WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 431

(By Mr. Clemens, Jr., McCawley, Jr.,free...)

PASSED March 10, 1984
In Effect from Passage

Veto

ORIGINAL
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AN ACT to amend and reenact sections three, six, seven, eight, nine, ten and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-three by adding thereto three new sections, designated sections eight-b, eight-c and thirteen-b, relating to horse and dog racing generally; providing additional definitions; increasing the authority of the racing commission; authority to impose penalties; providing minimum number of racing days; allowing Sunday racing; providing for local option elections; granting authority to racing associations to withhold certain commission; changing and reducing the pari-mutuel tax; providing for disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; and granting authority for racing commission to establish West Virginia thoroughbred development fund and to provide awards, purse supplements and moneys for capital improvements therefrom.
Be it enacted by the Legislature of West Virginia:

That sections three, six, seven, eight, nine, ten and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eight-b, eight-c and thirteen-b, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

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


1 Unless the context in which used clearly requires a different meaning, as used in this article:
2 (1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;
3 (2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;
4 (3) "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle, and shall not include any form of horse racing in which the horses are mounted by jockeys;
5 (4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;
6 (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;
7 (6) "Purse" means any purse, stake or award for which a horse or dog race is run;
8 (7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;
9 (8) "Applicant" means any racing association making application for a license under the provisions of this article, or any person making application for a permit under the provisions of this article, as the case may be;
(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

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

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

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

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

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

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

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

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

(20) "Legitimate breakage" is the percentage left over in the division of a pool;
(21) "To the dime" means that wagers shall be figured and paid to the dime;
(22) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;
(23) "Accredited thoroughbred horse" means a thoroughbred horse that is either: (a) Foaled in West Virginia; or (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days grace for the horse to be shipped to and from horse sales where said horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. No thoroughbred horse shall qualify under part (c) of this section after the first day of July, one thousand nine hundred ninety.
(24) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with the West Virginia thoroughbred breeders association;
(25) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;
(26) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. Prior to the horse being shipped out of the state for sales, the raiser must notify the racing commission of his intentions;
(27) The "owner of an accredited West Virginia sire" is the owner of record at the time the offspring is conceived;
(28) The "owner of an accredited West Virginia horse" means the owner at the time said horse earned designated purses to qualify for restricted purse supplements provided for in section thirteen-b of this article; and
(29) "Fund" means the West Virginia thoroughbred development fund established in section thirteen-b of this article.
PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.


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

1. To investigate applicants and determine the eligibility of such applicants for a license or permit or construction permit under the provisions of this article;
2. To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;
3. To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;
4. To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;
5. To fix and regulate the minimum purse to be offered during any horse or dog race meeting;
6. To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;
7. To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;
8. To investigate alleged violations of the provisions of
this article, its reasonable rules and regulations, orders and
final decisions and to take appropriate disciplinary action
against any licensee or permit holder or construction permit
holder for the violation thereof or institute appropriate
legal action for the enforcement thereof or take such
disciplinary action and institute such legal action;
(9) By reasonable rules and regulations, to authorize
stewards, starters and other racing officials to impose
reasonable fines or other sanctions upon any person
connected with or involved in any horse or dog racing or any
horse or dog race meeting; and to authorize stewards to rule
off the grounds of any horse or dog racetrack any tout,
bookmaker or other undesirable individual deemed
inimicable to the best interests of horse and dog racing or
the pari-mutuel system of wagering in connection
therewith;
(10) To require at any time the removal of any racing
official or racing employee of any licensee, for the violation
of any provision of this article, any reasonable rule and
regulation of the racing commission or for any fraudulent
practice;
(11) To acquire, establish, maintain and operate, or to
provide by contract for the maintenance and operation of, a
testing laboratory and related facilities, for the purpose of
conducting saliva, urine and other tests on the horse or dog
or horses or dogs run or to be run in any horse or dog race
meeting, and to purchase all equipment and supplies
deemed necessary or desirable in connection with the
acquisition, establishment, maintenance and operation of
any such testing laboratory and related facilities and all
such tests;
(12) To hold up, in any disputed horse or dog race, the
payment of any purse, pending a final determination of the
results thereof;
(13) To require each licensee to file an annual balance
sheet and profit and loss statement pertaining to such
licensee's horse or dog racing activities in this state,
gether with a list of each such licensee's stockholders or
other persons having any beneficial interest in the horse or
dog racing activities of such licensee;
(14) To issue subpoenas for the attendance of witnesses
and subpoenas duces tecum for the production of any
books, records and other pertinent documents, and to
administer oaths and affirmations to such witnesses,
whenever, in the judgment of the racing commission, it is
necessary to do so for the effective discharge of its duties
under the provisions of this article;
(15) To keep accurate and complete records of its
proceedings and to certify the same as may be appropriate;
(16) To take such other action as may be reasonable or
appropriate to effectuate the provisions of this article and
its reasonable rules and regulations;
(17) To provide breeders' awards, purse supplements
and moneys for capital improvements at racetracks in
compliance with section thirteen-b of this article.
The racing commission shall not interfere in the internal
business or internal affairs of any licensee.

