals shall be provided by the attorney
22 general or his assistants and in any circuit court by
23 the prosecuting attorney of the county as well, all with-

24 out additional compensation. The racing commission,
25 with the written approval of the attorney general, may
26 employ special counsel to represent the racing commis-
27 sion at any such appeal proceedings.

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

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

1 (a) No person shall construct and establish a horse
2 race track where horse race meetings are to be held or
3 conducted and the pari-mutuel system of wagering per-
4 mitted or conducted without a construction permit issued
5 by the racing commission in accordance with the provi-
6 sions of this article.

7 (b) Any person desiring to obtain a construction per-
8 mit shall file with the racing commission an application
9 therefor. The racing commission shall prescribe blank
10 forms to be used in making such application. Such ap-
11 plication shall disclose, but not be limited to, the fol-
12 lowing:

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

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

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

24 (4) Whether the applicant, any partner, member, offi-
25 cer or director has previously applied for a construction
26 permit under the provisions of this article or for a simi-
27 lar construction permit in this or any other state, and if
28 so, whether such construction permit was issued or re-
29 fused;

30 (5) The name and address of any person who has
31 agreed to lend the applicant money for use in connection
32 with such proposed horse race track;

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

35 (7) The county where the proposed horse race track
36 is to be constructed and established, and if such pro-
37 posed horse race track is to be constructed and estab-
38 lished across county lines, the identification of each such
39 county;

40 (8) Plans showing, in such detail as the racing com-
41 mission may require, the proposed horse race track and
42 all buildings and improvements to be used in connection
43 therewith; and

44 (9) Such other information as the racing commission
45 may reasonably require which may include information
46 relating to any criminal record of the applicant, if an
47 individual, or of each partner or member, if a partner-
48 ship, firm or association, or of each officer and director,
49 if a corporation.

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

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

1 (a) Upon the basis of the application and all other
2 information before it, the racing commission shall make
3 and enter an order granting tentative approval of the
4 application if it finds:

5 (1) That the applicant intends to proceed in good
6 faith to construct and establish a horse race track com-
7 plying in all particulars with the law of this state, the
8 provisions of this article and any reasonable rules and
9 regulations of the racing commission;

10 (2) That the plans for such proposed horse race track
11 are adequate and have been prepared with due regard
12 to the safety of all persons who will use such horse race
13 track;

14 (3) That the applicant is financially able to complete
15 such horse race track in accordance with the plans sub-
16 mitted with such application; and

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

20 (b) Otherwise, the racing commission shall deny the
21 application and refuse to grant tentative approval thereof.
22 The racing commission shall make and enter an order to
23 that effect and all of the provisions of section sixteen
24 pertaining to the denial of any application for a license
25 and an order in connection therewith and the provisions
26 of section seventeen pertaining to judicial review of a
27 decision of the racing commission shall govern and con-
28 trol. The denial and refusal shall be final and conclusive
29 unless a hearing thereon shall be demanded pursuant to
30 the provisions of section sixteen of this article considered
31 in pari materia with the preceding sentence of this sub-
32 section (b).

33 (c) If the racing commission grants tentative approval
34 of such application, it shall prepare and publish a notice
35 to the public that the racing commission has granted
36 tentative approval of the application and that the racing
37 commission will confirm such tentative approval and issue
38 a construction permit to the applicant at the expiration
39 of sixty days from the date of the first publication of
40 such notice (which date shall be specified in said notice),

41 unless within said time a petition for a local option elec-
42 tion shall have been filed, in accordance with the pro-
43 visions of this article, with the county court of the county
44 in which any integral part of said horse race track is
45 proposed to be constructed and established. Such notice
46 shall be published as a Class II legal advertisement in
47 compliance with the provisions of article three, chapter
48 fifty-nine of this code, and the publication area for such
49 publication shall be the county in which any integral
50 part of such proposed horse race track is to be constructed
51 and is established.

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

1 A petition for a local option election on the question
2 of the proposed construction and establishment of a horse
3 race track must be signed by qualified voters residing
4 within the county equal to at least fifteen percent of the
5 qualified voters within said county at the last general
6 election. Said petition may be in any number of counter-
7 parts, but must be filed with the county court prior to
8 the expiration of the sixty-day period specified in the
9 notice published by the racing commission in accordance

10 with the provisions of section nineteen of this article.
11 Said petition shall be sufficient if in substantially the
12 following form:

13 "PETITION FOR LOCAL OPTION ELECTION CON-
14 CERNING THE PROPOSED CONSTRUCTION AND
15 ESTABLISHMENT OF A HORSE RACE TRACK IN
16COUNTY, WEST VIRGINIA

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

23 "The undersigned petition the county court to call and
24 hold a local option election as required by article twenty-
25 three, chapter nineteen of the code of West Virginia, one
26 thousand nine hundred thirty-one, as amended, upon
27 the following question: 'Shall the West Virginia Racing
28 Commission issue a construction permit authorizing the
29 construction and establishment of a horse race track
30 where horse race meetings may be held or conducted

