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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

— ● —

# ENROLLED

HOUSE BILL No. 2587

(By ~~Mr.~~ Del. M. Burke + Minard)

— ● —

Passed April 8, 1989

In Effect Ninety Days From Passage

**ENROLLED**  
**H. B. 2587**

(By DELEGATES M. BURKE AND MINARD)

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[Passed April 8, 1989; in effect ninety days from passage.]

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AN ACT to amend and reenact section nine, ten, thirteen and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pari-mutuel system of wagering, authorization of licensee to deduct commissions from pari-mutuel pools, retention of breakage, auditing, minors, providing for daily license tax, providing pari-mutuel pools tax, procedure for payment of tax, alternate tax, credits, disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets, publication of notice, irredeemable tickets, stake races, and establishment of a special revenue account, necessary costs of administration and promotion of the West Virginia Thoroughbred Development Fund being appropriated from said special revenue account, excess after appropriation being remitted to the West Virginia Thoroughbred Development Fund.

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

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

**CHAPTER 19. AGRICULTURE.**

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

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

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

114 The deposits into special fund established by the  
115 racing commission to be used for payments of breeders'  
116 awards and other expenses authorized by section

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

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

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

154 (3) The commission deducted by any licensee from the  
155 pari-mutuel pools on dog racing, except from dog racing  
156 pari-mutuel pools involving what is known as multiple  
157 betting in which the winning pari-mutuel ticket or

158 tickets are determined by a combination of two or more  
159 winning dogs, shall not exceed sixteen and thirty one-  
160 hundredths percent of the total of all pari-mutuel pools  
161 for the day. The commission deducted by any licensee  
162 from the pari-mutuel pools on dog racing involving what  
163 is known as multiple betting in which the winning pari-  
164 mutuel ticket or tickets are determined by a combina-  
165 tion of two winning dogs shall not exceed nineteen  
166 percent, by a combination of three winning dogs shall  
167 not exceed twenty percent, and by a combination of four  
168 or more winning dogs shall not exceed twenty-one  
169 percent of the total of such pari-mutuel pools for the day.  
170 The foregoing commissions shall be in effect for the  
171 fiscal years one thousand nine hundred ninety and one  
172 thousand nine hundred ninety-one. Thereafter, the  
173 commission shall be at the percentages in effect prior  
174 to the effective date of this article unless the Legislature,  
175 after review, determines otherwise. Out of such commis-  
176 sions, the licensee shall pay the pari-mutuel pools tax  
177 provided for in subsection (d), section ten of this article,  
178 and one tenth of one percent of such pari-mutuel pools  
179 into the general fund of the county commission of the  
180 county in which the racetrack is located. In addition, out  
181 of such commissions, if the racetrack is located within  
182 a municipality, then the licensee shall also pay three  
183 tenths of one percent of the pari-mutuel pools into the  
184 general fund of the municipality; or, if the racetrack is  
185 located outside of a municipality, then the licensee shall  
186 also pay three tenths of one percent of the pari-mutuel  
187 pools into the state road fund for use by the department  
188 of highways in accordance with the provisions of this  
189 subdivision (3). The remainder of the commission shall  
190 be retained by the licensee.

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

197 Each dog racing licensee, when required by the  
198 provisions of this subdivision (3) to pay a percentage of

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

234 A dog racing licensee, before deducting the commis-  
235 sions authorized by this subdivision (3), shall give  
236 written notification to the racing commission not less  
237 than thirty days prior to any change in the percentage  
238 rates for such commissions. The racing commission shall  
239 prescribe blank forms for filing such notification. Such  
240 notification shall disclose the following: (1) The revised



241 commissions to be deducted from the pari-mutuel pools  
242 each day on win, place and show betting and on  
243 different forms of multiple bettings; (2) the dates to be  
244 included in such revised betting; (3) such other informa-  
245 tion as may be required by the racing commission.

