

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

— ● —

# ENROLLED

HOUSE BILL No. 2367

(By Delegate Humphreys )

— ● —

Passed March 14, 1987

In Effect from Passage

**ENROLLED**  
**H. B. 2367**  
(By DELEGATE HUMPHREYS)

[Passed March 14, 1987; in effect from passage.]

AN ACT to amend and reenact section nine, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the pari-mutuel system of wagering on dog racing generally; authorizing such system and establishing limitations thereon; authorizing licensees to deduct certain commissions; use of such commissions; providing for the establishment of special funds by the racing commission and prescribing the use thereof; increasing commissions deducted by licensees on certain pari-mutuel pools on dog racing; percentages of such commissions to be paid to county or municipality or state highway fund for the use of the department of highways; reporting of revised commissions to be made by dog racing licensees; requiring licensees to establish special funds and prescribing the use thereof; retention of breakage; access of auditors to certain records and to location where pari-mutuel wagering conducted or calculated; prohibitions; and mandating certain distributions from commissions.

*Be it enacted by the Legislature of West Virginia:*

That section nine, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 23. HORSE AND DOG RACING.**

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

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

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

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

20 (1) The commission deducted by any licensee from the  
21 pari-mutuel pools on thoroughbred horse racing, except  
22 from thoroughbred horse racing pari-mutuel pools  
23 involving what is known as multiple betting in which  
24 the winning pari-mutuel ticket or tickets are deter-  
25 mined by a combination of two or more winning horses,  
26 shall not exceed seventeen and one-fourth percent of the  
27 total of such pari-mutuel pools for the day. Out of such  
28 commission, as is mentioned in this subdivision, the  
29 licensee (i) shall pay the pari-mutuel pools tax provided  
30 for in subsection (b), section ten of this article, (ii) shall  
31 make a deposit into a special fund to be established by  
32 the licensee and to be used for the payment of regular  
33 purses offered for thoroughbred racing by the licensee,  
34 which deposits out of pari-mutuel pools for each day

35 during the months of January, February, March,  
36 October, November and December shall be seven and  
37 seventy-five one-thousandths percent of such pari-  
38 mutuel pools, and which, out of pari-mutuel pools for  
39 each day during all other months, shall be six and five  
40 hundred seventy-five one-thousandths percent of such  
41 pari-mutuel pools, (iii) shall, after allowance for the  
42 exclusion given by subsection (b), section ten of this  
43 article, make a deposit into a special fund to be  
44 established by the racing commission and to be used for  
45 the payment of breeders, awards and capital improve-  
46 ments as authorized by section thirteen-b of this article,  
47 which deposits out of pari-mutuel pools shall from the  
48 effective date of this section and for fiscal year one  
49 thousand nine hundred eighty-five, be four-tenths  
50 percent; for fiscal year one thousand nine hundred  
51 eighty-six, be seven-tenths percent; for fiscal year one  
52 thousand nine hundred eighty-seven, be one percent; for  
53 fiscal year one thousand nine hundred eighty-eight, be  
54 one and one-half percent; and for fiscal year one  
55 thousand nine hundred eighty-nine, and each year  
56 thereafter, be two percent of such pools, and (iv) shall  
57 pay one tenth of one percent of such pari-mutuel pools  
58 into the general fund of the county commission of the  
59 county in which the racetrack is located, except if within  
60 a municipality, then to such municipal general fund.  
61 The remainder of the commission shall be retained by  
62 the licensee.

63 The commission deducted by any licensee from the  
64 pari-mutuel pools on thoroughbred horse racing involv-  
65 ing what is known as multiple betting in which the  
66 winning pari-mutuel ticket or tickets are determined by  
67 a combination of two winning horses shall not exceed  
68 nineteen percent and by a combination of three or more  
69 winning horses shall not exceed twenty-five percent of  
70 the total of such pari-mutuel pools for the day. Out of  
71 such commission, as is mentioned in this paragraph, the  
72 licensee (i) shall pay the pari-mutuel pools tax provided  
73 for in subsection (b), section ten of this article, (ii) shall  
74 make a deposit into a special fund to be established by  
75 the licensee and to be used for the payment of regular  
76 purses offered for thoroughbred racing by the licensee,