PART V. LICENSE AND PERMIT PROCEDURES.

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

(a) Any racing association desiring to hold or conduct a
horse or dog race meeting, where the pari-mutuel system of
wagering is permitted and conducted, during any calendar
year, shall file with the racing commission an application
for a license to hold or conduct such horse or dog race
meeting. A separate application shall be filed for each
separate license sought for each horse or dog race meeting
which such applicant proposes to hold or conduct. The
racing commission shall prescribe blank forms to be used in
making such application. Such application shall be filed on
or before a day to be fixed by the racing commission and
shall disclose, but not be limited to, the following:
(1) If the applicant be an individual, the full name and
address of the applicant;
(2) If the applicant be a partnership, firm or association,
the full name and address of each partner or member
thereof, the name of the partnership, firm or association
and its post office address;
(3) If the applicant be a corporation, its name, the state
of its incorporation, its post office address, the full name
and address of each officer and director thereof, and if a
foreign corporation, whether it is qualified to do business in this state;
(4) The dates, totaling not less than two hundred, such applicant intends to hold or conduct such horse or dog race meeting (which may be on any day including Sundays);
(5) The location of the horse or dog racetrack, place or enclosure where such applicant proposes to hold or conduct such horse or dog race meeting;
(6) Whether the applicant, any partner, member, officer or director has previously applied for a license under the provisions of this article or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked; and
(7) Such other information as the racing commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.
(b) Such application shall be verified by the oath or affirmation of the applicant for such license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be. When required by the racing commission, an applicant for a license shall also furnish evidence satisfactory to the racing commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials and other expenses incident to the horse or dog race meeting for which a license is sought. In the event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to pay such expenses and fees, the racing commission may require bond or other adequate security before the requested license is issued.
(c) Any person desiring to obtain a permit, as required by the provisions of section two of this article, shall make application therefor on a form prescribed by the racing commission. The application for any such permit shall be accompanied by the fee prescribed therefor by the racing commission. Each applicant for a permit shall set forth in the application such information as the racing commission shall reasonably require.
§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

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

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

1. Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;
2. Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse or dog race meeting in this or any other state;
(3) Has been convicted, within ten years prior to the date of such application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;
(4) Has failed to comply with the provisions of this article or any reasonable rules and regulations of the racing commission;
(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;
(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;
(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;
(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the racing commission under the provisions of section seven of this article;
(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or
(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of such applicant.
(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the racing commission shall consider the horse racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this state are associated or contiguous to, and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing and dog racing.
(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and shall not permit the holding or conducting of a horse or dog race meeting at any horse or dog racetrack, place or enclosure not specified thereon. However, if the specified horse or dog racetrack, place or enclosure becomes unsuitable for the horse or dog race meeting because of flood, fire or other catastrophe, or cannot be used
for any reason, the racing commission may, upon application, authorize the horse or dog race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place or enclosure available for that purpose, provided that the owner of such racetrack, place or enclosure willingly consents to the use thereof.

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

(f) Each permit issued under the provisions of this section shall be for the period ending December thirty-first of the year for which it was issued, and shall be valid at all horse or dog race meetings during the period for which it was issued, unless it be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

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

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

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

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

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

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

"Shall the West Virginia Racing Commission be authorized to approve horse racing on Sundays after the hour of six p.m. in ................. County, West Virginia?  □ Yes □ No

