WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED
Committee Substitute for

HOUSE BILL No. 1773

(By Delegate Love and Delegate W. Martin)

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Passed March 8, 1986

In Effect Ninety days from Passage
AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to off-track pari-mutuel wagering on horse races; providing a short title; legislative intent and purposes with respect thereto; the definition of terms used; general jurisdiction; license required for off-track wagering facility and pari-mutuel wagering in connection therewith; permits required for off-track wagering facility; rights of preemptions with respect to such permits by existing tracks within certain distances of the proposed off-track wagering facility; employment positions; residency requirements for employees of licensees; construction permit for off-track wagering facility; licensing and approval of plans of operation; granting construction permits; amendments thereto; suspension of approval of such permits and hearings with respect thereto; reports, accounts and investigations of and by such facilities; pari-mutuel system of wagering authorized; authorization to deduct commissions from pari-mutuel pools; retention of breakage; auditing of such facilities; prohibiting minors from wagering; food and beverage service at such facilities; daily license tax; pari-mutuel pools tax;
deductions in lieu of all other licenses and taxes; pari-mutuel wagering and interstate and intrastate horse races; issuance of revenue bonds; dedication of admission fees and balance to licensee; employment of management agent by applicant or licensee; investigations of such agent; bonds; local referendum election required; when and where such elections required; local referendum election procedure; form of ballots or ballot labels; issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of construction permit; creation of an economic development commission to be funded from a portion of commissions withheld; appointment of board; powers and authority of commission; receipt and disbursement of funds; additional reports required; additional authority of the racing commission and rules and regulations.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-four, to read as follows:

ARTICLE 24. OFF-TRACK PARI-MUTUEL WAGERING.

§19-24-1. Short title.

This article shall be known and cited as the "West Virginia State Off-Track Pari-Mutuel Wagering Law."

§19-24-2. Legislative intent and purposes.

(a) The Legislature hereby declares that off-track pari-mutuel wagering on horse races, conducted under the administration of the West Virginia racing commission in the manner and subject to the conditions provided in this article, shall be lawful. This method of off-track wagering is intended to derive reasonable revenue for the support of government, and to prevent and curb unlawful bookmaking and illegal wagering on horse races in this state. It is also the intention of the Legislature to ensure that off-track wagering is conducted in a manner compatible with the well-being of the horse and dog racing and breeding industries in
(b) The purpose of this article is to authorize, enable, license and regulate a facility wherein the public may participate in off-track pari-mutuel wagering. Simultaneously with the running of horse racing events in this state or in other states, as the West Virginia racing commission may permit as hereinafter provided in this article, these racing events will be simultaneously telecommunicated from the place of origin to and simultaneously received and displayed by the facility so that patrons may wager on the outcome of such racing events in the same manner as if they were actually and personally in attendance at the racing events. The wagering odds posted at each such local facility shall for telecommunications from in-state racing tracks be based upon and integrated with the track pool. For interstate telecommunications of racing events, each local facility shall post its own wagering odds based upon money wagered at the facility. In the event more than one local off-track wagering facility is accepting wagers on the same event from an out-of-state track, they may combine the pool or pools and pay the same winning prices at all off-track facilities.

(c) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools as provided for in subsection (b), section eight of this article.

Except as otherwise provided in this article, the provisions of the “Federal Interstate Horse Racing Act of 1978” also known as Public Law 95-515, Section 3001 -3007 of Title 15, U.S. Code, shall be instructive as to the intent of this article.


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

(1) “Applicant” means any racing association or person making application for a license under the provisions of this article, or any person making application for a permit under the provisions of this article, or any person making application for a construction
permit under the provisions of this article, as the case may be;

(2) “Code” means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

(3) “Construction or construct” as used in this article, means the construction of a new facility, the purchasing, leasing or acquisition by other means of an existing building or portion thereof;

(4) “Construction permit” means the construction permit required by the provisions of section four of this article;

(5) “Construction permit holder” means any person holding a construction permit required by the provisions of section four of this article and issued under the provisions of this article;

(6) “Dog racing” means any type of dog racing, including, but not limited to, greyhound racing, and, for the purposes of this article means dog racing at those tracks possessing the license required by section one, article twenty-three of this chapter;

(7) “Hold or conduct” includes “assist, aid or abet in holding or conducting”;

(8) “Horse racing” means any type of horse racing, including thoroughbred racing and harness racing;

(9) “Legitimate breakage” means the percentage left over in the division of a pool;

(10) “License” means the license required by the provisions of section four of this article;

(11) “Licensee” means any person, racing association, corporation, or other entity holding a license required by the provisions of section four of this article;

(12) “Off-track wagering facility” means any new or existing physical facility which shall have the means of simultaneously receiving the transmissions of live telecast pictures and simultaneously telecommunicated racing events so that patrons wager on the outcome of
such racing events in the same manner as if they were
in attendance at the racing events. All buildings and/or
other facilities owned by the licensee and on land which
adjoins or is contiguous to other properties used for the
racetrack, shall be considered to be within the confines
of the licensee's horse or dog racetrack and shall not be
deemed to be an off-track wagering facility.

