WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED
Committee Substitute for
SENATE BILL NO. 389
(By Senator Lucht)

PASSED March 6, 1992
In Effect 90 days from Passage
AN ACT to amend and reenact sections three, six, nine, eleven, twelve-b, 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 horse and dog racing; defining the term pari-mutuel clerk; powers and authority of racing commission; requiring the racing commission to mediate certain disputes involving pari-mutuel clerks; relating to commissions from pari-mutuel pools; removing certain provisions relating to commissions to be paid for certain breeder's awards and other expenses; deleting obsolete revenue language; reorganizing special fund and transferring excess to general revenue; requiring audits; relating to the thoroughbred development fund; limiting the distribution of awards and purses; prioritizing the distribution of funds; limiting certain bonuses for certain breeders and raisers; specifying the time in which revenues must be remitted; relating to televised racing days for horse and dog racing; defining new terms; removing restrictions on telecasts at certain tracks; increasing the threshold for
Enr. Com. Sub. for S. B. No. 389] 2

pari-mutuel pools for which a tax may be imposed; restructuring the disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; requiring publication of notice; relating to funding stake races; restricting the use of the money for certain purposes; requiring quarterly reports and separate accounting; and requiring and authorizing the promulgation of separate rules on pari-mutuel racing.

Be it enacted by the Legislature of West Virginia:

That sections three, six, nine, eleven, twelve-b, 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 to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION-ORGANIZATION AND OPERATION.


1 Unless the context in which used clearly requires a different meaning, as used in this article:

3 (1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

6 (2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

9 (3) "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle and shall not include any form of horse racing in which the horses are mounted by jockeys;

14 (4) "Horse race meeting" means the whole period of time for which a license is required by the provisions of section one of this article;

17 (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;
(6) "Purse" means any purse, stake or award for which a horse or dog race is run;

(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing commission" means the West Virginia racing commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or
stewards representing a licensee and any other steward or stewards, whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and the reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) "Legitimate breakage" is the percentage left over in the division of a pool;

(22) "To the dime" means that wagers shall be figured and paid to the dime;

(23) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereinafter amended;

(24) "Accredited thoroughbred horse" means a thoroughbred horse that is either: (a) Foaled in West Virginia; or (b) sired by an accredited West Virginia sire; or (c) as a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days grace for the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred
sales company. No thoroughbred horse qualifies under paragraph (c) of this subdivision after the first day of July, one thousand nine hundred ninety;

(25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia thoroughbred breeders association;

(26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it was born in West Virginia;

(27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. Prior to the horse being shipped out of the state for sales, the raiser must notify the racing commission of his or her intentions;

(28) The "owner of an accredited West Virginia sire" is the owner of record at the time the offspring is conceived;

(29) The "owner of an accredited West Virginia horse" means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided for in section thirteen-b of this article; and

(30) "Fund" means the West Virginia thoroughbred development fund established in section thirteen-b of this article.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.


The racing commission has full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings and, in this
regard, it has plenary power and authority:

(1) To investigate applicants and determine the eligibility of the applicants for a license or permit or construction permit under the provisions of this article;

(2) To fix, from time to time, the annual fee to be paid to the racing commission for any permit required under the provisions of section two of this article;

(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code:

Provided, That in accordance with article three, chapter twenty-nine-a, the racing commission shall promulgate separate rules pertaining to the kinds of legal combination wagers which may be placed in connection with the pari-mutuel system of wagering authorized by this article;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

(6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and
employees may visit, investigate and have free access
to any such office, horse racetrack, dog racetrack,
kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions
of this article, its reasonable rules and regulations,
orders and final decisions and to take appropriate
disciplinary action against any licensee or permit
holder or construction permit holder for the violation
thereof or institute appropriate legal action for the
enforcement thereof or take such disciplinary action
and institute such legal action;

(9) By reasonable rules and regulations, to authorize
stewards, starters and other racing officials to impose
reasonable fines or other sanctions upon any person
connected with or involved in any horse or dog racing
or any horse or dog race meeting; and to authorize
stewards to rule off the grounds of any horse or dog
racetrack any tout, bookmaker or other undesirable
individual determined inimical to the best interests of
horse and dog racing or the pari-mutuel system of
wagering in connection therewith;

(10) To require at any time the removal of any
racing official or racing employee of any licensee, for
the violation of any provision of this article, any
reasonable rule and regulation of the racing commis-
sion or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or
to provide by contract for the maintenance and
operation of, a testing laboratory and related facilities,
for the purpose of conducting saliva, urine and other
tests on the horse or dog or horses or dogs run or to
be run in any horse or dog race meeting, and to
purchase all equipment and supplies considered neces-
sary or desirable in connection with the acquisition,
establishment, maintenance and operation of any
testing laboratory and related facilities and all such
tests;