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

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

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

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

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

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

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

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

(d) The county commission shall give notice of such
election by publication of such notice as a Class II-0 legal
advertisement in accordance with the provisions of article
three, chapter fifty-nine of this code. Such notice shall be
published within twenty-one consecutive days next
preceding the date of said election.
(e) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substantially
the following:
"Shall the West Virginia Racing Commission be
authorized to approve dog racing in ............ County,
West Virginia?
□ Yes   □ No
(Place a cross mark in the square opposite your choice.)"
Each individual qualified to vote in said county shall be
qualified to vote at the local option election. The votes in
said local option election shall be counted and returns made
by the election officers and the results certified by the
commissioners of election to the county commission, which
shall canvass the ballots, all in accordance with the laws of
this state relating to general elections insofar as the same
are applicable. The county commission shall, without delay,
canvass the votes cast at such local option election and
certify the results thereof to the racing commission, and
shall transmit a certified copy of said results to the
secretary of state.
(f) The racing commission may, after the certification of
the results of such local option election, thereafter approve
an application for a license for dog racing if a majority of
the voters voting at such local option election vote yes.
(g) After an election to determine whether it is the will
of the voters of the county that dog racing be permitted in
said county, another election on such issue shall not be held
for a period of five years.
(h) If at such election a majority of the voters of said
county shall approve dog racing in said county, it is lawful
for the county commission, after five years from such
approval, and it shall be the duty of the county commission
upon a petition in writing of qualified voters residing
within the county equal to at least fifteen percent of the
number of persons who voted in that county in the next
preceding general election, which petition may be in any
number of counterparts, to order an election to determine
whether it is the will of the voters of said county that dog
racing be discontinued in said county. The provisions of
subsections (c), (d) and (e) of this section shall govern said
election. The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substantially
the following:

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

☐ Yes  ☐ No

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

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

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

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

(1) The commission deducted by any licensee from the
pari-mutuel pools on thoroughbred horse racing, except
from thoroughbred horse racing pari-mutuel pools
involving what is known as multiple betting in which the
winning pari-mutuel ticket or tickets are determined by a
combination of two or more winning horses, shall not
exceed seventeen and one-fourth percent of the total of such
pari-mutuel pools for the day. Out of such commission, as is
mentioned in this subdivision, the licensee (i) shall pay the
pari-mutuel pools tax provided for in subsection (b), section
ten of this article, (ii) shall make a deposit into a special
fund to be established by the licensee and to be used for the
payment of regular purses offered for thoroughbred racing
by the licensee, which deposits out of pari-mutuel pools for
each day during the months of January, February, March,
October, November and December shall be seven and
seventy-five one thousandths percent of such pari-mutuel
pools, and which, out of pari-mutuel pools for each day
during all other months, shall be six and five hundred
seventy-five one thousandths percent of such pari-mutuel
pools, (iii) shall, after allowance for the exclusion given by
subsection (b) of section ten of this article, make a deposit
into a special fund to be established by the racing
commission and to be used for the payment of breeders'
awards and capital improvements as authorized by section
thirteen-b of this article, which deposits out of pari-mutuel
pools shall for fiscal year one thousand nine hundred
eighty-five be four-tenths percent; for fiscal year one
thousand nine hundred eighty-six be seven-tenths percent;
for fiscal year one thousand nine hundred eighty-seven be
one percent; for fiscal year one thousand nine hundred
eighty-eight be one and one-half percent; and for fiscal year
one thousand nine hundred eighty-nine and each year
thereafter, be two percent of such pools, and (iv) shall pay
one tenth of one percent of such pari-mutuel pools into the
general fund of the county commission of the county in
which the racetrack is located, except if within a
municipality, then to such municipal general fund. The
remainder of the commission shall be retained by the
licensee.

The commission deducted by any licensee from the pari-
mutuel pools on thoroughbred horse racing involving what
is known as multiple betting in which the winning pari-
mutuel ticket or tickets are determined by a combination of
two winning horses shall not exceed nineteen percent and
by a combination of three or more winning horses, shall not
exceed twenty-five percent of the total of such pari-mutuel
pools for the day. Out of such commission, as is mentioned
in this paragraph, the licensee (i) shall pay the pari-mutuel
pools tax provided for in subsection (b), section ten of this
article, (ii) shall make a deposit into a special fund to be
established by the licensee and to be used for the payment of
regular purses offered for thoroughbred racing by the
licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December for pools involving a combination of two winning horses shall be seven and ninety-five one hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and forty-five one hundredths percent of such pari-mutuel pools; and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of such fund shall be ten and ninety-five one hundredths percent of such pari-mutuel pools; and which, out of pari-mutuel pools for each day during all other months, shall be ten and forty-five one hundredths percent of such pari-mutuel pools, (iii) shall, after allowance for the exclusion given by subsection (b) of section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders’ awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall be for fiscal year one thousand nine hundred eighty-five be four-tenths percent; for fiscal year one thousand nine hundred eighty-six be seven-tenths percent; and for fiscal year one thousand nine hundred eighty-seven be one percent; for fiscal year one thousand nine hundred eighty-eight be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine and each year thereafter be two percent of such pools, and (iv) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

The deposits into special fund established by the racing commission to be used for payments of breeders' awards and other expenses authorized by section thirteen-b of this article shall be reduced by fifty percent in the event the average daily pari-mutuel pool for any calendar year is less than the average daily pari-mutuel pool for the calendar year ended the thirty-first day of December, one thousand nine hundred eighty-three in amount equal to eleven
percent of the average daily pari-mutuel pool for said
calendar year ended the thirty-first day of December, one
thousand nine hundred eighty-three. Of the amounts so
reduced, fifty percent shall be paid into the special purse
fund established in section nine-b of this article.