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

(14) "Permit" means the permit required by the
provisions of section four of this article;

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

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

(17) "Purse" means any purse, stake or award for
which a horse race is run;

(18) "Racing association" or "person" means any
individual, partnership, firm, association, corporation or
other entity or organization of whatever character or
description;

(19) "Racing commission" means the West Virginia
racing commission.

(20) "Thoroughbred association" means any horse
racing association licensed by the racing commission
under the provisions of article twenty-three of this
chapter; and

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

§19-24-4. General jurisdiction; license required for off-
track wagering facility and pari-mutuel wagering in connection therewith; permits required for off-track wagering facility employment positions; residency requirements for employees of licensees; construction permit for off-track wagering facility.

(a) The West Virginia racing commission has general jurisdiction over the operation of all off-track wagering facilities in the state. The racing commission shall issue rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code in order to ensure the accomplishment of the purposes of this article and to protect the thoroughbred racing and breeding industry within this state.

(b) No racing association or person shall hold, telemark, broadcast or otherwise conduct any off-track wagering enterprise of any kind whatsoever unless such association possesses a license therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(c) No person not required to be licensed under the provisions of subsection (b) of this section shall be permitted to be employed by the licensee, or the licensee's management agent, if any, or act as a pari-mutuel employee, or in any other capacity at an establishment conducting off-track wagering licensed under the provisions of subsection (b) of this section or in any other capacity specified in reasonable rules and regulations of the racing commission, unless such person possesses a permit therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(d) At least eighty percent of the individuals employed by a licensee at any off-track wagering enterprise operated by a licensee pursuant to subsection (b) of this section must be citizens and residents of this state and must have been such citizens and residents for at least one year immediately prior to the date of their
employment. For the purpose of this subsection, citizens and residents of this state shall be construed to mean individuals who maintain a permanent place of residence in this state, and have been bona fide residents and citizens of this state for a period of one year prior to the filing of their applications for employment.

(e) In order to ensure the well-being of the horse and dog racing and breeding industries in this state, the racing commission shall give first and prior consideration to the application filed by existing thoroughbred racing associations to the proposed off-track betting facility. For the purpose of this section "existing thoroughbred racing associations" means those thoroughbred associations operating under the provisions of section one, article twenty-three of this chapter prior to the effective date of this article.

The governing body of any municipality or county in this state desiring that an off-track wagering facility, as set forth in section four of this article, be established in their city or county, may forward to the racing commission a copy of the ordinance or order enacted by the council or commission, as the case may be. The racing commission shall forthwith notify all existing thoroughbred racing associations of the receipt of such ordinance or order. The existing thoroughbred racing associations may jointly file a notice of intent to file an application for the license herein required within forty-five days of the date of such notification. Any existing thoroughbred racing association may opt not to participate in such joint application for a license and in this event the notice of intent may be filed by the remaining thoroughbred racing association. The application for license as herein required shall then be filed within ninety days of the original notice by the racing commission. The racing commission shall proceed to consider the application, and if such application is in compliance with the requirements of this article, shall approve such application. If no such notice of intent to file an application is received within the forty-five day period, or if a written waiver of such option to file such notice of intent is executed by existing thoroughbred racing
associations prior to the expiration of the forty-five day period or if the application for license is not received by the racing commission within the required ninety day period the racing commission shall forthwith consider applications filed by any other racing association or person.

(f) No racing association or person shall construct or cause to be constructed a facility at which an off-track wagering enterprise is to be conducted and the pari-mutuel system of wagering is to be conducted without a construction permit issued by the racing commission in conjunction with its approval of the applicant's plan of operation as set forth in section five of this article. Any person desiring to obtain a construction permit, and who shall submit such a plan of operation shall file with the racing commission an application therefor. The racing commission shall prescribe blank forms to be used in making such application; however, the racing commission shall be permitted to accept the required information in any other form or format it may deem acceptable. Such application shall disclose, but not be necessarily limited to, the following:

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

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post office address;

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

(4) Whether the applicant, any partner, member, or officer or director has previously applied for a construction permit under the provisions of this article or for a similar construction permit in this or any other state, and if so, whether such construction permit was issued or refused;
(5) A description of the sources of financing, if any, for use in connection with such proposed off-track wagering enterprise facility, including the name and address of any person enterprise agreeing to provide such financing;

(6) If the applicant be a partnership or corporation then the application shall include the names and addresses of all partners or share-holders, as the case may be, owning ten percent or more interest or of the stock in such partnership or corporation. If the applicant be a partnership in which one or more corporations owns ten percent or more interest therein, then the application shall also include the names and addresses of all persons owning ten percent or more of the outstanding shares in such corporations;

(7) The name and address of any other person who holds a financial interest in the proposed off-track wagering enterprise facility;

(8) The municipality and county where the proposed off-track wagering enterprise facility is to be constructed, and if such proposed facility is to be constructed and established across municipal or county boundary lines, the identification of each such municipality or county;

(9) Plans showing, in such detail as the racing commission may require, the proposed off-track wagering enterprise facility and all buildings and improvements to be used in connection therewith; and

(10) 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.

