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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1975

ENROLLED

SENATE BILL NO. 58

(By Mr. Kusin, et al)

PASSED November 3, 1975

In Effect ninety days from Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 11/24/75

ENROLLED

Senate Bill No. 58

(By MR. KUSIC, MR. SHARPE, MR. STEPTOE, MR. ROGERS,
MR. SAVILLA, MR. DAVIS, MR. NEELEY, MISS HERNDON
and MR. NELSON)

[Passed November 3, 1975; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-six, article **twenty-three**, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, **relating** to horse and dog racing; relating generally to the authorization and regulation of dog racing; relating to the West Virginia racing commission, its organization, operation and increased duties; providing for the regulation and control of horse and dog racing; requiring a license to hold or conduct a horse or dog race meeting; requiring a permit to engage in certain types of employment in connection with a horse or dog race meeting and establishing certain citizenship and residency requirements; providing definitions, adding definition of dog racing; establishing qualifications for members of the West Virginia racing commission; specifying and increasing the powers and authorities of the West Virginia racing commission; providing for the 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, and other racing officials to impose reasonable fines or other sanctions and stewards to rule individuals off the grounds of any horse or dog racetrack;

relating to the compensation and increasing the same of the commissioners; relating to the expenses of the members of the racing commission; relating to the compensation and expenses of other employees of the West Virginia racing commission; relating to the purses in connection with horse or dog 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 or dog races held or conducted under the regulation and control of the West Virginia racing commission and excepting such wagering from the gaming statutes; prohibiting minors from wagering at any horse or dog racetrack; establishing the maximum commission which may be deducted from pari-mutuel pools by licensees of the West Virginia racing commission; providing for a specified deduction from the commission to establish regular purses for thoroughbred racing; providing for certain payments out of the maximum commission to be paid to counties in which thoroughbred or harness racetracks are located; establishing different maximum commissions which may be deducted from pari-mutuel pools resulting from thoroughbred racing, harness racing and dog racing; imposing a daily license tax for thoroughbred racing, harness racing and dog racing; imposing different pari-mutuel pool taxes on thoroughbred racing, harness racing and dog racing conducted under the regulation and control of the West Virginia racing commission; relating to the remitting of all daily license taxes and the pari-mutuel pool taxes to the West Virginia racing commission; relating to the payment of such taxes to a special account to fund teachers salaries; providing that such license tax is in lieu of all other taxes except a license tax which may be imposed by a municipality on a horse racetrack located within such municipality; relating to the financial responsibility of the licensees of the West Virginia racing commission; relating to the retention and ultimate disposition of funds for the payment of outstanding and unredeemed pari-mutuel tickets; establishing procedures

for making such tickets unredeemable and providing for certain payments from the resulting funds; authorizing the West Virginia racing commission to hold hearings on the issuance, suspension or revocation of licenses and permits; providing expressly 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; relating to the construction and establishment of horse or dog racetracks for horse or dog race meetings; requiring construction permit therefor; relating 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 or dog race-tracks; relating to criminal offenses and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-six, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

PART 1. LICENSE REQUIRED FOR HORSE AND DOG RACING AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH; PERMITS REQUIRED FOR CERTAIN HORSE AND DOG RACETRACK POSITIONS.

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

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

3 mitted for any purse unless such association possesses a
4 license therefor from the West Virginia racing commis-
5 sion and complies with the provisions of this article and
6 all reasonable rules and regulations of such racing com-
7 mission.

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

**§19-23-2. Permits required for horse and dog racetrack posi-
 tions; residency 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 or dog racing for a
4 purse or a horse or dog race meeting at any licensee's
5 horse or dog racetrack, place or enclosure, where the pari-
6 mutuel system of wagering upon the results of such horse
7 or dog racing is permitted or conducted, as a horse owner,
8 dog owner, jockey, apprentice jockey, exercise boy, kennel
9 keeper, trainer, groom, plater, stable foreman, valet,
10 veterinarian, agent, clerk of the scales, starter, assistant
11 starter, timer, judge or pari-mutuel employee, or in any
12 other capacity specified in reasonable rules and regula-
13 tions of the racing commission unless such person pos-
14 sesses a permit therefor from the West Virginia racing
15 commission and complies with the provisions of this
16 article and all reasonable rules and regulations of such
17 racing commission.

18 (b) At least eighty percent of the individuals employed
19 by a licensee at any horse or dog race meeting must be
20 citizens and residents of this state and must have been
21 such citizens and residents for at least one year. For the

22 purpose of this subsection, citizens and residents of this
23 state shall be construed to mean individuals who maintain
24 a permanent place of residence in this state, and have
25 been bona fide residents and citizens of this state for a
26 period of one year immediately prior to the filing of their
27 applications for employment. The provisions of this
28 subsection shall not apply to individuals engaged in the
29 construction of a horse or dog racetrack or in the equip-
30 ping of same, nor to racing officials designated by the
31 racing commission or racing officials designated by the
32 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" means any type of horse racing,
4 including, but not limited to, thoroughbred racing and
5 harness racing;