The commission deducted by the licensee under
subdivision (1), subsection (b) of this section may be
reduced only by mutual agreement between the licensee
and a majority of the trainers and horse owners licensed by
subsection (a), section two of this article or their designated
representative. Such reduction in licensee commissions
may be for a particular race, racing day or days or for a
horse race meeting. Fifty percent of such reduction shall be
retained by licensee from the amounts required to be paid
into the special fund established by the licensee under the
provisions of subdivision (1), subsection (b) of this section.
The racing commission shall promulgate such reasonable
rules and regulations as are necessary to implement the
foregoing provisions.

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

(3) The commission deducted by any licensee from the
pari-mutuel pools on dog racing shall not exceed sixteen
and thirty-one-hundredths percent of the total of such
pari-mutuel pools for the day. Out of such commission, the
licensee shall pay the pari-mutuel pools tax provided for in
subsection (d), section ten of this article, and shall pay one
tenth of one percent of such pari-mutuel pools into the
general fund of the county commission of the county in
which the racetrack is located, except if within a
municipality, then to such municipal general fund. The
remainder of the commission shall be retained by the
licensee.
(c) In addition to any such commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from such breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of such breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b), of this section for the payment of regular purses.

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

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

(f) Notwithstanding the foregoing provisions of subdivision (1) of subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1) of subsection (b) of section nine of this article as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal
general fund; (iii) one half of the remainder of the
commission shall be paid into the special fund established
by the licensee and to be used for the payment of regular
purses offered for thoroughbred racing by the licensee; and
(iv) the amount remaining after the payments required
above shall be retained by the licensee.

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; alternate tax; credits.

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

(b) Any racing association licensed by the racing
commission to conduct thoroughbred racing and
permitting and conducting pari-mutuel wagering under the
provisions of this article shall, in addition to the
aforementioned daily license tax, pay to the racing
commission, from the commission deducted each day by
such licensee from the pari-mutuel pools on thoroughbred
racing a tax calculated on the total daily contribution of all
such pari-mutuel pools conducted or made at any and every
thoroughbred race meeting of the licensee licensed under
the provisions of this article, which tax, on the pari-mutuel
pools conducted or made each day during the months of
January, February, March, October, November and
December shall for fiscal year one thousand nine hundred eighty-five be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six be calculated at two and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven be calculated at two percent of such pool; for fiscal year one thousand nine hundred eighty-eight be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine and each year thereafter be calculated at one percent of such pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall for fiscal year one thousand nine hundred eighty-five be calculated at three and six-tenths percent; for fiscal year one thousand nine hundred eighty-six be calculated at three and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven be calculated at three percent of such pool; for fiscal year one thousand nine hundred eighty-eight be two and one-half percent; and for fiscal year one thousand nine hundred eighty-nine be two percent of such pool: Provided, That any such racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of two hundred eighty thousand dollars or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as hereinbefore in this subsection provided, be permitted to conduct pari-mutuel wagering at such horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding three hundred thousand dollars the daily pari-mutuel pool tax shall be two thousand dollars plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of three hundred thousand dollars: Provided, however, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to ten races in a calendar day, such association or licensee shall pay both the daily license tax imposed in subsection (a) and the foregoing alternate tax for each such performance: Provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article.
(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all such pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of such pari-mutuel pools, five percent of the next fifty thousand dollars of such pari-mutuel pools, six percent of the next one hundred thousand dollars of such pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of such pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day.

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

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

§19-23-13. Disposition of funds for payment of outstanding
and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets;
stakes races for dog tracks.

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

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

(1) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the owner of such horse is at the time of such horse race a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he filed a personal income tax return in this state for the previous two years and that he owned real or personal property in this state and paid taxes in this state on said property for the two previous years, he shall be presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare foaled in this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: Provided, That the mare which foaled such winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by such horse; and

(4) When the moneys in the special account, known as the "West Virginia Racing Commission Special Account — Unredeemed Pari-Mutuel Tickets" will more than satisfy the requirements of subdivisions (1), (2) and (3), subsection (b) of this section, the West Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks.