77 which deposits out of pari-mutuel pools for each day  
78 during the months of January, February, March,  
79 October, November and December for pools involving a  
80 combination of two winning horses shall be seven and  
81 ninety-five one-hundredths percent and out of pari-  
82 mutuel pools for each day during all other months shall  
83 be seven and forty-five one-hundredths percent of such  
84 pari-mutuel pools; and involving a combination of three  
85 or more winning horses for the months of January,  
86 February, March, October, November and December  
87 the deposits out of such fund shall be ten and ninety-  
88 five one-hundredths percent of such pari-mutuel pools;  
89 and which, out of pari-mutuel pools for each day during  
90 all other months, shall be ten and forty-five one-  
91 hundredths percent of such pari-mutuel pools, (iii) shall,  
92 after allowance for the exclusion given by subsection (b),  
93 section ten of this article, make a deposit into a special  
94 fund to be established by the racing commission and to  
95 be used for the payment of breeders' awards and capital  
96 improvements as authorized by section thirteen-b of this  
97 article, which deposits out of pari-mutuel pools shall  
98 from the effective date of this section and for fiscal year  
99 one thousand nine hundred eighty-five, be four-tenths  
100 percent; for fiscal year one thousand nine hundred  
101 eighty-six, be seven-tenths percent; and for fiscal year  
102 one thousand nine hundred eighty-seven, be one percent;  
103 and for fiscal year one thousand nine hundred eighty-  
104 eight, be one and one-half percent; and for fiscal year  
105 one thousand nine hundred eighty-nine, and each year  
106 thereafter be two percent of such pools, and (iv) shall  
107 pay one tenth of one percent of such pari-mutuel pools  
108 into the general fund of the county commission of the  
109 county in which the racetrack is located, except if within  
110 a municipality, then to such municipal general fund.  
111 The remainder of the commission shall be retained by  
112 the licensee.

113 The deposits into special fund established by the  
114 racing commission to be used for payments of breeders'  
115 awards and other expenses authorized by section  
116 thirteen-b of this article shall be reduced by fifty  
117 percent in the event the average daily pari-mutuel pool  
118 for any calendar year is less than the average daily pari-

119   mutuel pool for the calendar year ended the thirty-first  
120   day of December, one thousand nine hundred eighty-  
121   three, in amount equal to eleven percent of the average  
122   daily pari-mutuel pool for said calendar year ended the  
123   thirty-first day of December, one thousand nine hundred  
124   eighty-three. Of the amounts so reduced, fifty percent  
125   shall be paid into the special purse fund established in  
126   section nine-b of this article.

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

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

153       (3) The commission deducted by any licensee from the  
154   pari-mutuel pools on dog racing, except from dog racing  
155   pari-mutuel pools involving what is known as multiple  
156   betting in which the winning pari-mutuel ticket or  
157   tickets are determined by a combination of two or more  
158   winning dogs, shall not exceed sixteen and thirty one-  
159   hundredths percent (16.30%) of the total of all pari-

160 mutuel pools for the day. The commission deducted by  
161 any licensee from the pari-mutuel pools on dog racing  
162 involving what is known as multiple betting in which  
163 the winning pari-mutuel ticket or tickets are deter-  
164 mined by a combination of two winning dogs shall not  
165 exceed nineteen percent (19%), by a combination of three  
166 winning dogs shall not exceed twenty-one percent (21%),  
167 and by a combination of four or more winning dogs shall  
168 not exceed twenty-three percent (23%) of the total of  
169 such pari-mutuel pools for the day. Out of such commis-  
170 sions, the licensee shall pay the pari-mutuel pools tax  
171 provided for in subsection (d), section ten of this article,  
172 and one tenth of one percent of such pari-mutuel pools  
173 into the general fund of the county commission of the  
174 county in which the racetrack is located. In addition, out  
175 of such commissions, if the racetrack is located within  
176 a municipality, then the licensee shall also pay three  
177 tenths of one percent of the pari-mutuel pools into the  
178 general fund of the municipality; or, if the racetrack is  
179 located outside of a municipality, then the licensee shall  
180 also pay three tenths of one percent of the pari-mutuel  
181 pools into the state road fund for use by the department  
182 of highways in accordance with the provisions of this  
183 subdivision (3). The remainder of the commission shall  
184 be retained by the licensee.