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

9 (3) "Harness racing" means horse racing in which the
10 horses participating therein are harnessed to a sulky, car-
11 riage or other vehicle, and shall not include any form of
12 horse racing in which the horses are mounted by jockeys;

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

16 (5) "Dog racing" means any type of dog racing, in-
17 cluding, but not limited to greyhound racing;

18 (6) "Purse" means any purse, stake or award for which
19 a horse or dog race is run;

20 (7) "Racing association" or "person" means any indi-
21 vidual, partnership, firm, association, corporation or other
22 entity or organization of whatever character or descrip-
23 tion;

24 (8) "Applicant" means any racing association making

25 application for a license under the provisions of this ar-
26 ticle, or any person making application for a permit under
27 the provisions of this article, or any person making appli-
28 cation for a construction permit under the provisions of
29 this article, as the case may be;

30 (9) "License" means the license required by the pro-
31 visions of section one of this article;

32 (10) "Permit" means the permit required by the pro-
33 visions of section two of this article;

34 (11) "Construction permit" means the construction per-
35 mit required by the provisions of section eighteen of this
36 article;

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

40 (13) "Permit holder" means any person holding a per-
41 mit required by the provisions of section two of this ar-
42 ticle and issued under the provisions of this article;

43 (14) "Construction permit holder" means any person
44 holding a construction permit required by the provisions
45 of section eighteen of this article and issued under the
46 provisions of this article;

47 (15) "Hold or conduct" includes "assist, aid or abet in
48 holding or conducting";

49 (16) "Racing commission" means the West Virginia
50 racing commission;

51 (17) "Stewards" means the steward or stewards repre-
52 senting the racing commission, the steward or stewards
53 representing a licensee and any other steward or stewards,
54 whose duty it shall be to supervise any horse or dog race
55 meeting, all as may be provided by reasonable rules and
56 regulations of the racing commission, and such reasonable
57 rules and regulations shall specify the number of stewards
58 to be appointed, the method and manner of their appoint-
59 ment and their powers, authority and duties;

60 (18) "Pari-mutuel" means a mutuel or collective pool
61 that can be divided among those who have contributed
62 their wagers to one central agency, the odds to be reck-
63 oned in accordance to the collective amounts wagered
64 upon each contestant running in a horse or dog race upon

65 which the pool is made, but the total to be divided among
66 the first three contestants on the basis of the number of
67 wagers on these;

68 (19) "Pool" means a combination of interests in a joint
69 wagering enterprise, or a stake in such enterprise;

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

72 (21) "To the dime" means that wagers shall be figured
73 and paid to the dime; and

74 (22) "Code" means the code of West Virginia, one
75 thousand nine hundred thirty-one, as heretofore and here-
76 after amended.

**§19-23-4. West Virginia racing commission continued as a
public corporation; composition; terms; vacancies;
qualifications, compensation and expenses of
members; principal office; meetings; election of
officers; quorum; inspection of records; 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
7 members, not more than two of whom shall belong to
8 the same political party, to be appointed by the gov-
9 ernor by and with the advice and consent of the Senate.
10 The term of office for the members of such racing com-
11 mission shall be four years, and until their successors
12 have been appointed and have qualified, and members of
13 the racing commission may serve any number of suc-
14 cessive terms. The members of the racing commission
15 in office on the effective date of this article shall, unless
16 removed by the governor after the effective date of this
17 article, continue to serve until their terms expire and
18 until their successors have been appointed and have
19 qualified. Any vacancy in the office of a member of the
20 racing commission shall be filled by appointment by
21 the governor for the unexpired term of the member
22 whose office shall be vacant. No individual shall be

23 eligible for appointment to or to serve upon the racing
24 commission:

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

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

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

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

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

48 (d) The racing commission shall have its principal
49 office at the seat of government, and shall meet annually
50 at its principal office in the month of January, and at
51 such other times and places as shall be designated by
52 its chairman. At such annual meeting the racing com-
53 mission shall elect from its membership a chairman and
54 such other officers as may be desired. Other meetings
55 of the racing commission may be called by the chair-
56 man on such notice to the other members as may be
57 prescribed by the racing commission.

58 (e) A majority of the members of the racing com-
59 mission shall constitute a quorum for the transaction
60 of its business or the exercise of any of its powers and
61 authority. No individual not a bona fide member of the
62 racing commission shall vote upon or participate in the

63 deliberations of the racing commission on any matter
64 which may come before it. All racing commission rec-
65 ords, except as otherwise provided by law, shall be open
66 to public inspection during regular office hours.

67 (f) As soon as possible after the close of each calen-
68 dar year, the racing commission shall submit to the
69 governor a report of the transactions of the racing com-
70 mission during the preceding calendar year.

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

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

1 (a) The racing commission shall appoint a racing
2 secretary to represent the racing commission and such
3 racing secretary shall possess such powers and authority
4 and perform such duties as the racing commission may
5 direct or prescribe. The racing secretary shall preserve at
6 the racing commission's principal office all books, maps,
7 records, documents and other papers of the racing
8 commission. 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
11 racing commission. The racing commission may also em-
12 ploy, direct and define the duties of an assistant racing
13 secretary and such stenographers, clerks and other office
14 personnel 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, the
17 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
21 conducted under the provisions of this article, veterin-
22 arians, inspectors, accountants, guards and all other em-
23 ployees deemed by the racing commission to be essential
24 in connection with any horse or dog race meeting. The

25 director of audit shall be a certified public accountant or
26 experienced public accountant.