(g) Such application shall be verified by the oath or affirmation of the applicant for such construction permit, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof as the case may be.
Such application shall be submitted as a part of the applicant's proposed plan of operation set forth in section five of this article and shall be evaluated, approved, amended, modified, or disapproved, as a part thereof, by the racing commission.

(h) Nothing in this section exempts any municipality or county from the referendum election provisions of this article.

(i) No application for a construction permit for the construction and establishment of an off-track wagering facility described in this article shall be acted upon by, or a construction permit issued by, the racing commission for the construction or establishment of an off-track wagering facility which is to be located within fifty-five air miles of an existing horse track or within thirty air miles of an existing off-track wagering facility or an existing dog racetrack: Provided, That existing thoroughbred racing associations shall have the sole right, subject to the provisions of this article and the approval of the racing commission, to apply for a construction permit and establish and operate an off-track wagering facility within fifty-five air miles of their on-track thoroughbred racing facility and that existing dog racing associations shall have the sole right, subject to the provisions of this article and the approval of the racing commission, to apply for a construction permit and establish and operate an off-track wagering facility within thirty air miles of their on-track dog racing facility. An existing thoroughbred racing association, an existing dog racing association, or an existing off-track wagering facility may waive their rights under this paragraph by submitting a written waiver of such rights to the racing commission.

For the purpose of this subsection an existing horse or dog racetrack shall mean any licensed horse or dog racing association licensed under the provisions of article twenty-three of this chapter in operation, that is, running a daily program of horse or dog races.

§19-24-5. Approval of plans of operation; granting construction permits; amendments.
(a) In order to accomplish the objectives of this article, the state racing commission shall have the power, subject to the provisions of this article, to approve a plan of operation submitted by any applicant or licensee. Before approval of the plan of operation and any construction permit application pertinent thereto, the racing commission must review and approve a feasibility study submitted by the applicant or licensee, including, but not limited to, the following:

(1) The potential market;

(2) The estimated costs of operation;

(3) The probable types of wagering and number of opportunities required for successful operation;

(4) The probable impact of the proposed operation upon on-track attendance and pari-mutuel wagering within the region;

(5) The probable impact of the proposed operation upon the community in which it is to be located, including but not limited to such factors as hours of operation, traffic patterns and the creation of nuisances created by noise or light or both, within the community.

The racing commission may, within the time provided for approval, request additional information from the applicant or licensee. Disapproval of the feasibility study shall be accompanied by a statement of the reasons therefor and shall be treated as disapproval under subsection (c) of this section.

(b) The plan of operation shall include the following:

(1) A narrative description of the system;

(2) The types and approximate cost of data processing communication and transmission facilities that will be utilized, including back-up systems;

(3) Security measures;

(4) The type and number of wagering opportunities to be offered;
(5) The race tracks and races that will be telecommu-
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nicated to the proposed facility for which bets will
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be taken;
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(6) The proposed system of accounts; and
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(7) The amount and proposed sources of financing.
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(c) Within thirty days of receipt of the feasibility
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study and plan, the racing commission shall issue an
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order tentatively approving the plan, tentatively
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approving it with modifications, or denying approval
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and stating its reasons therefor. Within such period the
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applicant may request additional information, make
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reasonable inquiries of the racing commissions as to any
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portions of the feasibility study or plan of operation
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which the racing commission does or may find objection-
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able, or suggest amendments. The applicant may submit
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an amended application no later than thirty days after
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a denial. An applicant whose application or amended
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application for a license or whose proposed plan or
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amended proposal plan of operation and attendant
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construction permit application has been denied, shall
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be granted a hearing before the racing commission.
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Such a hearing shall be governed by the standards set
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forth in section six of this article governing suspensions
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of previously approved plans.
(d) Upon tentative approval of the license application,
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the feasibility study, the proposed plan of operation and
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its attendant construction permit application, if any, the
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racing commission shall cause to be published a Class
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II legal advertisement, in compliance with the provi-
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dions of article three, chapter fifty-nine of this code, in
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a newspaper of general circulation in the municipality
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or county wherein the proposed facility is to be
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constructed giving notice of the commission’s action.
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Such notice shall state the name of the applicant, a
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description of the proposed operation, the location of the
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proposed facility, the name of any management agent
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retained or to be retained by the applicant, if any,
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together with the names of all officers and directors of
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such management agent, if any, and the applicant, and
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that final approval will be granted upon the approval
of the proposed establishment by voters in a referendum election as set forth in sections fourteen and fifteen of this article. No applicant or licensee may exercise the authority granted in the approved application until the certification of the results of the election to the racing commission is made as provided in section fifteen of this article. A denial by the voters shall cancel the application.