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

267 The licensee shall make a deposit into a special fund  
268 established by the licensee and used for payment of  
269 regular purses offered for dog racing, which deposits  
270 out of the licensee's commissions for each day shall be  
271 three and seventy-five one-hundredths percent  
272 (3.75%) of the pari-mutuel pools.

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

279 The racing commission shall prepare and transmit  
280 annually to the governor and the Legislature a report

281 of the activities of the racing commission under this  
282 subdivision (3). The report shall include a statement of:  
283 The amount of commissions retained by licensees; the  
284 amount of taxes paid to the state; the amounts paid to  
285 municipalities, counties and the department of highways  
286 dog racing fund; the amounts deposited by licensees into  
287 special funds for capital improvements or long-term  
288 debt amortization, and a certified statement of the  
289 financial condition of any licensee depositing into such  
290 fund; the amounts paid by licensees into special funds  
291 and used for regular purses offered for dog racing; the  
292 amounts paid by licensees into special funds and used  
293 for marketing and promotion programs; and such other  
294 information as the racing commission may deem  
295 appropriate for review.

296 The racing commission shall report to the governor,  
297 president of the Senate, speaker of the House, and the  
298 Legislature, on or before the thirty-first day of De-  
299 cember, one thousand nine hundred ninety-three, on the  
300 effects of the amendments to this article by the acts of  
301 the Legislature, regular session, one thousand nine  
302 hundred eighty-seven, on dog racing licensees and pari-  
303 mutuel taxation for use by the Legislature in review of  
304 such amendments.

305 (c) In addition to any such commission, a licensee of  
306 horse race or dog race meetings shall also be entitled  
307 to retain the legitimate breakage, which shall be made  
308 and calculated to the dime, and from such breakage, the  
309 licensee of a horse race meeting (excluding dog race  
310 meetings), shall deposit daily fifty percent of the total  
311 of such breakage retained by the licensee into the special  
312 fund created pursuant to the provisions of subdivision  
313 (1), subsection (b) of this section for the payment of  
314 regular purses.

315 (d) The director of audit, and any other auditors  
316 employed by the racing commission who shall also be  
317 certified public accountants or experienced public  
318 accountants, shall have free access to the space or  
319 enclosure where the pari-mutuel system of wagering is  
320 conducted or calculated at any horse or dog race  
321 meeting for the purpose of ascertaining whether or not

322 the licensee is deducting and retaining only a commis-  
323 sion as provided in this section and is otherwise  
324 complying with the provisions of this section. They shall  
325 also, for the same purposes only, have full and free  
326 access to all records and papers pertaining to such pari-  
327 mutuel system of wagering, and shall report to the  
328 racing commission in writing, under oath, whether or  
329 not the licensee has deducted and retained any commis-  
330 sion in excess of that permitted under the provisions of  
331 this section or has otherwise failed to comply with the  
332 provisions of this section.

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

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

356 (g) Each kennel which provides or races dogs owned  
357 or leased by others shall furnish to the commission a  
358 surety bond in an amount to be determined by the  
359 commission to secure the payment to the owners or  
360 lessees of such dogs the portion of any purse owed to  
361 such owner or lessee.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.**

1 (a) Any racing association conducting thoroughbred  
2 racing at any horse racetrack in this state shall pay each  
3 day upon which horse races are run a daily license tax  
4 of two hundred fifty dollars. Any racing association  
5 conducting harness racing at any horse racetrack in this  
6 state shall pay each day upon which horse races are run  
7 a daily license tax of one hundred fifty dollars. Any  
8 racing association conducting dog races shall pay each  
9 day upon which dog races are run a daily license tax  
10 of one hundred fifty dollars. In the event thoroughbred  
11 racing, harness racing, dog racing, or any combination  
12 of the foregoing are conducted on the same day at the  
13 same racetrack by the same racing association, only one  
14 daily license tax in the amount of two hundred fifty  
15 dollars shall be paid for that day. Any such daily license  
16 tax shall not apply to any local, county or state fair,  
17 horse show or agricultural or livestock exposition at  
18 which horse racing is conducted for not more than six  
19 days.