27 (c) No individual shall knowingly be employed or be
28 continued in employment by the racing commission in any
29 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 racetrack where horse or dog race meetings may be held,
33 including, 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 and
45 qualified for such position by the generally accepted
46 practices and customs of horse or dog racing in the United
47 States.

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

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

65 itemized account thereof, under oath, be first filed with
66 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, all
3 dog race meetings and all persons involved in the holding
4 or conducting of horse or dog race meetings, and, in
5 this regard, it shall have plenary power and authority:

6 (1) To investigate applicants and determine the eligi-
7 bility of such applicants for a license or permit or con-
8 struction 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
14 this article and the powers and authority conferred and
15 the duties imposed upon the racing commission under
16 the provisions of this article, including, but not limited
17 to, reasonable rules and regulations under which all
18 horse races, dog races, horse race meetings and dog race
19 meetings shall be held and conducted, all of which rea-
20 sonable rules and regulations shall be promulgated in
21 accordance with the provisions of article three, chapter
22 twenty-nine-a of this code;

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

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

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

31 (7) To enter the office, horse racetrack, dog race-
32 track, kennel, facilities and other places of business of
33 any licensee to determine whether the provisions of this
34 article and its reasonable rules and regulations are being

35 complied with, and for this purpose, the racing com-
36 mission, its racing secretary, representatives and em-
37 ployees may visit, investigate and have free access to
38 any such office, horse racetrack, dog racetrack, kennel,
39 facilities and other places of business;

40 (8) To investigate alleged violations of the provisions
41 of this article, its reasonable rules and regulations, orders
42 and final decisions and to take appropriate disciplinary
43 action against any licensee or permit holder or construc-
44 tion permit holder for the violation thereof or institute
45 appropriate legal action for the enforcement thereof or
46 take such disciplinary action and institute such legal
47 action;

48 (9) By reasonable rules and regulations, to authorize
49 stewards, starters and other racing officials to impose
50 reasonable fines or other sanctions upon any person
51 connected with or involved in any horse or dog racing
52 or any horse or dog race meeting; and to authorize
53 stewards to rule off the grounds of any horse or dog
54 racetrack any tout, bookmaker or other undesirable indi-
55 vidual deemed inimicable to the best interests of horse
56 and dog racing or the pari-mutuel system of wagering
57 in connection therewith;

58 (10) To require at any time the removal of any
59 racing official or racing employee of any licensee, for
60 the violation of any provision of this article, any reason-
61 able rule and regulation of the racing commission or
62 for any fraudulent practice;

63 (11) To acquire, establish, maintain and operate, or
64 to provide by contract for the maintenance and operation
65 of, a testing laboratory and related facilities, for the
66 purpose of conducting saliva, urine and other tests on
67 the horse or dog or horses or dogs run or to be run in
68 any horse or dog race meeting, and to purchase all equip-
69 ment and supplies deemed necessary or desirable in
70 connection with the acquisition, establishment, main-
71 tenance and operation of any such testing laboratory
72 and related facilities and all such tests;

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

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

82 (14) To issue subpoenas for the attendance of wit-
83 nesses and subpoenas duces tecum for the production
84 of any books, records and other pertinent documents,
85 and to administer oaths and affirmations to such wit-
86 nesses, whenever, in the judgment of the racing com-
87 mission, it is necessary to do so for the effective dis-
88 charge of its duties under the provisions of this article;

89 (15) To keep accurate and complete records of its
90 proceedings and to certify the same as may be appro-
91 priate; and

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

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

PART V. LICENSE AND PERMIT PROCEDURES.

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

1 (a) Any racing association desiring to hold or conduct
2 a horse or dog race meeting, where the pari-mutuel system
3 of wagering is permitted and conducted, during any cal-
4 endar year, shall file with the racing commission an appli-
5 cation for a license to hold or conduct such horse or dog
6 race meeting. A separate application shall be filed for
7 each separate license sought for each horse or dog race
8 meeting which such applicant proposes to hold or conduct.
9 The racing commission shall prescribe blank forms to be
10 used in making such application. Such application shall
11 be 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
15 and 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 member
18 thereof, the name of the partnership, firm or association
19 and its post-office address;

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

25 (4) The dates such applicant intends to hold or conduct
26 such horse or dog race meeting (which shall be successive
27 weekdays, excluding Sundays);

28 (5) The location of the horse or dog racetrack, place or
29 enclosure where such applicant proposes to hold or con-
30 duct such horse or dog race meeting;

31 (6) Whether the applicant, any partner, member, offi-
32 cer or director has previously applied for a license under
33 the provisions of this article or for a similar license in this
34 or any other state, and if so, whether such license was
35 issued or refused, and, if issued, whether it was ever sus-
36 pended 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 indi-
45 vidual, or if the applicant is a partnership, firm, associ-
46 ation 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 or dog race meeting for which a license is sought. In
53 the event the applicant is not able to furnish such satis-

54 factory evidence of such applicant's ability to pay such
55 expenses and fees, the racing commission may require
56 bond or other adequate security before the requested li-
57 cense is issued.

