

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.

Handwritten signature and text, likely a signature and date, appearing at the bottom of the page.

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.

Judd C. Smith

Clerk of the Senate

Donald T. Kopp

Clerk of the House of Delegates

Dan Tonkovich

President of the Senate

Robert Chubb

Speaker of the House of Delegates

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

Luca. Prange Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/87

Time 2:27 p.m.

✓