20 (b) Any racing association licensed by the racing  
21 commission to conduct thoroughbred racing and permit-  
22 ting and conducting pari-mutuel wagering under the  
23 provisions of this article shall, in addition to the  
24 aforementioned daily license tax, pay to the racing  
25 commission, from the commission deducted each day by  
26 such licensee from the pari-mutuel pools on tho-  
27 roughbred racing a tax calculated on the total daily  
28 contribution of all such pari-mutuel pools conducted or  
29 made at any and every thoroughbred race meeting of  
30 the licensee licensed under the provisions of this article,  
31 which tax, on the pari-mutuel pools conducted or made  
32 each day during the months of January, February,  
33 March, October, November and December shall from  
34 the effective date of this section and for fiscal year one  
35 thousand nine hundred eighty-five, be calculated at two  
36 and six-tenths percent; for fiscal year one thousand nine  
37 hundred eighty-six, be calculated at two and three-  
38 tenths percent; for fiscal year one thousand nine  
39 hundred eighty-seven, be calculated at two percent of

40 such pool; for fiscal year one thousand nine hundred  
41 eighty-eight, be calculated at one and one-half percent;  
42 for fiscal year one thousand nine hundred eighty-nine,  
43 be calculated at one percent of such pool; for fiscal year  
44 one thousand nine hundred ninety, seven-tenths of one  
45 percent, and for fiscal year one thousand nine hundred  
46 ninety-one and each fiscal year thereafter be calculated  
47 at four-tenths of one percent of such pool; and, on the  
48 pari-mutuel pools conducted or made each day during  
49 all other months, shall from the effective date of this  
50 section and for fiscal year one thousand nine hundred  
51 eighty-five, be calculated at three and six-tenths  
52 percent; for fiscal year one thousand nine hundred  
53 eighty-six, be calculated at three and three-tenths  
54 percent; for fiscal year one thousand nine hundred  
55 eighty-seven, be calculated at three percent of such pool;  
56 for fiscal year one thousand nine hundred eighty-eight,  
57 be calculated at two and one-half percent; for fiscal year  
58 one thousand nine hundred eighty-nine, be calculated at  
59 two percent of such pool; for fiscal year one thousand  
60 nine hundred ninety, be calculated at one and seven-  
61 tenths percent of such pool; and for fiscal year one  
62 thousand nine hundred ninety-one and each fiscal year  
63 thereafter, be calculated at one and four-tenths percent  
64 of such pool: *Provided*, That out of the amount realized  
65 from the three-tenths of one percent decrease in such tax  
66 effective for fiscal year one thousand nine hundred  
67 ninety-one and thereafter, which decrease correspond-  
68 ingly increases the amount of commission retained by  
69 the licensee, the licensee shall annually expend or  
70 dedicate (i) one-half of such realized amount for capital  
71 improvements in its barn area at the track, subject to  
72 the racing commission's prior approval of the plans for  
73 such improvements, and (ii) the remaining one-half of  
74 such realized amount for capital improvements as the  
75 licensee may determine appropriate at the track. The  
76 term capital improvement shall be as defined by the  
77 Internal Revenue Code: *Provided, however*, That any  
78 such racing association operating a horse racetrack in  
79 this state having an average daily pari-mutuel pool on  
80 horse racing of two hundred eighty thousand dollars or  
81 less per day for the race meetings of the preceding