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards, or for awards under section thirteen-b of this article.
(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b) of section nine of this article in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account. — West Virginia Thoroughbred Development Fund." Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of October, one thousand nine hundred ninety-two.

The fund shall be established forthwith and operate on an annual basis.

(a) Funds will be expended for awards and purses in the following manner:

(i) Fifteen percent of the fund shall be available for distribution for events taking place between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of December, one thousand nine hundred eighty-five;

(ii) Fifty percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-six, and the
thirty-first day of December, one thousand nine hundred eighty-six;

(iii) Seventy-five percent of the fund shall be available for distribution for events taking place between the first day of January, one thousand nine hundred eighty-seven, and the thirty-first day of December, one thousand nine hundred eighty-seven; and

(iv) One hundred percent of the fund shall be available thereafter.

Awards and purses will be distributed as follows:

(i) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in such races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. Of the funds available for distribution in any one year to breeders/raisers, neither the breeders as a group nor the raisers as a group, shall, until January first, one thousand nine hundred ninety-four, qualify for more than sixty and one-tenth percent of such funds.

(ii) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio purses earned by the progeny of accredited West Virginia stallions in such races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in such races. However, no sire
owner may receive from the fund dedicated to sire owners an amount in excess of thirty percent of the accredited earnings for each sire.

The owner of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet will receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in such races of a particular race horse to the total amount earned by all accredited race horses in such races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of forty percent of the total accredited earnings for each accredited race horse.

In no event shall purses earned at a meet held at a track which did not make a contribution to the thoroughbred development fund out of the daily pool on the day the meet was held, qualify or count toward eligibility for an award under this section.

Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall revert back into the general account of the fund for distribution in the next year.

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

(b) The remainder, if any, of the fund that is not available for distribution in the above program in any one year is reserved for regular purses, marketing expenses and for capital improvements in the amounts and under the conditions provided hereinafter. Fifty percent of such remainder shall be reserved for payments into the regular purse fund established in subsection (b) of section nine of this article. Up to five hundred thousand dollars per year shall be available for (1) capital improvements at the eligible licensed horse racing tracks in the state, and (2) marketing and advertising programs above and beyond two hundred fifty thousand dollars for the eligible licensed horse racing tracks in the state: Provided, That moneys shall be expended for capital improvements or marketing and advertising purposes as described above only in accord with a plan filed with and receiving the prior approval of
the racing commission, and on a basis of fifty percent participation by the licensee and fifty percent participation by moneys from the fund, in the total cost of approved projects: Provided, however, That funds approved for one track may not be used at another track unless the first track ceases to operate or is viewed by the commission as unworthy of additional investment due to financial or ethical reasons.

(c) Each pari-mutuel thoroughbred horse track shall provide at least the following restricted races in accordance with the following time schedules:

(i) July first, one thousand nine hundred eighty-four, to December thirty-first, one thousand nine hundred eighty-four — one restricted race per eight racing days;

(ii) January first, one thousand nine hundred eighty-five, to December thirty-first, one thousand nine hundred eighty-five — one restricted race per seven racing days;

(iii) January first, one thousand nine hundred eighty-six, to December thirty-first, one thousand nine hundred eighty-six — one restricted race per six racing days;

(iv) January first, one thousand nine hundred eighty-seven, to December thirty-first, one thousand nine hundred eighty-seven — one restricted race per five racing days;

(v) January first, one thousand nine hundred eighty-eight, to December thirty-first, one thousand nine hundred eighty-eight — one restricted race per four racing days;

(vi) January first, one thousand nine hundred eighty-nine, to December thirty-first, one thousand nine hundred eighty-nine — one restricted race per three racing days; and

(vii) Thereafter, one restricted race per two racing days.

Restricted races shall be funded by each racing association from moneys placed in the general purse fund. The purses shall be twenty percent larger than the purses for similar type races at each track. The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia racing commission.

(d) No association or licensee qualifying for the alternate tax provision of subsection (b) of section ten of this article shall be eligible for participation in any of the provisions of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James T. Davis
Chairman Senate Committee

Donald L. Culver
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph C. York
Clerk of the Senate

Donald L. Voop
Clerk of the House of Delegates

Warren K. McFarlane
President of the Senate

James G. Mezitis
Speaker House of Delegates

The within...is disapproved...this the 14th day of March, 1984.

Governor