185 For the purposes of this section, "municipality" shall  
186 mean and include any Class I, Class II and Class III city  
187 and any Class IV town or village, incorporated as a  
188 municipal corporation under the laws of this state prior  
189 to the first day of January, one thousand nine hundred  
190 eighty-seven.

191 Each dog racing licensee, when required by the  
192 provisions of this subdivision (3) to pay a percentage of  
193 its commissions to the state road fund for use by the  
194 department of highways, shall transmit the required  
195 funds, in such manner and at such times as the racing  
196 commission shall by procedural rule direct, to the state  
197 treasurer for deposit in the state treasury to the credit  
198 of the department of highways state road fund. All  
199 funds collected and received in the state road fund  
200 pursuant to the provisions of this subdivision shall be

201 used by the department of highways in accordance with  
202 the provisions of article seventeen-a, chapter seventeen  
203 of this code for the acquisition of right-of-way for, the  
204 construction of, the reconstruction of and the improve-  
205 ment or repair of any interstate or other highway,  
206 secondary road, bridge and toll road in the state. If on  
207 the first day of July, one thousand nine hundred eighty-  
208 nine any area encompassing a dog racetrack has  
209 incorporated as a Class I, Class II or Class III city or  
210 as a Class IV town or village, whereas such city, town  
211 or village was not incorporated as such on the first day  
212 of January, one thousand nine hundred eighty-seven,  
213 then on and after the first day of July, one thousand nine  
214 hundred eighty-nine, any balances in the state road fund  
215 existing as a result of payments made under the  
216 provisions of this subdivision may be used by the state  
217 road fund for any purpose for which other moneys in  
218 such fund may lawfully be used, and in lieu of further  
219 payments to the state road fund, the licensee of a  
220 racetrack which is located in such municipality shall  
221 thereafter pay three tenths of one percent of the pari-  
222 mutuel pools into the general fund of such municipality.  
223 If no such incorporation occurs before the first day of  
224 July, one thousand nine hundred eighty-nine, then  
225 payments to the state road fund shall thereafter  
226 continue as provided for under the provisions of this  
227 subdivision.

228 A dog racing licensee, before deducting the commis-  
229 sions authorized by this subdivision (3), shall give  
230 written notification to the racing commission not less  
231 than thirty days prior to any change in the percentage  
232 rates for such commissions. The racing commission shall  
233 prescribe blank forms for filing such notification. Such  
234 notification shall disclose the following: (1) The revised  
235 commissions to be deducted from the pari-mutuel pools  
236 each day on win, place and show betting and on  
237 different forms of multiple bettings; (2) the dates to be  
238 included in such revised betting; (3) such other informa-  
239 tion as may be required by the racing commission.

240 The licensee shall establish a special fund to be used  
241 only for capital improvements or long-term debt



242 amortization or both: *Provided*, That any licensee,  
243 heretofore licensed for a period of eight years prior to  
244 the effective date of the amendment made to this section  
245 during the regular session of the Legislature held in the  
246 year one thousand nine hundred eighty-seven, shall  
247 establish such special fund to be used only for capital  
248 improvements or physical plant maintenance, or both,  
249 at such licensee's licensed facility or at such licensee's  
250 commonly owned racing facility located within this  
251 state. Deposits made into such funds shall be in an  
252 amount equal to twenty-five percent of the increased  
253 rate total over and above the applicable rate in effect  
254 as of the first day of January, one thousand nine  
255 hundred eighty-seven, of the pari-mutuel pools for the  
256 day. Any amount deposited into such funds must be  
257 expended or liability therefor incurred within a period  
258 of two years from the date of deposit. Any funds not so  
259 expended shall forthwith be transferred into the state  
260 general fund after expiration of the two-year period.

261 The licensee shall make a deposit into a special fund  
262 established by the licensee and used for payment of  
263 regular purses offered for dog racing, which deposits  
264 out of the licensee's commissions for each day shall be  
265 three and seventy-five one-hundredths percent (3.75%) of  
266 the pari-mutuel pools.

267 The licensee shall further establish a special fund to  
268 be used exclusively for marketing and promotion  
269 programs; such funds shall be in an amount equal to five  
270 percent over and above the applicable rates in effect as  
271 of the first day of January, one thousand nine hundred  
272 eighty-seven, of the total pari-mutuel pools for the day.