82 calendar year shall, in lieu of payment of the pari-  
83 mutuel pool tax, calculated as hereinbefore in this  
84 subsection provided, be permitted to conduct pari-  
85 mutuel wagering at such horse racetrack on the basis  
86 of a daily pari-mutuel pool tax fixed as follows: On the  
87 daily pari-mutuel pool not exceeding three hundred  
88 thousand dollars the daily pari-mutuel pool tax shall be  
89 one thousand dollars plus the otherwise applicable  
90 percentage rate imposed by this subsection of the daily  
91 pari-mutuel pool, if any, in excess of three hundred  
92 thousand dollars: *Provided further*, That upon the  
93 effective date of the reduction of such daily pari-mutuel  
94 pool tax to one thousand dollars from the former two  
95 thousand dollars, the association or licensee shall daily  
96 deposit five hundred dollars into the special fund for  
97 regular purses established by subdivision one, subsec-  
98 tion (b), section nine of this article: *And provided*  
99 *further*, That if an association or licensee qualifying for  
100 the foregoing alternate tax conducts more than one  
101 racing performance, each consisting of up to ten races  
102 in a calendar day, such association or licensee shall pay  
103 both the daily license tax imposed in subsection (a) and  
104 the foregoing alternate tax for each such performance:  
105 *And provided further*, That a licensee qualifying for the  
106 foregoing alternate tax is excluded from participation  
107 in the fund established by section thirteen-b of this  
108 article.

109 (c) Any racing association licensed by the racing  
110 commission to conduct harness racing and permitting  
111 and conducting pari-mutuel wagering under the provi-  
112 sions of this article shall, in addition to the aforemen-  
113 tioned daily license tax, pay to the racing commission,  
114 from the commission deducted each day by the licensee  
115 from the pari-mutuel pools on harness racing, as a tax,  
116 three percent of the first one hundred thousand dollars  
117 wagered, or any part thereof; four percent of the next  
118 one hundred fifty thousand dollars; and five and three-  
119 fourths percent of all over that amount wagered each  
120 day in all such pari-mutuel pools conducted or made at  
121 any and every harness race meeting of the licensee  
122 licensed under the provisions of this article.

123 (d) Any racing association licensed by the racing  
124 commission to conduct dog racing and permitting and  
125 conducting pari-mutuel wagering under the provisions  
126 of this article shall, in addition to the aforementioned  
127 daily license tax, pay to the racing commission, from the  
128 commission deducted each day by such licensee from the  
129 pari-mutuel pools on dog racing, as a tax, four percent  
130 of the first fifty thousand dollars or any part thereof of  
131 such pari-mutuel pools, five percent of the next fifty  
132 thousand dollars of such pari-mutuel pools, six percent  
133 of the next one hundred thousand dollars of such pari-  
134 mutuel pools, seven percent of the next one hundred fifty  
135 thousand dollars of such pari-mutuel pools, and eight  
136 percent of all over three hundred fifty thousand dollars  
137 wagered each day: *Provided*, That the licensee shall  
138 deduct daily from the pari-mutuel tax an amount equal  
139 to one-tenth of one percent of the daily pari-mutuel pools  
140 in dog racing in fiscal year one thousand nine hundred  
141 ninety; fifteen hundredths of one percent in fiscal year one  
142 thousand nine hundred ninety-one; two-tenths of one  
143 percent in fiscal year one thousand nine hundred ninety-  
144 two; one quarter of one percent in fiscal year one  
145 thousand nine hundred ninety-three; and three-tenths of  
146 one percent in fiscal year one thousand nine hundred  
147 ninety-four and every fiscal year thereafter. The  
148 amounts so deducted shall be paid to the racing  
149 commission to be deposited by the racing commission in  
150 a banking institution of its choice in a special account  
151 to be known as "West Virginia Racing Commission-  
152 Special Account-West Virginia Greyhound Breeding  
153 Development Fund". Such moneys shall be expended by  
154 the racing commission exclusively for purses for stake  
155 races involving West Virginia whelped dogs, under  
156 rules and regulations promulgated by the racing  
157 commission.

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

165 (f) Every association or licensee subject to the provi-  
166 sions of this article, including the changed provisions of  
167 sections nine and ten hereof, shall annually submit to the  
168 racing commission and the Legislature financial state-  
169 ments, including a balance sheet, income statement,  
170 statement of change in financial position and an audit  
171 of any electronic data system used for pari-mutuel  
172 tickets and betting, prepared in accordance with  
173 generally accepted auditing standards, as certified by  
174 an experienced public accountant or a certified public  
175 accountant.

**§19-23-13. Disposition of funds for payment of outstand-  
ing and unredeemed pari-mutuel tickets;  
publication of notice; irredeemable tickets;  
stake races for dog tracks.**

1 (a) All moneys held by any licensee for the payment  
2 of outstanding and unredeemed pari-mutuel tickets, if  
3 not claimed within ninety days after the close of the  
4 horse or dog race meeting in connection with which the  
5 tickets were issued, shall be turned over by the licensee  
6 to the racing commission within fifteen days after the  
7 expiration of such ninety-day period, and the licensee  
8 shall give such information as the racing commission  
9 may require concerning such outstanding and unre-  
10 deemed tickets. All such moneys shall be deposited by  
11 the racing commission in a banking institution of its  
12 choice in a special account to be known as "West  
13 Virginia Racing Commission Special Account — Unre-  
14 deemed Pari-Mutuel Tickets." Notice of the amount,  
15 date and place of such deposit shall be given by the  
16 racing commission, in writing, to the state treasurer.  
17 The racing commission shall then cause to be published  
18 a notice to the holders of such outstanding and unre-  
19 deemed pari-mutuel tickets, notifying them to present  
20 such tickets for payment at the principal office of the  
21 racing commission within ninety days from the date of  
22 the publication of such notice. Such notice shall be  
23 published within fifteen days following the receipt of  
24 said moneys by the commission from the licensee as a  
25 Class I legal advertisement in compliance with the  
26 provisions of article three, chapter fifty-nine of this code,



27 and the publication area for such publication shall be  
28 the county in which such horse or dog race meeting was  
29 held.

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

37 (1) To the owner of the winning horse in any horse  
38 race at a horse race meeting held or conducted by any  
39 licensee provided that the owner of such horse is at the  
40 time of such horse race a bona fide resident of this state,  
41 a sum equal to ten percent of the purse won by such  
42 horse. The commission may require proof that the owner  
43 was, at the time of the race, a bona fide resident of this  
44 state. Upon proof by the owner that he filed a personal  
45 income tax return in this state for the previous two  
46 years and that he owned real or personal property in  
47 this state and paid taxes in this state on said property  
48 for the two previous years, he shall be presumed to be  
49 a bona fide resident of this state; and

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

55 (3) To the owner of the stallion which sired the  
56 winning horse in any horse race at a horse race meeting  
57 held or conducted by any licensee provided that the  
58 mare which foaled such winning horse was served by  
59 a stallion standing and registered in this state, a sum  
60 equal to ten percent of the purse won by such horse; and

61 (4) When the moneys in the special account, known as  
62 the "West Virginia Racing Commission Special Account  
63 — Unredeemed Pari-Mutuel Tickets" will more than  
64 satisfy the requirements of subdivisions (1), (2) and (3),  
65 subsection (b) of this section, the West Virginia racing  
66 commission shall have the authority to expend the

67 excess moneys from unredeemed horse racing pari-  
68 mutuel tickets as purse money in any race conditioned  
69 exclusively for West Virginia bred or sired horses, and  
70 to expend the excess moneys from unredeemed dog  
71 racing pari-mutuel tickets in supplementing purses and  
72 establishing stake races and dog racing handicaps at the  
73 dog tracks: *Provided*, That beginning with the fiscal  
74 year one thousand nine hundred ninety, and subject to  
75 the availability of funds, the commission shall, after the  
76 requirements of subdivisions (1), (2), and (3), subsection  
77 (b) of this section have been satisfied, transfer annually  
78 three hundred thousand dollars of such excess moneys  
79 into a separate account to be used for promotional  
80 activities and purses for stake races for the West  
81 Virginia Thoroughbred Breeders Classic, which shall  
82 give equal consideration to all horses qualifying under  
83 the West Virginia breeders program for each stake race,  
84 based solely on the horses' sex, age and earnings.