31 and the pari-mutuel system of wagering permitted and
 32 conducted in..... County, West Virginia:

| 33 | Name | Address | Date |
|----|-------|---------|-------|
| 34 | | | |
| 35 | | | |
| 36 | | | |

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

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

1 (a) Upon the timely filing of a proper petition for a
 2 local option election in accordance with the provisions
 3 of section twenty of this article, the county court of the
 4 county in which all or any integral part of a proposed
 5 horse race track is to be constructed and established is
 6 hereby authorized to call a local option election for the
 7 purpose of determining the will of the qualified voters
 8 within said county as to the construction and establish-
 9 ment of all or any integral part of such horse race track
 10 within said county. Upon the timely filing of a proper
 11 petition as aforesaid, the county court shall enter an

12 order calling for a local option election and providing
13 that the same shall be held at the same time and as a
14 part of the next primary or general election to be held
15 in said county. A copy of the order so entered by the
16 county court shall be served upon the racing commission
17 and the racing commission shall take no further action
18 in connection with the issuance of such construction
19 permit until said local option election shall be held. Said
20 county court shall give notice of such local option elec-
21 tion by publication of such notice as a Class II-0 legal
22 advertisement in compliance with the provisions of article
23 three, chapter fifty-nine of this code, and the publication
24 area for such publication shall be the county. Such
25 notice shall be so published within fourteen consecutive
26 days next preceding the date of said election.

27 (b) The local option election ballots, or ballot labels
28 where voting machines are used, shall have printed there-
29 on substantially the following:

30 "Shall the West Virginia Racing Commission issue a
31 construction permit authorizing the construction and
32 establishment of a horse race track where horse race

33 meetings may be held or conducted and the pari-mutuel
34 system of wagering permitted and conducted?

35 ☐ Yes ☐ No

36 (Place a cross mark in the square opposite your
37 choice.)”

38 (c) Each individual qualified to vote in said county
39 at said primary or general election shall likewise be
40 qualified to vote at the local option election. The elec-
41 tion officers appointed and qualified to serve as such at
42 said primary or general election shall conduct said local
43 option election in connection with and as a part of said
44 primary or general election. The votes in said local
45 option election shall be counted and returns made by
46 the election officers and the results certified by the
47 commissioners of election to said county court which
48 shall canvass the ballots, all in accordance with the laws
49 of this state relating to primary and general elections
50 insofar as the same are applicable. The county court
51 shall, without delay, canvass the votes cast at such local
52 option election and certify the results thereof to the rac-
53 ing commission.

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

1 (a) The racing commission shall, after the certifica-
2 tion of the results of such local option election, issue
3 such construction permit if a majority of the legal votes
4 cast at such election were in favor of the issuance of a
5 construction permit. If a majority of the legal votes
6 cast at such election were opposed to the issuance of a
7 construction permit, the commission shall not issue a
8 construction permit.

9 (b) A construction permit issued as aforesaid shall
10 remain valid only for a three-month period, except that
11 if the racing commission is satisfied that the construction
12 permit holder has in good faith started and is continuing
13 construction of the proposed horse race track, the racing
14 commission may extend the construction permit for ad-
15 ditional successive three-month periods, but in no event
16 shall the aggregate time of such construction permit
17 exceed a period of twenty-four months from the date of
18 the issuance of the construction permit.

19 (c) No construction permit which may be or has been
20 issued under the provisions of this article or the former
21 provisions of this article shall be transferred or assigned
22 in any manner whatever without the written consent of
23 the racing commission.

§19-23-23. Further elections restricted.

1 When a local option election in accordance with the pro-
2 visions of this article or the former provisions of this
3 article shall have been held in a county, another such
4 election shall not be held in said county for a period
5 of five years, and within that time the racing commis-
6 sion shall not accept or act upon any application for
7 any other construction permit within said county. In
8 the event a horse race track shall be constructed in a
9 county pursuant to a construction permit issued by
10 the racing commission in accordance with the provi-
11 sions of this article, no local option election shall there-
12 after be held as to any horse race track constructed and
13 established pursuant to such construction permit.

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

1 Nothing contained in sections eighteen through twenty-

2 three of this article shall apply to any horse race track
3 heretofore constructed and established in this state and
4 at which horse race meetings have been held or con-
5 ducted by the owners or operators thereof under and
6 pursuant to licenses issued by the racing commission
7 in accordance with the provisions of this article or the
8 former provisions of this article. The construction and
9 establishment of any new or additional horse race track
10 within a county in which a horse race track has hereto-
11 fore been constructed and established and operated under
12 licenses issued by the racing commission, whether by
13 the persons owning and operating such existing horse
14 race track or others, shall be subject to all of the pro-
15 visions of this article.

PART XII. INJUNCTIVE RELIEF.

§19-23-25. Actions to enjoin violations.