(e) A plan of operation may be amended from time to time at the request of either the applicant or licensee, or the racing commission. The applicant or licensee shall have the right to be heard concerning any amendment to the plan proposed after implementation and the racing commission shall dispose of such proposed amendments as expeditiously as practicable, but no later than thirty days following submission of such amendment or amendments by the applicant or licensee or in the case of amendments proposed by the racing commission, objection by the applicant or licensee. An applicant or licensee whose amendment is denied or who submits a written objection to an amendment proposed by the racing commission, shall be granted a hearing before the racing commission. Such hearing shall be governed by the standards set forth in subsection (c) of this section.

§19-24-6. Suspension of approval.

(a) The racing commission may suspend its approval of any plan of operation if the applicant or licensee whose plan of operation has been approved or its retained management agent or representative fail to conduct off-track pari-mutuel wagering on horse races in accordance with the provisions of the plan of operation, with the applicable rules of the racing commission or with the provisions of this article or if such applicant, licensee, its retained management agent or representative, or its officers or directors shall knowingly permit on any of its premises illegal lotteries, pool selling or bookmaking or any other kind of illegal gambling. Suspension shall continue for the period necessary to remedy the situation or condition requiring such suspension.
(b) If the racing commission shall determine to suspend approval of any plan of operation it shall give the applicant or licensee involved notice of a time and place for a hearing before the racing commission, at which the racing commission will hear such applicant in reference thereto. The racing commission may continue such hearing from time to time for the convenience of all parties. Any of the parties affected by such hearing may be represented by counsel. In the conduct of such hearing, the racing commission shall apply the rules of evidence as set forth in chapter twenty-nine-a, article five, section two of the code. A written record shall be made of all proceedings and all evidence offered before the racing commission, and such evidence together with the exhibits, if any, and the findings of the racing commission shall be permanently preserved and shall constitute the record of the racing commission in such case. The racing commission may, if occasion shall require, by order, refer to one or more of its members, the duty of taking testimony in such matter and to report thereon to the racing commission, but no determination shall be made therein except by the racing commission. Within thirty days after such hearing, the racing commission shall make a final determination. Such a determination shall be based solely upon the evidence presented at the hearing. An order of the racing commission shall be based solely upon the evidence presented at the hearing. An order of the racing commission shall be based upon substantial evidence. If it determines that such approval be suspended, it shall make an order accordingly and shall cause such order to be entered on its minutes and a copy thereof served on such local application. Such an order of suspension shall be construed as a final order and shall be subject to judicial review under the provisions of the State Administrative Procedures Act, as set forth in chapter twenty-nine-a, article five, section two thereof.

§19-24-7. Reports, accounts, investigations.

The racing commission shall have power in its discretion, to prescribe uniform methods of keeping
accounts, records and books to be observed by applicants
and licensees. The racing commission may also, in its
discretion, prescribe by order forms of accounts, records
and memoranda to be kept by such applicants and
licensees and shall have power to visit, investigate and
place in lieu thereof racing commission accountants or
such other employees of the racing commission as it may
deem necessary, in the office, or other places of business
of any such applicant or licensee for the purpose of
seeing that the provisions of this article and the rules
and regulations issued by the racing commission
thereunder are strictly complied with.

Each applicant or licensee approved by the racing
commission to conduct off-track pari-mutuel wagering
shall submit daily accounting reports to the racing
commission, within forty-eight hours after each racing
day, accounting for all tickets sold and winning tickets
cashed or refunds and such other information as the
racing commission may require.

Every applicant or licensee subject to the provisions
of this article shall annually submit to the racing
commission and to the Legislature financial statements,
including a balance sheet, income statement, statement
of change in financial position and any other requested
financial data as well as the results of an audit of any
electronic data system used for pari-mutuel tickets and
wagering, all of which are to be audited in accordance
with generally accepted auditing standards as recog-
nized by the American institute of certified public
accountants, and certified by a certified public
accountant.

The reports required under this section shall be in
such form and contain such other matters as the racing
commission may determine from time to time to be
necessary to disclose accurately the financial condition
and operation of such applicant or licensees. The racing
commission may for good cause shown grant a reasona-
ble extension of time for the filing of any such report.

§19-24-8. Pari-mutuel system of wagering authorized;
authorization to deduct commission from
(a) The pari-mutuel system of wagering upon the simultaneously telecommunicated results of any horse race at any horse race meeting, whether within the state or without the state, conducted by an applicant or licensee created under the provisions of this article is hereby authorized, if, and only if, pari-mutuel wagering is conducted by such applicant or licensee within the confines of such applicant's or licensee's approved off-track wagering facility: Provided, That pari-mutuel wagering may not be conducted on any out of state event at the same time of day, that is afternoon against afternoon, or evening against evening, that thoroughbred racing is being conducted at a licensed thoroughbred track in West Virginia without the written consent of all existing thoroughbred racing associations and the legitimate horsemen's groups that represent the owners and trainers at all thoroughbred tracks in West Virginia. The provision of section one, article ten, chapter sixty-one of the code, relating to gaming shall not apply to the pari-mutuel system of wagering herein authorized.