85 Beginning with the fiscal year one thousand nine  
86 hundred eighty-nine, and in each fiscal year thereafter,  
87 the commission shall submit to the legislative auditor a  
88 quarterly report and accounting of the income, expen-  
89 ditures and unobligated balance in the special account  
90 created by this section known as the "West Virginia  
91 Racing Commission Special Account — Unredeemed  
92 Pari-Mutuel Tickets".

93 (c) Nothing contained in this article shall prohibit one  
94 person from qualifying for all or more than one of the  
95 aforesaid awards, or for awards under section thirteen-  
96 b of this article.

97 (d) The cost of publication of the notice provided for  
98 in this section shall be paid from the funds in the hands  
99 of the state treasurer collected from the pari-mutuel  
100 pools tax provided for in section ten of this article, when  
101 not otherwise provided in the budget; but no such costs  
102 shall be paid unless an itemized account thereof, under  
103 oath, be first filed with the state auditor.

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

1     The racing commission shall deposit moneys required  
2     to be withheld by an association or licensee in subsection  
3     (b), section nine of this article in a banking institution  
4     of its choice in a special account to be known as "West  
5     Virginia Racing Commission Special Account — West  
6     Virginia Thoroughbred Development Fund." Notice of  
7     the amount, date and place of such deposit shall be given  
8     by the racing commission, in writing, to the state  
9     treasurer. The purpose of the fund is to promote better  
10    breeding and racing of thoroughbred horses in the state  
11    through awards and purses for accredited breed-  
12    ers/raisers, sire owners and thoroughbred race horse  
13    owners. A further objective of the fund is to aid in the  
14    rejuvenation and development of the present horse  
15    tracks now operating in West Virginia for capital  
16    improvements, operations or increased purses between  
17    the first day of July, one thousand nine hundred eighty-  
18    four, and the thirty-first day of October, one thousand  
19    nine hundred ninety-two: *Provided*, That five percent of  
20    the deposits required to be withheld by an association  
21    or licensee in subsection (b), section nine of this article  
22    shall be placed in a special revenue account hereby  
23    created in the state treasury called the "administration  
24    and promotion account". The racing commission is  
25    authorized to expend the moneys deposited in the  
26    administration and promotion account at such times and  
27    in such amounts as the commission determines to be  
28    necessary for purposes of administering and promoting  
29    the thoroughbred development program: *Provided*,  
30    *however*, That during any fiscal year in which the  
31    commission anticipates spending any money from such  
32    account, the commission shall submit to the executive  
33    department during the budget preparation period prior  
34    to the Legislature convening before that fiscal year for  
35    inclusion in the executive budget document and budget  
36    bill, the recommended expenditures, as well as requests  
37    of appropriations for the purpose of administration and  
38    promotion of the program. The commission shall make  
39    an annual report to the Legislature on the status of the  
40    administration and promotion account, including the  
41    previous year's expenditures and projected expenditures  
42    for the next year.

43     The funds shall be established forthwith and operate  
44     on an annual basis.

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

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

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

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

62         (iv) One hundred percent of the fund shall be avail-  
63         able thereafter.

64     (b) Awards and purses will be distributed as follows:

65         (i) The breeders/raisers of accredited thoroughbred  
66         horses that earn a purse at any West Virginia meet will  
67         receive a bonus award calculated at the end of the year  
68         as a percentage of the fund dedicated to the breed-  
69         ers/raisers, which shall be sixty percent of the fund  
70         available for distribution in any one year. The total  
71         amount available for the breeders'/raisers' awards shall  
72         be distributed according to the ratio of purses earned  
73         by an accredited race horse to the total amount earned  
74         in such races by all accredited race horses for that year  
75         as a percentage of the fund dedicated to the breed-  
76         ers/raisers. However, no breeder/raiser may receive  
77         from the fund dedicated to breeders'/raisers' awards an  
78         amount in excess of the earnings of the accredited horse  
79         at West Virginia meets. In addition, should a horse's  
80         breeder and raiser qualify for the same award on the  
81         same horse, they will each be awarded one half of the