1 Whenever it appears to the racing commission that any
2 person has been or is violating or is about to violate
3 any provision of this article, any reasonable rule and
4 regulation promulgated hereunder or any order or final
5 decision of the racing commission, the racing commission

6 may apply in the name of the state to the circuit court
7 of the county in which the violation or violations or
8 any part thereof has occurred, is occurring or is about to
9 occur, or the judge thereof in vacation, for an injunction
10 against such person and any other persons who have been,
11 are or are about to be, involved in any practices, acts or
12 omissions, so in violation, enjoining such person or per-
13 sons from any such violation or violations. Such applica-
14 tion may be made and prosecuted to conclusion
15 whether or not any such violation or violations have re-
16 sulted or shall result in prosecution or conviction under
17 the provisions of section twenty-six of this article.

18 Upon application by the racing commission, the circuit
19 courts of this state may by mandatory or prohibitory in-
20 junction compel compliance with the provisions of this
21 article, the reasonable rules and regulations promulgated
22 hereunder and all orders and final decisions of the racing
23 commission. The court may issue a temporary injunction
24 in any case pending a decision on the merits of any ap-
25 plication filed.

26 The judgment of the circuit court upon any application
27 permitted by the provisions of this section shall be final

28 unless reversed, vacated or modified on appeal to the
29 supreme court of appeals. Any such appeal shall be sought
30 in the manner and within the time provided by law for
31 appeals from circuit courts in other civil actions.

32 The racing commission shall be represented in all such
33 proceedings by the attorney general or his assistants and
34 in such proceedings in the circuit court by the prose-
35 cuting attorneys of the several counties as well, all with-
36 out additional compensation. The racing commission,
37 with the written approval of the attorney general, may
38 employ special counsel to represent the racing commis-
39 sion in any such proceedings.

PART XIII. OFFENSES AND PENALTIES.

§19-23-26. Offenses and penalties.

1 (a) Any person holding or conducting, or assisting, aid-
2 ing or abetting in the holding or conducting, of any horse
3 race meeting at which horse racing and the pari-mutuel
4 system of wagering on the same is permitted or conduct-
5 ed, without a license issued by the racing commission,
6 which license remains unexpired, unsuspended and un-
7 revoked, shall be guilty of a misdemeanor, and, upon

8 conviction, shall be punished by a fine of not less than
9 one thousand dollars for each day of such unauthorized
10 horse race meeting, or by imprisonment in jail not exceed-
11 ing one year, or by both such fine and imprisonment, in
12 the discretion of the court: *Provided*, That no conviction
13 shall be had or punishment imposed upon any licensee,
14 whose license has been suspended or revoked, for holding
15 or conducting a horse race meeting while execution of the
16 order of suspension or revocation is stayed or suspended
17 as provided in this article.

18 (b) Any person violating any provision of section four
19 or section five of this article shall be guilty of a misde-
20 meanor, and, upon conviction, shall be punished by a fine
21 of not less than five hundred dollars nor more than one
22 thousand dollars, or by imprisonment in jail for not less
23 than six months nor more than one year, or by both such
24 fine and imprisonment, in the discretion of the court. The
25 venue of any such offense shall be in the county, or any
26 one of the counties, wherein the person violating said
27 section four or section five carries out any duties of, or
28 performs any work for, the racing commission, which con-
29 stitute the basis of the charge or complaint.

30 (c) Any person violating any provision of subsection
31 (b) of section two of this article shall be guilty of a mis-
32 demeanor, and, upon conviction, shall be punished by a
33 fine of not less than one hundred dollars nor more than
34 five hundred dollars, or by imprisonment in jail for not
35 less than one month nor more than two months, or by
36 both such fine and imprisonment, in the discretion of the
37 court. The venue of any such offense shall be in the
38 county, or any one of the counties, wherein the person
39 violating said subsection (b) carries out any duties of, or
40 performs any work for, the racing commission, which
41 constitute the basis of the charge or complaint.

42 (d) False swearing before the racing commission on
43 the part of any witness shall be deemed perjury and shall
44 be punished as such.

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

§19-23-27. Repealer.

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

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

1 All rules and regulations promulgated by the racing
2 commission and in effect on the effective date of this
3 article shall remain in full force and effect until super-
4 seded, or except as amended or repealed, in accordance
5 with the provisions of this article.

6 Any license or permit issued by the racing commission
7 under the former provisions of article twenty-three of
8 this chapter, which has not expired and which has not
9 been suspended or revoked prior to the effective date of
10 this article, shall be governed by the provisions of this
11 article and shall remain valid until the expiration thereof,
12 unless such license or permit is sooner suspended or
13 revoked in accordance with the provisions of this article.

PART XV. SEVERABILITY.

§19-23-29. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held uncon-
3 stitutional or invalid, such unconstitutionality or inva-
4 lidity shall not affect other provisions or applications of

5 the article, and to this end the provisions of this article

6 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 Senate.

To take effect from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Land G. Jackson
President of the Senate

Loor F. Boiansky
Speaker House of Delegates

The within disapproved this the 17th
day of March, 1969.

Archd. Shreve Jr.
Governor



PRESENTED TO THE

GOVERNOR RECEIVED

Date 3/14/69

Time 2:20 p.m. Mar 17 9 05 PM '69

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA