WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2587

(By Del. M. Burke & Minard)

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Passed April 8, 1989

In Effect Ninety Days From Passage
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 breakage; 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 three hundred 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 eight hundred seventy-five one-thousandths percent of such pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety, (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 eight and
twenty-five one-hundredths percent and out of pari-
mutuel pools for each day during all other months shall
be seven and seventy-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 eleven and twenty-
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 seventy-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; 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 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-
sion shall be retained by the licensee.

(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 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-
utuel ticket or tickets are determined by a combina-
tion of two winning dogs shall not exceed nineteen
percent, by a combination of three winning dogs shall
not exceed twenty percent, and by a combination of four
or more winning dogs shall not exceed twenty-one
percent of the total of such pari-mutuel pools for the day.
The foregoing commissions shall be in effect for the
fiscal years one thousand nine hundred ninety and one
thousand nine hundred ninety-one. Thereafter, the
commission shall be at the percentages in effect prior
to the effective date of this article unless the Legislature,
after review, determines otherwise. 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 improvement 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-nine, 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 commissions 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 bettings; (2) the dates to be included in such revised betting; (3) such other information 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.

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.

(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the commission a surety bond in an amount to be determined by the commission to secure the payment to the owners or lessees of such dogs the portion of any purse owed to such owner or lessee.
§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all such pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article, which tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at two percent of
such pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at one and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at one percent of such pool; for fiscal year one thousand nine hundred ninety, seven-tenths of one percent, and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter be calculated at four-tenths of one percent of such pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at three and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at three and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at three percent of such pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at two and one-half percent; for fiscal year one thousand nine hundred ninety, be calculated at one and seven-tenths percent of such pool; and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter, be calculated at one and four-tenths percent of such pool: Provided, That out of the amount realized from the three-tenths of one percent decrease in such tax effective for fiscal year one thousand nine hundred ninety-one and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate (i) one-half of such realized amount for capital improvements in its barn area at the track, subject to the racing commission’s prior approval of the plans for such improvements, and (ii) the remaining one-half of such realized amount for capital improvements as the licensee may determine appropriate at the track. The term capital improvement shall be as defined by the Internal Revenue Code: Provided, however, That any such racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of two hundred eighty thousand dollars or less per day for the race meetings of the preceding
calendar year shall, in lieu of payment of the pari-
mutuel pool tax, calculated as hereinbefore in this
subsection provided, be permitted to conduct pari-
mutuel wagering at such horse racetrack on the basis
of a daily pari-mutuel pool tax fixed as follows: On the
daily pari-mutuel pool not exceeding three hundred
thousand dollars the daily pari-mutuel pool tax shall be
one thousand dollars plus the otherwise applicable
percentage rate imposed by this subsection of the daily
pari-mutuel pool, if any, in excess of three hundred
thousand dollars: Provided further, That upon the
effective date of the reduction of such daily pari-mutuel
pool tax to one thousand dollars from the former two
thousand dollars, the association or licensee shall daily
deposit five hundred dollars into the special fund for
regular purses established by subdivision one, subsec-
tion (b), section nine of this article: And provided
further, That if an association or licensee qualifying for
the foregoing alternate tax conducts more than one
racing performance, each consisting of up to ten races
in a calendar day, such association or licensee shall pay
both the daily license tax imposed in subsection (a) and
the foregoing alternate tax for each such performance:
And provided further, That a licensee qualifying for the
foregoing alternate tax is excluded from participation
in the fund established by section thirteen-b of this
article.

(c) Any racing association licensed by the racing
commission to conduct harness racing and permitting
and conducting pari-mutuel wagering under the provi-
sions of this article shall, in addition to the aforemen-
tioned daily license tax, pay to the racing commission,
from the commission deducted each day by the licensee
from the pari-mutuel pools on harness racing, as a tax,
three percent of the first one hundred thousand dollars
waged, or any part thereof; four percent of the next
one hundred fifty thousand dollars; and five and three-
fourths percent of all over that amount wagered each
day in all such pari-mutuel pools conducted or made at
any and every harness race meeting of the licensee
licensed under the provisions of this article.
(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of such pari-mutuel pools, five percent of the next fifty thousand dollars of such pari-mutuel pools, six percent of the next one hundred thousand dollars of such pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of such pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one-tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundreds of one percent in fiscal year one thousand nine hundred ninety-one; two-tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three-tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts so deducted shall be paid to the racing commission to be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund”. Such moneys shall be expended by the racing commission exclusively for purses for stake races involving West Virginia whelped dogs, under rules and regulations promulgated by the racing commission.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.
(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten hereof, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

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

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of the horse or dog race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account — Unredeemed Pari-Mutuel Tickets." Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published within fifteen days following the receipt of said moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the county in which such horse or dog race meeting was held.

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

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

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

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

4. When the moneys in the special account, known as the “West Virginia Racing Commission Special Account — Unredeemed Pari-Mutuel Tickets” will more than satisfy the requirements of subdivisions (1), (2) and (3), subsection (b) of this section, the West Virginia racing commission shall have the authority to expend the
excess moneys from unredeemed horse racing pari-
mutuel tickets as purse money in any race conditioned
exclusively for West Virginia bred or sired horses, and
to expend the excess moneys from unredeemed dog
racing pari-mutuel tickets in supplementing purses and
establishing stake races and dog racing handicaps at the
dog tracks: Provided, That beginning with the fiscal
year one thousand nine hundred ninety, and subject to
the availability of funds, the commission shall, after the
requirements of subdivisions (1), (2), and (3), subsection
(b) of this section have been satisfied, transfer annually
three hundred thousand dollars of such excess moneys
into a separate account to be used for promotional
activities and purses for stake races for the West
Virginia Thoroughbred Breeders Classic, which shall
give equal consideration to all horses qualifying under
the West Virginia breeders program for each stake race,
based solely on the horses’ sex, age and earnings.

Beginning with the fiscal year one thousand nine
hundred eighty-nine, and in each fiscal year thereafter,
the commission shall submit to the legislative auditor a
quarterly report and accounting of the income, expend-
ditures and unobligated balance in the special account
created by this section known as the “West Virginia
Racing Commission Special Account — Unredeemed
Pari-Mutuel Tickets”.

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

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

§19-23-13b. West Virginia thoroughbred development
fund; distribution; restricted races; non-restricted purse supplements.
The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account — West Virginia Thoroughbred Development Fund.” Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The purpose of the fund is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners. A further objective of the fund is to aid in the rejuvenation and development of the present horse tracks now operating in West Virginia for capital improvements, operations or increased purses between the first day of July, one thousand nine hundred eighty-four, and the thirty-first day of October, one thousand nine hundred ninety-two: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state treasury called the “administration and promotion account”. The racing commission is authorized to expend the moneys deposited in the administration and promotion account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, however, That during any fiscal year in which the commission anticipates spending any money from such account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.
The funds shall be established forthwith and operate on an annual basis.

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

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

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

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

(iv) One hundred percent of the fund shall be available thereafter.

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

(i) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in such races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the
proceeds. Of the funds available for distribution in any
one year to breeders/raisers, neither the breeders as a
group nor the raisers as a group, shall, until January
first, one thousand nine hundred ninety-four, qualify for
more than sixty and one-tenth percent of such funds.

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

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

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

(v) Any balance in the breeders/raisers, sire owners
and purse supplement funds after yearly distributions
shall revert back into the general account of the fund for distribution in the next year.

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

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

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

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

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

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

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

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

(e) No association or licensee qualifying for the alternate tax provision of subsection (b), section ten of this article shall be eligible for participation in any of the provisions of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
Date 4/26/89
Time 2151