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

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

1 (a) The racing commission shall promptly consider
2 any application for a license or permit, as the case may
3 be. Based upon such application and all other informa-
4 tion before it, the racing commission shall make and
5 enter an order either approving or denying such appli-
6 cation. The application shall be denied for any reason
7 specified in subsection (b) of this section. If an applica-
8 tion for a license is approved, the racing commission
9 shall issue a license to conduct a horse or dog race meet-
10 ing, and shall designate on the face of such license the
11 kind or type of horse or dog racing for which the same
12 is issued, the racing association to which the same is
13 issued, the dates upon which such horse or dog race
14 meeting is to be held or conducted (which shall be suc-
15 cessive weekdays, or weeknights, excluding Sundays),
16 the location of the horse or dog racetrack, place or en-
17 closure where such horse or dog race meeting is to be
18 held or conducted and such other information as the
19 racing commission shall deem proper. If an application
20 for a permit is approved, the racing commission shall
21 issue a permit and shall designate on the face of such

22 permit such information as the racing commission shall
23 deem proper.

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

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

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

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

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

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

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

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

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

61 (9) In the case of an application for a permit, is
62 unqualified to perform the duties required for the per-
63 mit sought; or

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

67 (c) In issuing licenses and fixing dates for horse or
68 dog race meetings at the various horse racetracks and
69 dog racetracks in this state, the racing commission shall
70 consider the horse racing circuits and dog racing circuits
71 with which the horse racetracks and dog racetracks in
72 this state are associated or contiguous to, and shall also
73 consider dates which are calculated to increase the
74 tax revenues accruing from horse racing and dog
75 racing.

76 (d) A license issued under the provisions of this
77 article is neither transferable nor assignable to any other
78 racing association and shall not permit the holding or
79 conducting of a horse or dog race meeting at any horse
80 or dog racetrack, place or enclosure not specified thereon.
81 However, if the specified horse or dog racetrack, place
82 or enclosure becomes unsuitable for the horse or dog
83 race meeting because of flood, fire or other catastrophe,
84 or cannot be used for any reason, the racing commission
85 may, upon application, authorize the horse or dog race
86 meeting, or any remaining portion thereof, to be
87 conducted at any other racetrack, place or enclosure
88 available for that purpose, provided that the owner of
89 such racetrack, place or enclosure willingly consents to
90 the use thereof.

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

94 (f) Each permit issued under the provisions of this
95 section shall be for the period ending December thirty-
96 first of the year for which it was issued, and shall be
97 valid at all horse or dog race meetings during the period
98 for which it was issued, unless it be sooner suspended
99 or revoked in accordance with the provisions of this
100 article. A permit issued under the provisions of this

101 article is neither transferable nor assignable to any other
102 person.

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

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

1 (a) The pari-mutuel system of wagering upon the
2 results of any horse or dog race at any horse or dog race
3 meeting conducted or held by any licensee is hereby
4 authorized, if and only if such pari-mutuel wagering is
5 conducted by such licensee within the confines of such
6 licensee's horse racetrack or dog racetrack, and the pro-
7 visions of section one, article ten, chapter sixty-one of this
8 code, relating to gaming, shall not apply to the pari-
9 mutuel system of wagering in manner and form as pro-
10 vided for in this article at any horse or dog race meeting
11 within this state where horse or dog racing shall be per-
12 mitted for any purse by any licensee. A licensee shall
13 permit or conduct only the pari-mutuel system of wager-
14 ing within the confines of such licensee's racetrack at
15 which any horse or dog race meeting is conducted or
16 held.

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

19 (1) The commission deducted by any licensee from the
20 pari-mutuel pools on thoroughbred horse racing shall not
21 exceed seventeen and one-fourth percent of the total of
22 such pari-mutuel pools for the day. Out of such commis-
23 sion, the licensee shall pay the pari-mutuel pools tax
24 provided for in subsection (b), section ten of this article,
25 and shall deposit five and seventy-five one hundredths
26 percent of such pari-mutuel pools into a special fund to be
27 established by the licensee and to be used for the pay-
28 ment of regular purses offered for thoroughbred racing by
29 the licensee, and shall pay one tenth of one percent of
30 such pari-mutuel pools into the general fund of the

31 county commission of the county in which the racetrack
32 is located, except if within a municipality, then to such
33 municipal general fund. The remainder of the commission
34 shall be retained by the licensee.

35 (2) The commission deducted by any licensee from the
36 pari-mutuel pools on harness racing shall not exceed
37 seventeen and one-half percent of the total of such
38 pari-mutuel pools for the day. Out of such commission,
39 the licensee shall pay the pari-mutuel pools tax provided
40 for in subsection (c), section ten of this article, and shall
41 pay one tenth of one percent into the general fund of the
42 county commission of the county in which the racetrack is
43 located, except if within a municipality, then to such
44 municipal general fund. The remainder of the commission
45 shall be retained by the licensee.

46 (3) The commission deducted by any licensee from the
47 pari-mutuel pools on dog racing shall not exceed sixteen
48 percent of the total of such pari-mutuel pools for the day.
49 Out of such commission, the licensee shall pay the pari-
50 mutuel pools tax provided for in subsection (d), section
51 ten of this article. The remainder of the commission shall
52 be retained by the licensee.

53 (c) In addition to any such commission, a licensee of
54 horse race or dog race meetings shall also be entitled to
55 retain the legitimate breakage, which shall be made and
56 calculated to the dime.

57 (d) The director of audit, and any other auditors
58 employed by the racing commission who shall also be
59 certified public accountants or experienced public
60 accountants, shall have free access to the space or
61 enclosure where the pari-mutuel system of wagering is
62 conducted or calculated at any horse or dog race meeting
63 for the purpose of ascertaining whether or not the
64 licensee is deducting and retaining only a commission as
65 provided in this section and is otherwise complying with
66 the provisions of this section. They shall also, for the
67 same purposes only, have full and free access to all
68 records and papers pertaining to such pari-mutuel system
69 of wagering, and shall report to the racing commission in
70 writing, under oath, whether or not the licensee has

71 deducted and retained any commission in excess of that
72 permitted under the provisions of this section or has
73 otherwise failed to comply with the provisions of this
74 section.

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

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

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

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

19 (b) Any racing association licensed by the racing
20 commission to conduct thoroughbred racing and permit-
21 ting and conducting pari-mutuel wagering under the pro-
22 visions of this article shall, in addition to the aforemen-
23 tioned daily license tax, pay to the racing commission,
24 from the commission deducted each day by such licensee
25 from the pari-mutuel pools on thoroughbred racing, as a
26 tax, five and three-fourths percent of the total contri-

27 bution to all such pari-mutuel pools conducted or made
28 at any and every thoroughbred race meeting of the li-
29 censee licensed under the provisions of this article:
30 *Provided*, That any such racing association operating a
31 horse racetrack in this state having an average daily pari-
32 mutuel pool on horse racing of one hundred fifty thousand
33 dollars or less, per day, for the race meetings, of the pre-
34 ceding calendar year, shall, in lieu of payment of the five
35 and three-fourths percent pari-mutuel pool tax as afore-
36 said be permitted to conduct pari-mutuel wagering at
37 such horse racetrack on the basis of a daily pari-mutuel
38 pool tax fixed as follows: On the daily pari-mutuel pool
39 not exceeding one hundred fifty thousand dollars the
40 daily pari-mutuel pool tax shall be four thousand dollars
41 plus five and three-fourths percent of the daily pari-
42 mutuel pool, if any, in excess of one hundred fifty thou-
43 sand dollars.

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

58 (d) Any racing association licensed by the racing
59 commission to conduct dog racing and permitting and
60 conducting pari-mutuel wagering under the provisions of
61 this article shall, in addition to the aforementioned daily
62 license tax, pay to the racing commission, from the
63 commission deducted each day, by such licensee from the
64 pari-mutuel pools on dog racing, as a tax, four percent of
65 the first fifty thousand dollars or any part thereof of such
66 pari-mutuel pools, five percent of the next fifty thousand

67 dollars of such pari-mutuel pools, six percent of the next
68 one hundred thousand dollars of such pari-mutuel pools,
69 seven percent of the next one hundred fifty thousand
70 dollars of such pari-mutuel pools, and eight percent of all
71 over three hundred fifty thousand dollars wagered each
72 day.

73 (e) All daily license and pari-mutuel pools tax
74 payments required under the provisions of this section
75 shall be made to the racing commission or its agent after
76 the last race of each day of each horse or dog race meet-
77 ing, and the pari-mutuel pools tax payments shall be made
78 from all contributions to all pari-mutuel pools to each and
79 every race of the day.

**§19-23-11. Revenues from horse racing and dog racing to be
paid into the general revenue fund; revenues
from horse racing and dog racing to be paid into
special account to fund teachers salaries.**

1 (a) All revenues collected pursuant to the provisions
2 of this article as license taxes or pari-mutuel pool taxes
3 on horse racing and dog racing shall be paid by the racing
4 commission to the state treasurer and be deposited by
5 him to the credit of the general revenue fund of the
6 state. Remittance of all such collected and accrued
7 revenues shall be made by the racing commission to the
8 state treasurer at least one time during each thirty-day
9 period of the racing season, and a final remittance as to
10 any particular horse race meeting shall be made within
11 thirty days from and after the close of each such horse
12 race meeting. The provisions of this subsection shall
13 expire June 30, 1976.

14 (b) Effective July 1, 1976, all revenues collected pur-
15 suant to the provisions of this article as license taxes
16 or pari-mutuel pools taxes on horse racing and dog racing
17 shall be paid by the racing commission to the state
18 treasurer, who shall deposit such revenues in a special
19 account to be denominated by him. The revenues in
20 such special account shall be accumulated and used for
21 the sole purpose of providing funding for salaries for
22 professional educators. Remittance of all such collected
23 revenues shall be made by the racing commission to the

24 state treasurer at least one time during each thirty-day
25 period of each racing season, and a final remittance as
26 to any particular dog race meeting shall be made
27 within thirty days from and after the close of each such
28 dog 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, special
3 or franchise taxes of this state, and no county or mu-
4 nicipality or other political subdivision of this state shall
5 be empowered to levy or impose any license, income,
6 pari-mutuel, excise, special or franchise tax on any racing
7 association engaged in the business of conducting a horse
8 or dog race meeting at which horse or dog races are
9 run for purses under the jurisdiction of and being
10 licensed by the racing commission, or on the operation
11 or maintenance of the pari-mutuel system of wagering,
12 or on the sale of any commodity during a horse or dog
13 race meeting at which horse or dog races are run, or
14 at any such horse or dog racetrack: *Provided*, That the
15 foregoing provisions of this section shall in no way affect,
16 abridge or abolish the authority of a municipality to
17 impose the license tax authorized by the provisions of
18 section eight, article thirteen, chapter eight of this
19 code.

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

**§19-23-13. Disposition of funds for payment of outstanding
and unredeemed pari-mutuel tickets; publication
of notice; irredeemable tickets; awards to resi-
dent owners, etc., of winning horses and dogs.**

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 or dog race meeting in connection with which the
5 tickets were issued, shall be turned over by the licensee
6 to the racing commission within fifteen days after the

7 expiration of such ninety-day period, and the licensee
8 shall give such information as the racing commission
9 may require concerning such outstanding and unre-
10 deemed tickets. All such moneys shall be deposited by
11 the racing commission in a banking institution of its
12 choice in a special account to be known as "West Vir-
13 ginia Racing Commission Special Account—Unredeemed
14 Pari-Mutuel Tickets." Notice of the amount, date and
15 place of such deposit shall be given by the racing com-
16 mission, in writing, to the state treasurer. The racing
17 commission shall then cause to be published a notice
18 to the holders of such outstanding and unredeemed pari-
19 mutuel tickets, notifying them to present such tickets
20 for payment at the principal office of the racing com-
21 mission within ninety days from the date of the pub-
22 lication of such notice. Such notice shall be published
23 within fifteen days following the receipt of said moneys
24 by the commission from the licensee as a Class I legal
25 advertisement in compliance with the provisions of ar-
26 ticle three, chapter fifty-nine of this code, and the pub-
27 lication area for such publication shall be the county
28 in which such horse or dog race meeting was
29 held.

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

37 (1) To the owner of the winning horse in any horse
38 race at a horse race meeting held or conducted by any
39 licensee: *Provided*, That the owner of such horse is at
40 the time of such horse race a bona fide resident of this
41 state, a sum equal to ten percent of the purse won by
42 such horse; the commission may require proof that the
43 owner was at the time of the race, a bona fide resident
44 of this state. Upon proof by the owner that he filed a
45 personal income tax return in this state for the previous
46 two years and that he owned real or personal property
47 in this state and paid taxes in this state on said prop-

48 erty for the two previous years, he shall be presumed
49 to be a bona fide resident of this state.

50 (2) To the breeder (that is, the owner of the mare)
51 of the winning horse in any horse race at a horse race
52 meeting held or conducted by any licensee: *Provided*,
53 That such breeder was at the time such winning horse
54 was foaled a bona fide resident of this state, a sum equal
55 to ten percent of the purse won by such horse;
56 and

57 (3) To the owner of the stallion which sired the
58 winning horse in any horse race at a horse race meeting
59 held or conducted by any licensee: *Provided*, That the
60 mare which foaled such winning horse was served by
61 such stallion in this state, and the owner of such stallion
62 was at the time of such service a bona fide resident of
63 this state, a sum equal to ten percent of the purse won by
64 such horse; and

65 (4) When the moneys in the special account, known
66 as the "West Virginia Racing Commission Special Ac-
67 count—Unredeemed Pari-Mutuel Tickets" will more than
68 satisfy the requirements of subsections (b) (1) and (2)
69 of section thirteen, the West Virginia racing commis-
70 sion shall have the authority to expend the excess
71 moneys from unredeemed horse racing pari-mutuel
72 tickets as purse money in any race conditioned exclu-
73 sively for West Virginia bred or sired horses, and to
74 expend the excess moneys from unredeemed dog racing
75 pari-mutuel tickets in supplementing purses and estab-
76 lishing dog racing handicaps at the dog tracks.

77 (c) Nothing contained in this article shall prohibit
78 one person from qualifying for all or more than one
79 of the aforesaid.

80 (d) The cost of publication of the notice provided
81 for in this section shall be paid from the funds in the
82 hands of the state treasurer collected from the pari-
83 mutuel pools tax provided for in section ten of this
84 article, when not otherwise provided in the budget; but
85 no such costs shall be paid unless an itemized account
86 thereof, under oath, be first filed with the state auditor.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. Investigation by racing commission; 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 article
3 or any of its reasonable rules and regulations have been
4 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 involving
11 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
16 or permit holder is not lawfully entitled.