(12) To hold up, in any disputed horse or dog race,
the payment of any purse, pending a final determina-
tion of the results thereof;
(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's horse or dog racing activities in this state, together with a list of each licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of the licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents, and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the racing commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

(16) To take any other action that may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article; and

(18) To mediate on site, upon request of a party, all disputes existing between the racetrack licensees located in this state and representatives of a majority of the horse owners and trainers licensed at the track which threaten to disrupt any scheduled racing event or events. The racing commission shall, upon the request of a party, mediate on site, all disputes existing between racetrack licensees and representatives of pari-mutuel clerks which threaten to disrupt any scheduled racing event or events. When a request for mediation is made, the commission shall designate from among its members, one person to act as mediator in each dispute that arises. Each opposing party involved in any dispute shall negotiate in good faith with the goal of reaching a fair and mutual resolution. The mediator may issue recommendations designed to assist each side toward reaching a fair compromise:
Provided, That no owner or operator or any horse owner or trainer or any pari-mutuel clerk licensed at the track may be required to abide by any recommendation made by any mediator acting pursuant to this subsection.

The racing commission shall not interfere in the internal business or internal affairs of any licensee.

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 the licensee within the confines of the 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 the 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 the pari-mutuel pools for the day. Out of the 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 the 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 the 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 the pools; and (iv) shall pay one tenth of one percent of the 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 the 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 deter-
mined 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 the 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 the 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 the fund shall be eleven and twenty-five one-hundredths percent of the 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 the 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 the pools; and (iv) shall pay one tenth of one percent of the 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 the municipal general fund. The remainder of the commission shall be retained by the licensee.

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. The reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the 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 any reasonable rules and regulations that 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 the pari-mutuel pools for the day. Out of the 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 the municipal general fund. The remainder of the commission 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-mutuel ticket or tickets are determined by a combination 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 are 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 the commissions, 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 the 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 division of highways in accordance with the provisions of this subdivision. The remainder of the commission shall be retained by the licensee.

For the purposes of this section, “municipality” means and includes 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 eight hundred eighty-seven.

Each dog racing licensee, when required by the provisions of this subdivision to pay a percentage of its
commissions to the state road fund for use by the division 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 division 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 division 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 the 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 the municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality. If no 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) of this subsection, shall give written notification to the racing commission not less than thirty days prior to any change in the percentage rates for the commissions. The racing commission shall prescribe blank forms for filing the notification. The notification shall disclose
the following: (A) 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; (B) the dates to be included in the revised betting; (C) 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 the special fund to be used only for capital improvements or physical plant maintenance, or both, at the licensee's licensed facility or at the licensee's commonly owned racing facility located within this state. Deposits made into the 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 the funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not expended shall be transferred immediately 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 of the pari-mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; the 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. 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 division 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 the 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 consider 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 the amendments.

(c) In addition to any 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 the breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of the 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 are also 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 the 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 the 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) the licensee shall pay one tenth of one percent of the 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 the municipal general fund; (iii) the licensee shall pay one half of the remainder of the commission 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 licensee shall retain the amount remaining after making the payments required in this subsection.

(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 the dogs the portion of any purse owed to
the owner or lessee.

PART VII. TAXATION OF HORSE AND DOG RACING AND
PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-11. Revenues from horse racing and dog racing to be
paid into a special account to fund commission
expenses and salaries for professional
educators.

All revenues collected pursuant to the provisions of
this article as license taxes or pari-mutuel pools taxes
on horse racing and dog racing shall be paid by the
racing commission to the state treasurer who shall
deposit the revenues in a special account to be denomi-
inated by him or her. The revenues in the special
account shall first be available to the commission to
pay salaries and other budgeted expenses for the
commission, not to exceed the amounts appropriated
for such purposes in the budget bill for each fiscal
year. Revenues in excess of the budgeted expenses of
the commission shall be accumulated and transferred
to the general revenue fund. The racing commission
shall remit all collected revenues to the state treasurer
at least one time during each thirty-day period of each
racing season, and a final remittance as to any partic-
ular horse race or dog race meeting shall be made
within thirty days from and after the close of each
horse race or dog race meeting.

§19-23-12b. Televised racing days; merging of pari-mutuel
wagering pools.

(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day,
assigned by the commission, at a licensed racetrack on
which pari-mutuel betting is conducted on horse or
dog races run at racetracks outside of the state which
are broadcast by television at a licensed racetrack and
which day or days have had the prior written approval
of the representative of the majority of the owners
and trainers who hold permits required by section two
of this article; and
(2) "Host racing association" means any person who, pursuant to a license or other permission granted by the host state, conducts the horse or dog race subject to the interstate wager.