(b) An applicant or licensee authorized to construct or operate an off-track wagering facility, under the provisions of this article is hereby expressly authorized to retain a basic commission not to exceed eighteen and twenty-five one-hundreths percent of all money wagered plus an additional amount equal to one and seventy-five one-hundreths percent of the amount wagered each day on all multiple wagers determined by a combination of two winning horses, including, but not limited to, the daily double, perfecta, exacta, quinella or plus an additional amount equal to seven and seventy-five one-hundreths percent of the amount wagered each day on all trifecta wagers or any other multiple wager which involves a single wagering interest on three or more horses.

In addition to any such commission, an applicant or licensee authorized to construct or operate on off-track wagering facility under the provisions of this article
shall also be entitled to retain the legitimate breakage which shall be made and calculated to the dime and from such breakage the applicant or licensee shall remit daily fifty percent of the total of such breakage retained by the applicant or licensee to the existing thoroughbred associations in equal amounts and fifty percent of such amount received by the thoroughbred associations shall be placed in the purse fund established by section nine, article twenty-three, chapter nineteen of this code.

That part of chapter nineteen, article twenty-three, section nine, subsection (b), subdivision (2), concerning commission deductions shall be applicable to telecommunicated harness races.

(c)(1) All moneys held by the applicant or licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of the last business day of the calendar quarter in connection with which the tickets were issued shall be turned over by the applicant or licensee to the racing commission within fifteen days after the expiration of such ninety-day period and the applicant or 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 racing commission from the licensee as a Class I advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication shall be
the county in which such off-track wagering facility is located.

(2) Further disposition of any such pari-mutuel tickets that shall not be presented for payment within ninety days from the date of the publication shall be as specified and detailed in subparagraphs one, two, three and four, subsection (b), section thirteen, article twenty-three, chapter nineteen of this code.

(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 off-track wagering facility for the purpose of ascertaining whether or not the licensee is complying with the provisions of this section. They shall also, for the same purpose 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 complied with the provisions of this section or has 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 off-track wagering facility, knowing or having reason to believe that such individual is under the age of eighteen years.

(f) Any licensee authorized to construct or operate on off-track wagering facility under the provisions of this article shall also have authority in conjunction therewith to maintain parking facilities and facilities for the sale of food and beverages, including beer and alcoholic beverages if proper licensing is obtained under article sixteen, chapter eleven, and article seven, chapter sixty of this code.

(g) When an entire afternoon and/or evening racing program from a West Virginia thoroughbred association track is being shown at an off-track betting facility, such facility may, with the prior written approval of the racing commission, the written approval of the tho-
roughbred racing association and the written approval
of the authorized representative of a majority of the
owners and trainers who hold the permit required by
section two, article twenty-three of this chapter, at each
of the thoroughbred horse tracks in this state, show
additional races originating from outside the state on
that particular occasion.


(a) Any off-track wagering facility offering horse
races shall pay each day upon which horse races are run
a daily license tax of one hundred and fifty dollars or
three dollars per wagering terminal, whichever is less.

(b) Any off-track wagering facility licensed by the
racing commission to receive simultaneously telecommu-
cinate horse races and permitting and conducting
pari-mutuel wagering shall, in addition to the aforemen-
tioned daily license tax, pay to the racing commission
from the commission deducted each day by such licenses
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
off-track wagering facility licensed under the provisions
of this article which tax shall be calculated at one
percent of such pari-mutuel pools. Three percent of such
pari-mutuel pools shall be paid to the economic devel-
opment commission, if any, established by the jurisdic-
tion in which the facility is located pursuant to section
seventeen of this article. If no economic development
commission is established then the three percent shall
be paid into the general fund of the county commission
of the county in which the off-track wagering facility is
located, except if it is located within a municipality,
then such amount shall be paid into the general fund
of the municipality. Further, from the deducted
commission a total of one percent shall be paid to each
nonoff-track wagering thoroughbred association li-
censed and operating in this state, and from the
deducted commission, a total of one percent shall be paid
for regular purses offered at each thoroughbred horse
track licensed and operating in this state.
Any dog racing association which is within seventy-five air miles of an off-track betting facility or within seventy-five air miles of a separate facility for which the license required by article twenty-three, chapter nineteen of this code, to conduct dog-race meetings has been approved by the racing commission, shall in lieu of the commissions authorized to be deducted by the licensee under the provisions of subsection (b), section three of article twenty-three of this chapter is hereby authorized to retain a basic commission not to exceed seventeen percent of all money wagered plus an additional amount equal to two percent of the amount wagered each day on all multiple wagers determined by a combination of two winning dogs, including but not limited to the daily double, perfecta, exacta, quinella and plus an additional amount equal to three percent of the amount wagered each day on all trifecta wagers or any other multiple wager which involves a single wagering interest on three or more dogs. A dog racing association electing to deduct the revised commissions authorized by this paragraph, shall give written notification to the racing commission not less than thirty days prior to such change. The racing commission shall prescribe blank forms for filing such notification. Such notification shall disclose the following: (1) the revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple betting; (2) the dates to be included in such revised betting, which shall not be less than one race meet; (3) such other information as may be required by the racing commission.

