Enrolled

House Bill No. 2367

(By Delegate Humphrey)

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.

(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), 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 from the effective date of this section and 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), 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 from the effective date of this section and 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; and 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 the 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 commis-

(3) The commission deducted by any licensee from the
pari-mutuel pools on dog racing, except from dog 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 dogs, shall not exceed sixteen and thirty one-
hundredths percent (16.30%) of the total of all pari-
mutuel pools for the day. The commission deducted by
any licensee from the pari-mutuel pools on dog racing
involving what is known as multiple betting in which
the winning pari-mutuel ticket or tickets are deter-
mined by a combination of two winning dogs shall not
exceed nineteen percent (19%), by a combination of three
winning dogs shall not exceed twenty-one percent (21%),
and by a combination of four or more winning dogs shall
not exceed twenty-three percent (23%) of the total of
such pari-mutuel pools for the day. Out of such commis-
sions, the licensee shall pay the pari-mutuel pools tax
provided for in subsection (d), section ten of this article,
and 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. In addition, out
of such commissions, if the racetrack is located within
a municipality, then the licensee shall also pay three
tenths of one percent of the pari-mutuel pools into the
general fund of the municipality; or, if the racetrack is
located outside of a municipality, then the licensee shall
also pay three tenths of one percent of the pari-mutuel
pools into the state road fund for use by the department
of highways in accordance with the provisions of this
subdivision (3). The remainder of the commission shall
be retained by the licensee.

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

Each dog racing licensee, when required by the
provisions of this subdivision (3) to pay a percentage of
its commissions to the state road fund for use by the
department of highways, shall transmit the required
funds, in such manner and at such times as the racing
commission shall by procedural rule direct, to the state
treasurer for deposit in the state treasury to the credit
of the department of highways state road fund. All
funds collected and received in the state road fund
pursuant to the provisions of this subdivision shall be
used by the department of highways in accordance with
the provisions of article seventeen-a, chapter seventeen
of this code for the acquisition of right-of-way for, the
construction of, the reconstruction of and the improve-
ment or repair of any interstate or other highway,
secondary road, bridge and toll road in the state. If on
the first day of July, one thousand nine hundred eighty-
ine any area encompassing a dog racetrack has
incorporated as a Class I, Class II or Class III city or
as a Class IV town or village, whereas such city, town
or village was not incorporated as such on the first day
of January, one thousand nine hundred eighty-seven,
then on and after the first day of July, one thousand nine
hundred eighty-nine, any balances in the state road fund
existing as a result of payments made under the
provisions of this subdivision may be used by the state
road fund for any purpose for which other moneys in
such fund may lawfully be used, and in lieu of further
payments to the state road fund, the licensee of a
racetrack which is located in such municipality shall
thereafter pay three tenths of one percent of the pari-
mutuel pools into the general fund of such municipality.
If no such incorporation occurs before the first day of
July, one thousand nine hundred eighty-nine, then
payments to the state road fund shall thereafter
continue as provided for under the provisions of this
subdivision.

A dog racing licensee, before deducting the commis-
sions authorized by this subdivision (3), shall give
written notification to the racing commission not less
than thirty days prior to any change in the percentage
rates for such commissions. 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; (3) such other informa-
tion as may be required by the racing commission.

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

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

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

Notwithstanding the provisions of subsection (d), section ten of this article, the amendments to this section by the Acts of the Legislature, Regular Session, one thousand nine hundred eighty-seven, shall not reduce any pari-mutuel wagering tax paid by any dog racing licensee below the total dollar level paid by such licensee for and during the calendar year one thousand nine hundred eighty-six: Provided, That nothing herein shall affect any increase in any such tax; and, Provided, further, That, if the number of annual dog racing
meetings approved by the racing commission for any dog racing licensee is reduced below four hundred by the racing commission, or as a result of acts of God, including, but not limited to flood, fire, wind damage, work stoppages or other events beyond the control of the licensee, (but not including inclement weather), then any increase in the pari-mutuel wagering tax for any calendar year in excess of the total dollar level paid by such licensee for the calendar year one thousand nine hundred eighty-six, shall be reduced in like proportion.

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

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

(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), 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), subsection (b), 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams  
Chairman Senate Committee

Lyle Hatter  
Chairman House Committee

Originating in the House.
Takes effect from passage.

J. cord. Wilt    
Clerk of the Senate

Donald L. Hupp  
Clerk of the House of Delegates

Dan Thomas  
President of the Senate

Speaker of the House of Delegates

The within       APPROVED    this the 2nd  
day of April, 1987.  

Governor