273 Notwithstanding the provisions of subsection (d),  
274 section ten of this article, the amendments to this section  
275 by the Acts of the Legislature, Regular Session, one  
276 thousand nine hundred eighty-seven, shall not reduce  
277 any pari-mutuel wagering tax paid by any dog racing  
278 licensee below the total dollar level paid by such licensee  
279 for and during the calendar year one thousand nine  
280 hundred eighty-six: *Provided*, That nothing herein shall  
281 affect any increase in any such tax; and, *Provided*,  
282 *further*, That, if the number of annual dog racing

283 meetings approved by the racing commission for any  
284 dog racing licensee is reduced below four hundred by  
285 the racing commission, or as a result of acts of God,  
286 including, but not limited to flood, fire, wind damage,  
287 work stoppages or other events beyond the control of the  
288 licensee, (but not including inclement weather), then any  
289 increase in the pari-mutuel wagering tax for any  
290 calendar year in excess of the total dollar level paid by  
291 such licensee for the calendar year one thousand nine  
292 hundred eighty-six, shall be reduced in like proportion.

293 The racing commission shall prepare and transmit  
294 annually to the governor and the Legislature a report  
295 of the activities of the racing commission under this  
296 subdivision (3). The report shall include a statement of:  
297 the amount of commissions retained by licensees; the  
298 amount of taxes paid to the state; the amounts paid to  
299 municipalities, counties and the department of highways  
300 dog racing fund; the amounts deposited by licensees into  
301 special funds for capital improvements or long-term  
302 debt amortization, and a certified statement of the  
303 financial condition of any licensee depositing into such  
304 fund; the amounts paid by licensees into special funds  
305 and used for regular purses offered for dog racing; the  
306 amounts paid by licensees into special funds and used  
307 for marketing and promotion programs; and such other  
308 information as the racing commission may deem  
309 appropriate for review.

310 The racing commission shall report to the Governor,  
311 President of the Senate, Speaker of the House, and the  
312 Legislature, on or before the thirty-first day of De-  
313 cember, one thousand nine hundred ninety-three, on the  
314 effects of the amendments to this article by the Acts of  
315 the Legislature, Regular Session, one thousand nine  
316 hundred eighty-seven, on dog racing licensees and pari-  
317 mutuel taxation for use by the Legislature in review of  
318 such amendments.

319 (c) In addition to any such commission, a licensee of  
320 horse race or dog race meetings shall also be entitled  
321 to retain the legitimate breakage, which shall be made  
322 and calculated to the dime, and from such breakage, the  
323 licensee of a horse race meeting (excluding dog race

324 meetings), shall deposit daily fifty percent of the total  
325 of such breakage retained by the licensee into the special  
326 fund created pursuant to the provisions of subdivision  
327 (1), subsection (b) of this section for the payment of  
328 regular purses.

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

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

351 (f) Notwithstanding the foregoing provisions of  
352 subdivision (1), subsection (b) of this section, to the  
353 contrary, a thoroughbred licensee qualifying for and  
354 paying the alternate reduced tax on pari-mutuel pools  
355 provided in section ten of this article shall distribute the  
356 commission authorized to be deducted by subdivision (1),  
357 subsection (b), section nine of this article as follows: (i)  
358 The licensee shall pay the alternate reduced tax  
359 provided in section ten of this article; (ii) shall pay one  
360 tenth of one percent of such pari-mutuel pools into the  
361 general fund of the county commission of the county in  
362 which the racetrack is located, except if within a  
363 municipality, then to such municipal general fund; (iii)  
364 one half of the remainder of the commission shall be

365 paid into the special fund established by the licensee and  
366 to be used for the payment of regular purses offered for  
367 thoroughbred racing by the licensee; and (iv) the amount  
368 remaining after the payments required above shall be  
369 retained by the licensee.

*James H. Smith*  
*James H. Smith*  
*James H. Smith*

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

*Bruce O. Williams*  
Chairman Senate Committee

*Lyle Satter*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Iodd C. Smith*  
Clerk of the Senate

*Donald S. Kopp*  
Clerk of the House of Delegates

*Dan Tonkovich*  
President of the Senate

*W. H. Chubb*  
Speaker of the House of Delegates

The within *approved* this the *2<sup>nd</sup>*  
day of *April*, 1987.

*Anna. Prange Jr.*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/87

Time 2:27 p.m.