The commissions authorized to be deducted prior to the effective date of this act shall remain in force and effect until changed under the provisions of this section.

After deducting the pari-mutuel pool tax, the amount to be paid to the economic development commission or the county or city, the amounts to be paid to the non-off-track wagering associations and regular purses, the amount required to be paid under the terms of the contract with the legal wagering entity of this or another state and the cost of transmission the remainder
of the commission, except as hereinafter provided in this paragraph, shall be retained by the licensee. In the event the off-track wagering facility is operated by an existing West Virginia thoroughbred association or combination of such associations, in addition to the foregoing deductions the licensee shall deduct the cost of debt amortization, if any, and all other operating costs and pay fifty percent of the remainder into the purse fund at the participating thoroughbred tracks. Subsection (a), section ten, article twenty-three, chapter nineteen of this code concerning daily license taxes, shall be applicable to telecommunicated harness races.

Subsection (c), section ten, article twenty-three, chapter nineteen of this code, concerning pari-mutuel taxes paid to the state shall be applicable to telecommunicated harness races.

§19-24-10. Deductions from pari-mutuel pools in lieu of all other licenses and taxes.

The deductions from pari-mutuel pools provided for in section nine of this article shall be in lieu of all other license, income, excise, special franchise, special or franchise taxes of this state or of any county or municipality within this state.


An applicant or licensee authorized to construct or operate an off-track wagering facility under the provisions of this article may, with written approval of the racing commission, contract with any legal wagering entity in this or any other state to simultaneously receive from such entity telecommunications of the simultaneous running of any horse race or races conducted by such entity. "Legal wagering entity" as used herein means any person, partnership, corporation, board, commission, or association engaged in horse racing pursuant to a licensee or other permission granted by the state in which such person, partnership, board, commission or association maintains a racetrack and conducts race meetings with a pari-mutuel wagering system permitted under that state's law and in
which the participants are wagering with each other and not with the operator.

§19-24-12. Issuance of revenue bonds; dedication of admission fees; balance to licensee.

A county or municipality within which authorization has been granted by the racing commission to an applicant to construct or operate a facility for off-track wagering, may, upon proper resolution, ordinance or order, issue revenue bonds for the purpose of paying all or any part of the initial cost of organization and acquiring, constructing, equipping and putting into operation a facility for the conducting of off-track pari-mutuel wagering on horse races. The bonds shall be dated and shall bear interest at such rate as are approved by the racing commission, payable semiannually, and shall mature at such time or times, not exceeding thirty years, as may be determined by the respective county commission or governing municipal council may be made redeemable before maturity as the respective county commission or governing municipal council may determine at such price or prices and under such terms and conditions as may be fixed by the respective county commission or governing municipal council prior to the issuance of such bonds. The respective county commission or governing municipal council shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination of the bonds and the place of payment of the principal and interest, which may be at any banking institution or trust company within the county or municipality. The bonds shall be signed and the seal of the political subdivision shall be affixed thereto in accordance with the provisions of section nineteen, article one, chapter thirteen of this code.

All admission fees established by the licensee for public admittance to the off-track wagering facility constructed and operated by a licensee under the provisions of this article shall be dedicated, without any deductions being made therefrom, to the payment of the principal and interest due on any bonds issued by the respective county commission or governing municipal
council under the authority of this section. Such admission fees shall be deposited in a sinking fund in a banking institution or trust company designated by the licensee, subject to the approval of the racing commission as a part of a plan of operation or an amended plan of operation, as paying agent for the principal and interest due on such bonds; and the funds so deposited shall be used for such purpose, less the fees of the paying agent.

After all of the bonds are paid and redeemed and all of the interest due thereupon is paid, the sinking fund shall be terminated and all public admission fees received thereafter shall be retained by the licensee.


An applicant or licensee authorized to construct or operate an off-track wagering facility under the provisions of this article may agree by written contract with any person, firm or organization, whereby such person, firm or organization will act as management agent over all or any part of the operations of such off-track wagering facility, if such written contract is submitted to the racing commission for its approval either before the racing commission gives its final approval to the construction of such facility or thereafter.

If such a management agreement is presented to the racing commission, the racing commission shall make a complete and exhaustive investigation into the stability and standing of such management agent, its principals, officers, directors and stockholders within sixty days of the time when the agreement is presented to the racing commission. In making this investigation the racing commission may require the applicant or licensee, or such prospective management agent to produce whatever information the racing commission deems necessary to complete the investigation.