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state racing commission, contract with any legal wagering entity in any other state to receive telecasts and accept wagers on races conducted by the legal wagering entity. The telecasts may be received and wagers accepted at any location authorized by the provisions of section twelve-a of this article. The contract must receive the approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article at the receiving racetrack.

(c) The commission may allow the licensee to commingle its wagering pools with the wagering pools of the host racing association. If the pools are commingled, the wagering at the licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be electronically linked with the equipment at the sending racetrack. Subject to the approval of the commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules governing the sending racetrack and must be distributed in a manner agreed to between the licensee and the sending racetrack.

(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) From the licensee commissions authorized by subsection (c) of this section, there is imposed and the
licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(f) After deducting the tax required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the legal wagering entity of another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b)(1), section nine of this article.

(g) The provisions of the “Federal Interstate Horseracing Act of 1978”, also known as Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in determining the intent of this section.

(h) The handle from televised simulcast racing shall not be included in the calculation of “average daily handle” as it is calculated in section ten of this article to determine the alternative daily pari-mutuel pool tax.
PART VIII. DISPOSITION OF FUNDS FOR PAYMENT
OF OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS;
IRREDEEMABLE TICKETS; AWARDS.

§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 a
horse or dog race meeting or the televised racing day,
as the case may be, 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 money 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 and the county in which the televised racing day
wagering conducted in this state.

(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 provided in this subsection. The racing
commission shall maintain separate accounts for each
licensee and shall record therein the moneys turned
over by such licensee and the amount expended at
such licensee’s track for the purposes set forth in this
subsection. The moneys in the “West Virginia Racing
Commission Special Account—Unredeemed Pari-
Mutuel Tickets” 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 previous two 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) To those horse racing licensees not participating
in the thoroughbred development fund authorized in
section thirteen-b of this article the unexpended
balance of such licensee's account not expended as provided in subdivisions (1), (2) and (3) of this subsection: Provided, That all moneys distributed under this subdivision shall be expended solely for capital improvements at the licensee's track: Provided, however, That such capital improvements must be approved, in writing, by the West Virginia racing commission before funds are expended by the licensee for that capital improvement; and

(5) 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), (3) and (4) of this subsection, 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), (3) and (4) of this subsection 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.

The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures 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.

PART IX. DISPOSITION OF PERMIT FEES, REGISTRATION
AND FINES.

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

1 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 Devel-
opment Fund”. Notice of the amount, date and place
of the 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 develop-
ment 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 autho-
rized to expend the moneys deposited in the adminis-
tration 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 the
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 Legis-
lature on the status of the administration and promo-
tion account, including the previous year’s expendi-
tures and projected expenditures for the next year.

The funds shall be established immediately 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; and

(v) After the first day of July, one thousand nine hundred ninety-one, and after the thirty-first day of December, one thousand nine hundred ninety-one, and annually thereafter, the first one hundred thousand dollars of the fund shall be available for distribution for a maximum of four stakes races. One of these races shall be the West Virginia futurity and the second shall be the Frank Gall memorial stakes. The remaining races may be chosen by the committee set forth in subsection (b) of this section.

(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 the 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 the first day of January, one thousand nine hundred ninety-four, qualify for more than sixty and one-tenth percent of such funds. The bonus referred to in this subdivision shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(ii) The owner of a West Virginia sire of an accred-
ited 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 the races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subsection shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(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 the races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subsection shall only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess thereof.

(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: (1) Be utilized to fund the races established in subsection (d) of this section; and (2) 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 in this subsection. Fifty percent of the 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 accordance 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 the 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) From the first day of July, one thousand nine hundred eighty-four, to the thirty-first day of December, one thousand nine hundred eighty-four — one restricted race per eight racing days;

(ii) From the first day of January, one thousand...
nine hundred eighty-five, to the thirty-first day of December, one thousand nine hundred eighty-five — one restricted race per seven racing days;

(iii) From the first day of January, one thousand nine hundred eighty-six, to the thirty-first day of December, one thousand nine hundred eighty-six — one restricted race per six racing days;

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

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

(vi) From the first day of January, one thousand nine hundred eighty-nine, to the thirty-first day of December, one thousand nine hundred eighty-nine — one restricted race per three racing days; and thereafter.

The restricted races established in this subsection shall be administered by a three-member committee consisting of: (A) The racing secretary; (B) a member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and (C) a member appointed by a majority of the thoroughbred breeders. The purses shall be twenty percent larger than the purses for similar type races at each track. Restricted races shall be funded by each racing association from:

(1) Moneys placed in the general purse fund up to a maximum of one hundred fifty thousand dollars per year.

(2) Moneys as provided in subdivision (v), subsection (b) of this section shall be placed in a special fund called the "West Virginia accredited race fund". 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 is 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

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Donald D. Epp
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the ______________ day of ______________, 1992.

Governor

Vaston Caperton