82 proceeds. Of the funds available for distribution in any  
83 one year to breeders/raisers, neither the breeders as a  
84 group nor the raisers as a group, shall, until January  
85 first, one thousand nine hundred ninety-four, qualify for  
86 more than sixty and one-tenth percent of such funds.

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

102 (iii) The owner of an accredited thoroughbred horse  
103 that earns a purse in any race at a West Virginia meet  
104 will receive a restricted purse supplement award  
105 calculated at the end of the year, which shall be twenty-  
106 five percent of the fund available for distribution in any  
107 one year, based on the ratio of the earnings in such races  
108 of a particular race horse to the total amount earned by  
109 all accredited race horses in such races during that year  
110 as a percentage of the fund dedicated to purse supple-  
111 ments. However, the owners may not receive from the  
112 fund dedicated to purse supplements an amount in  
113 excess of forty percent of the total accredited earnings  
114 for each accredited race horse.

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

120 (v) Any balance in the breeders/raisers, sire owners  
121 and purse supplement funds after yearly distributions

122 shall revert back into the general account of the fund  
123 for distribution in the next year.

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

126 (c) The remainder, if any, of the fund that is not  
127 available for distribution in the above program in any  
128 one year is reserved for regular purses, marketing  
129 expenses and for capital improvements in the amounts  
130 and under the conditions provided hereinafter. Fifty  
131 percent of such remainder shall be reserved for  
132 payments into the regular purse fund established in  
133 subsection (b), section nine of this article. Up to five  
134 hundred thousand dollars per year shall be available for  
135 (1) capital improvements at the eligible licensed horse  
136 racing tracks in the state, and (2) marketing and  
137 advertising programs above and beyond two hundred  
138 fifty thousand dollars for the eligible licensed horse  
139 racing tracks in the state: *Provided*, That moneys shall  
140 be expended for capital improvements or marketing and  
141 advertising purposes as described above only in accord  
142 with a plan filed with and receiving the prior approval  
143 of the racing commission, and on a basis of fifty percent  
144 participation by the licensee and fifty percent partici-  
145 pation by moneys from fund, in the total cost of  
146 approved projects: *Provided, however*, That funds  
147 approved for one track may not be used at another track  
148 unless the first track ceases to operate or is viewed by  
149 the commission as unworthy of additional investment  
150 due to financial or ethical reasons.

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

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

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

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

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

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

172 (vi) January first, one thousand nine hundred eighty-  
173 nine, to December thirty-first, one thousand nine  
174 hundred eighty-nine—one restricted race per three  
175 racing days; and thereafter. Restricted races shall be  
176 funded by each racing association from moneys placed  
177 in the general purse fund. The purses shall be twenty  
178 percent larger than the purses for similar type races at  
179 each track. The racing schedules, purse amounts and  
180 types of races are subject to the approval of the West  
181 Virginia racing commission.

182 (e) No association or licensee qualifying for the  
183 alternate tax provision of subsection (b), section ten of  
184 this article shall be eligible for participation in any of  
185 the provisions of this section.

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

*Frederick L. Parker*  
Chairman Senate Committee

*Bernard V. Kelly*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Isaac C. Miller*  
Clerk of the Senate

*Donald T. Hays*  
Clerk of the House of Delegates

*Sam R. Tucker*

President of the Senate

*Robert M. ...*  
Speaker of the House of Delegates

The within *is approved* this the *27th*  
day of *April*, 1989.

*Yastou Capant*  
Governor



PRESENTED TO THE

GOVERNOR

Date 4/21/89

Time 2:57 *jk*