In investigating the management agent, applicant, licensee, or all of them, the racing commission, where applicable, shall examine the following:
(1) The identities of the principals and of all persons who are intended to be placed in supervisory capacities in management of the facility;

(2) Their experience, former business activities and past performance in business management of the facility;

(3) The identities of all stockholders of the management agent, applicant, licensee, or any or all of them, holding more than five percent of the respective stock, or more than five percent interest in any other noncorporate capacity in the management agent, applicant, licensee, or any or all of them;

(4) Whether and to what extent any principal, officer, director, stockholder of the management agent, applicant, licensee, or any or all of them, own any interest in any horse racing facility or in any off-track wagering facility;

(5) The performance of the management agent, applicant, licensee, or any or all of them, under any similar management agreement, or authorized wagering enterprise in this or any other state;

(6) Whether any principal, officer, director, stockholder or supervisory or management personnel of the management agent, applicant, licensee, or any or all of them, has been convicted of a felony or is under indictment for the commission of a felony; and

(7) Any other area of investigation that the racing commission deems worthwhile in determining the fitness of the management agent, applicant, licensee, or any or all of them.

In addition, in approving or disapproving such management agreement the racing commission may consider the terms of the agreement to determine if they are fair and equitable and are in keeping with similar agreements employed in the industry. At any time that there is a change in the management or ownership of a management agent, applicant, licensee, or any or all of them, that the racing commission deems significant, and the racing commission may conduct such further
investigation as it may direct.

All employees of a management agent, applicant, licensee, or any or all of them, who handle or are in the proximity of moneys evolving from the operation of an off-track wagering facility shall place a fidelity bond with the licensee in amounts to be specified by the racing commission and conditioned upon the honesty, integrity and faithful performance of the management agent and its employees.

§19-24-14. Local referendum election.

Approval by the qualified voters of the municipality or county in which the proposed facility is to be established under this article, by referendum shall be required. If the proposed facility receiving tentative approval by the racing commission is proposed for a location within a Class I or II municipality or a Class III municipality having a population of five thousand or more, such an election shall be held within the affected municipality. If the proposed facility receiving tentative approval by the commission is proposed for a location outside any municipality's boundaries, or inside a Class IV municipality, or a Class III municipality having a population of less than five thousand and within a county, such an election shall be held within the entire affected county. Such a referendum may be held at the same time as a primary, general or special election within the affected municipality or county; however, in no event shall such an election be held less than thirty days following the first publication of tentative approval of the license and construction permit application by the racing commission as set forth in section five of this article.

§19-24-15. Local referendum election procedure; form of ballots or ballot labels.

(a) Upon the publication of notice of tentative approval of the license and construction permit by the racing commission in accordance with the provisions of section five of this article, the county commission of the county or the clerk of the municipality, whichever is appropriate under the provisions of section thirteen of this
article, in which all or any integral part of a proposed
off-track facility for wagering on horse races is to be
constructed or established is hereby required to call a
local referendum election for the purpose of determining
the will of the qualified voters within said county or
municipality as to the construction or establishment of
all or any integral part of such off-track facility for
wagering on horse races within said county or munic-
ipality. Upon such notice of tentative approval of the
license application and construction permit, the county
commission or municipal clerk shall enter an order
calling for a local referendum election and providing
that the same shall be held at not less than thirty days
from the date of the initial publication of the notice of
tentative approval. A copy of the order so entered by the
county commission or municipal clerk shall be served
upon the racing commission and the racing commission
shall take no further action in connection with the
issuance of such construction permit until said local
referendum election shall be held. Said county commis-
ion or municipal clerk shall give notice of such local
referendum election by publication of such notice as a
Class II-0 legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code;
and the publication area for such publication shall be
the county or municipality as is appropriate. Such notice
shall be so published within fourteen consecutive days
next preceding the date of said election.

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

"Shall the West Virginia Racing Commission issue a
permit authorizing the construction or establishment of
an off-track facility for wagering on horse races, and the
pari-mutuel system of wagering permitted and con-
ducted in (City or County)?

☐ Yes

☐ No

(Place a cross mark in the square opposite your
choice)"
(c) Each individual qualified to vote in said county or municipality at a primary, general or special election shall likewise be qualified to vote at the local referendum election. Election officers shall be appointed and qualified to conduct said local referendum election. The votes in said local referendum election shall be counted and returns made by the election officers, the results certified by the commissioners of election to said county commission or municipal clerk who shall canvass the ballots, all in accordance with the laws of this state relating to primary, general and special elections insofar as the same are applicable. The county commission or the municipal clerk as is appropriate, shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission.

§19-24-16. Issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of construction permit.

(a) The racing commission shall, after the certification of the results of such local referendum election, issue such construction permit if a majority of the legal votes cast at such election were in favor of the issuance of a construction permit. If a majority of the legal votes cast at such election were opposed to the issuance of a construction permit, the racing commission shall not issue a construction permit.

(b) A construction permit issued as aforesaid shall remain valid only for a three-month period, except that if the racing commission is satisfied that the construction permit holder has in good faith started and is continuing construction of the proposed off-track wagering facility the racing commission may extend the construction permit for additional successive three-month periods, but in no event shall the aggregate time of such construction permit exceed a period of twenty-four months from the date of issuance of the construction permit.

(c) No construction permit which may be or has been
issued under provisions of this article shall be transferred or assigned in any manner whatsoever without the written consent of the racing commission.

§19-24-17. Economic development commission.