17 (b) The racing commission may also suspend or
18 revoke 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 or dog
26 race meeting may suspend or revoke a permit for any
27 reason for which the racing commission may suspend
28 or revoke a permit, as specified in subsections (a) and
29 (b) of this section, or for any other reason authorized
30 by reasonable rules and regulations promulgated by the
31 racing commission.

32 (d) Whenever a licensee fails to keep the bond re-
33 quired, if any, under the provisions of section seven of
34 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. Revo-
43 cation of a license or permit shall not preclude appli-
44 cation for a new license or permit, which application
45 shall be processed in the same manner and the application
46 approved or denied and the license or permit issued or
47 refused on the same grounds as any other application
48 for 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
51 to approve or deny such application and issue or refuse
52 such license or permit as is meet and proper under all
53 of the circumstances.

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

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 an
4 order to that effect and serve a copy thereof on the ap-
5 plicant, licensee or permit holder, as the case may be, in
6 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 revo-
11 cation.

12 (b) Whenever a majority of the stewards at any horse
13 or dog race meeting shall suspend or revoke a permit,
14 such suspension or revocation shall be effective immedi-
15 ately. 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 the
20 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 man-
24 ner in which a summons may be served as aforesaid or
25 within twenty days after receipt of a copy thereof if
26 served by certified mail as aforesaid, such person files with
27 the racing commission a written demand for such hearing.
28 A demand for hearing shall operate automatically to stay
29 or suspend the execution of any order suspending or re-
30 voking a license, but a demand for hearing shall not
31 operate to stay or suspend the execution of any order
32 suspending or revoking a permit. The racing commission
33 may require the person demanding such hearing to give
34 reasonable security for the costs thereof and if such per-
35 son does not substantially prevail at such hearing such
36 costs shall be assessed against such person and may be
37 collected by an action at law or other proper remedy.

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

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

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

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

72 (h) After any such hearing and consideration of all of
73 the testimony, evidence and record in the case, the racing
74 commission shall render its decision in writing. The writ-
75 ten decision of the racing commission shall be accom-
76 panied by findings of fact and conclusions of law as speci-
77 fied in section three, article five, chapter twenty-nine-a
78 of this code, and a copy of such decision and accompany-
79 ing findings and conclusions shall be served by certified
80 mail, return receipt requested, upon the person demanding
81 such hearing, and his attorney of record, if any.

82 (i) The decision of the racing commission shall be
83 final unless reversed, vacated or modified upon judicial
84 review thereof in accordance with the provisions of sec-
85 tion seventeen of this article.

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

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

1 (a) No person shall construct and establish a horse
2 or dog racetrack where horse or dog race meetings are
3 to be held or conducted and the pari-mutuel system of
4 wagering permitted or conducted without a construction
5 permit issued by the racing commission in accordance
6 with the provisions 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 appli-
11 cation shall disclose, but not be limited to, the following:

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

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

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

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

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

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

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

40 (8) Plans showing, in such detail as the racing com-
41 mission may require, the proposed horse or dog race-
42 track and all buildings and improvements to be used
43 in connection 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
54 officer thereof, as the case may be.

55 (d) No application for a construction permit for the
56 construction and establishment of a dog racetrack shall be
57 received or acted upon by or a construction permit
58 issued by the racing commission for the construction
59 and establishment of a dog racetrack which is to be
60 located within fifty-five air miles of an existing horse
61 racetrack: *Provided*, That nothing herein contained shall
62 be construed to prohibit establishment of a dog racetrack
63 in conjunction with harness racetrack facilities existing
64 on and operating as a harness racetrack the first day of
65 February, one thousand nine hundred seventy-four, if
66 such facilities are or can be made suitable: *Provided*,
67 That nothing in this section exempts any such county
68 from the local option provisions of this article.

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

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 faith
6 to construct and establish a horse or dog racetrack 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 or dog
11 racetrack are adequate and have been prepared with due
12 regard to the safety of all persons who will use such horse
13 or dog racetrack;

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

17 (4) That the construction and establishment of such
18 proposed horse or dog racetrack would be in the best
19 interests of horse or dog 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
38 issue a construction permit to the applicant at the ex-
39 piration of sixty days from the date of the first publica-
40 tion of such notice (which date shall be specified in said
41 notice), unless within said time a petition for a local option
42 election shall have been filed, in accordance with the
43 provisions of this article, with the county commission of
44 the county in which any integral part of said horse or dog
45 racetrack is proposed to be constructed and established.
46 Such notice shall be published as a Class II legal adver-
47 tisement in compliance with the provisions of article
48 three, chapter fifty-nine of this code, and the publication
49 area for such publication shall be the county in which
50 any integral part of such proposed horse or dog racetrack
51 is to be constructed 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
3 horse or dog racetrack must be signed by qualified voters
4 residing within the county equal to at least fifteen per-
5 cent of the qualified voters within said county at the
6 last general election. Said petition may be in any num-
7 ber of counterparts, but must be filed with the county