Any county or municipality within which an applicant receives authority from the state racing commission to construct and operate a facility for off-track wagering on horse races is hereby authorized to establish an economic development commission, hereinafter referred to as the "commission" in this section. Such commission shall be formed by an ordinance or order, as appropriate, by the governmental body establishing the same. Each commission, when created, shall be a public corporation and shall have perpetual existence.

All property, powers and duties and the management and control of each commission shall be vested in a board consisting of representatives appointed by the governmental body creating and establishing such commission. Such board shall consist of not less than five members to be appointed by the county commission or municipal council as is appropriate. All members of any board shall be appointed for terms of four years. Prior to making the initial appointments to the board, the governmental body shall make such initial appointments so that one of the members of the board shall be appointed for a term of one year, one of the members of the board shall be appointed for a term of two years, one of the members of the board shall be appointed for a term of three years, two of the members of the board shall be appointed for a term of four years. As the term of each such initial appointee expires the successor to fill the vacancy created by such expired term may be appointed for one additional four-year term.

The ordinance or order creating an economic development commission may provide for the manner of appointments to the membership of such commission by the governmental body creating such commission, which, in the case of a county, shall be the county commission or other tribunal in lieu thereof and, in the case of a municipality, shall be the governing body
If any member of any board die, resign or for any reason cease to be a member of the board, the governmental body which such member represented shall appoint another individual to fill the unexpired portion of the term of such member. No more than two thirds of the total number of members of the board of each commission shall be from the same political party and no member of any such board shall hold any office, other than the office of notary public, or employment from the state of West Virginia, any county political subdivision thereof, or any political party. All members of any board shall be residents of the municipality or county for which appointed. No member of any board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.

Each such commission shall have plenary power and authority to:

(a) Sue and be sued;
(b) Contract and be contracted with;
(c) Adopt, use and alter common seal;
(d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;
(e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;
(f) (1) Acquire, purchase, own and hold any property real or personal, and (2) acquire, construct, equip, maintain, and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
(g) Apply for, receive and use grants-in-aid, donations
and contributions from any source or sources, including, but not limited to, the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;

(h) Sell, encumber or dispose of any property, real or personal;

(i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein;

(j) Accept funds from the operation of an off-track wagering facility;

(k) Expend funds for the construction of any facility or enterprise that such commission deems will contribute to the economic development of the municipality or county by way of stimulating commerce, creating employment or inuring to economic development and property;

(l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as such commission deems proper, but when any municipality or county commission is a lessee under any such lease, such lease must contain a provision granting to such municipality or county commission the option to terminate such lease during any fiscal year covered thereby; and

(m) Do all things reasonable and necessary to carry out the foregoing powers.

No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies shall apply to the indebtedness of a commission. No indebtedness of any nature of a commission shall constitute an indebtedness of any municipality or county creating and establishing such commission or a charge
against any property of said municipalities or counties. No indebtedness or obligation incurred by any commission shall give any right against any member of the governing body of any municipality or any member of the county commission of any county or any member of the board of any commission. The rights of creditors of any commission shall be solely against the commission as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

If a commission should realize a surplus over and above the amount required for the improvement, maintenance and operation of its facilities and for meeting all required payments on its obligations, it shall set aside such reserve for future improvements, maintenance, operations and contingencies as it shall deem proper and may then apply the residue of such surplus, if any, to the payment of any recognized and established obligations not then due, and after all such recognized and established obligations have been paid and discharged in full, the commission shall, at the end of each fiscal year, set aside the reserve for future improvements, maintenance, operations and contingencies, as foresaid, and then pay the residue of such surplus, if any, to the governmental bodies creating and establishing such commission.

Each such commission shall be exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipality. The property of each commission shall be exempt from all municipal and county taxes and bonds, notes, debentures and other evidences of indebtedness, together with the interest thereon, of each commission are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon.

All funds received by each such commission shall be deposited in a banking institution or banking institutions as the board may direct and shall be withdrawn therefrom in such manner as the board may direct. Each commission shall keep strict account of all of its
receipts and expenditures and shall each quarter make
a quarterly report thereon to the municipalities,
counties and persons which have made contributions to
it, and such report shall contain an itemized account of
its receipts and disbursements during the preceding
quarter. Such report shall be made within sixty days
after the termination of the quarter. Within sixty days
after the end of each fiscal year, each such commission
shall make an annual report containing an itemized
statement of its receipts and disbursements for the
preceding fiscal year and publish the same as a Class
II-0 legal advertisement in compliance with the provi-
sions of article three, chapter fifty-nine of this code, and
the publication area for such publication shall be each
county in which the commission's facilities are located.
The books, records and accounts of each such
commission shall be subject to audit and examination by
the state tax commissioner and by other proper public
official or body in the manner provided by law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Floyd Fulla
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

J. C. West
Clerk of the Senate

Donald R. Kepp
Clerk of the House of Delegates

Dean Turnbull
President of the Senate

Joseph P. Alvey
Speaker of the House of Delegates

The within bill is requested this the 26th day of March, 1986.

aud/inner
Governor