8 commission prior to the expiration of the sixty-day period
 9 specified in the notice published by the racing com-
 10 mission in accordance with the provisions of section nine-
 11 teen of this article. Said petition shall be sufficient if
 12 in substantially the following form:

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

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

24 "The undersigned petition the county commission to
 25 call and hold a local option election as required by article
 26 twenty-three, chapter nineteen of the Code of West Vir-
 27 ginia, one thousand nine hundred thirty-one, as amended,
 28 upon the following question: 'Shall the West Virginia
 29 Racing Commission issue a construction permit author-
 30 izing the construction and establishment of a (horse
 31 or dog) racetrack where (horse or dog) race meetings
 32 may be held or conducted and the pari-mutuel system
 33 of wagering permitted and conducted in _____
 34 County, West Virginia?

35	Name	Address	Date
36	_____	_____	
37	_____	_____	_____
38	_____	_____	_____, "

39 (Each individual signing must specify either his post-
 40 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 commission
 4 of the county in which all or any integral part of a pro-

5 posed horse or dog racetrack is to be constructed and
6 established is hereby authorized to call a local option
7 election for the purpose of determining the will of the
8 qualified voters within said county as to the construction
9 and establishment of all or any integral part of such
10 horse or dog racetrack within said county. Upon the
11 timely filing of a proper petition as aforesaid, the county
12 commission shall enter an order calling for a local option
13 election and providing that the same shall be held at
14 the same time and as a part of the next primary or
15 general election to be held in said county. A copy of
16 the order so entered by the county commission shall
17 be served upon the racing commission and the racing
18 commission shall take no further action in connection
19 with the issuance of such construction permit until said
20 local option election shall be held. Said county com-
21 mission shall give notice of such local option election
22 by publication of such notice as a Class II-0 legal adver-
23 tisement in compliance with the provisions of article
24 three, chapter fifty-nine of this code, and the publication
25 area for such publication shall be the county. Such
26 notice shall be so published within fourteen consecutive
27 days next preceding the date of said election.

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

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

37 ☐ Yes ☐ No

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

40 (c) Each individual qualified to vote in said county
41 at a primary or general election shall likewise be quali-
42 fied to vote at the local option election. The election
43 officers appointed and qualified to serve as such at said
44 primary or general election shall conduct said local
45 option election in connection with and as a part of said

46 primary or general election. The votes in said local
47 option election shall be counted and returns made by
48 the election officers, the results certified by the com-
49 missioners of election to said county commission which
50 shall canvass the ballots, all in accordance with the laws
51 of this state relating to primary and general elections
52 insofar as the same are applicable. The county com-
53 mission shall, without delay, canvass the votes cast at
54 such local option election and certify the results thereof
55 to the racing commission.

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

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

9 (b) A construction permit issued as aforesaid shall re-
10 main valid only for a three-month period, except that if
11 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 or dog racetrack, the
14 racing commission may extend the construction permit
15 for additional successive three-month periods, but in no
16 event 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 provisions of this article or the former pro-
21 visions 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
2 provisions 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 of
5 five years, and within that time the racing commission
6 shall not accept or act upon any application for any other
7 construction permit within said county, except that if an
8 election be held seeking the approval of a permit for the
9 construction of a horse racetrack another election may be
10 held within such five-year period seeking the approval of
11 a permit for the construction of a dog racetrack, and the
12 reverse shall also be true. In the event a horse or dog
13 racetrack shall be constructed in a county pursuant to a
14 construction permit issued by the racing commission in
15 accordance with the provisions of this article, no local
16 option election shall thereafter be held as to any horse or
17 dog racetrack constructed and established pursuant to
18 such construction permit: *Provided*, That a local option
19 election has been held for the type of racing to be con-
20 ducted.

PART XIII. OFFENSES AND PENALTIES.

§19-23-26. Offenses and penalties.

1 (a) Any person holding or conducting, or assisting,
2 aiding or abetting in the holding or conducting, of any
3 horse or dog race meeting at which horse or dog racing
4 and the pari-mutuel system of wagering on the same is
5 permitted or conducted, without a license issued by the
6 racing commission, which license remains unexpired,
7 unsuspended and unrevoked, shall be guilty of a
8 misdemeanor, and, upon conviction, shall be punished by
9 a fine or not less than one thousand dollars for each day of
10 such unauthorized horse or dog race meeting, or by im-
11 prisonment in jail not exceeding one year, or by both
12 such fine and imprisonment, in the discretion of the court:
13 *Provided*, That no conviction shall be had or punishment
14 imposed upon any licensee, whose license has been sus-
15 pended or revoked, for holding or conducting a horse or
16 dog race meeting while execution of the order of sus-
17 pension or revocation is stayed or suspended as provided
18 in this article.

19 (b) Any person violating any provision of section four
20 or section five of this article shall be guilty of a misde-

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

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

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

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

James L. Davis
Chairman Senate Committee

James C. Christian
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. C. Dillon Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Louis R. McManus
Speaker House of Delegates

The within approved this the 20th
day of November, 1975

Arch A. Moore Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 11/5/75

Time 2:45 p.m.