HB 2632

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

ENROLLED

Com. Sub. for
HOUSE BILL No. 2632

(By Delegate Mezzatesta)

Passed March 10, 1995

In Effect From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2632

(By Delegate Mezzatesta)

[Passed March 10, 1995; in effect from passage.]

AN ACT to amend and reenact sections ten and twelve-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-c, all relating to pari-mutuel taxation; providing for an alternative method to calculate taxes; setting forth specific time periods during which such alternative method will be in effect; providing for eligibility to receive awards or purses through the greyhound breeding development fund; providing for payment of certain percentage of net simulcast income into thoroughbred development fund; exception; defining net simulcast income; repealing the requirement that the handle from televised simulcast racing be included in the calculation of average daily handle; permitting interstate simulcasting by licensed racetracks; and providing that relief from the two hundred twenty day racing schedule for cause.

Be it enacted by the Legislature of West Virginia:

That sections ten and twelve-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section,

designated section twenty-three, all to read as follows:

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

ARTICLE 23. HORSE AND DOG RACING.

§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 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 daily license tax set forth in subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The 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 the 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 the 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 the 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 the 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 eighty-nine, be calculated at two percent of the pool; for fiscal year one thousand nine hundred ninety, be calculated at one and seven-tenths percent of the 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 the pool: *Provided*, That out of the amount realized from the three tenths of one percent decrease in the 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 the realized amount for capital improvements in its barn area at the track, subject to the racing commission's prior approval of the plans for the improvements, and (ii) the remaining one half of the 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 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 in this subsection, be permitted to conduct pari-mutuel wagering at the 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 the 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 (1), subsection (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, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each 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: *And provided further,* That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia thoroughbred development fund for more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, 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 wagered, 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 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 daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the 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 the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the 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 hundredths 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 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". The purpose of the fund is to promote better breeding and racing of greyhounds in the state through awards and purses to resident owners of

accredited West Virginia whelped greyhounds. In order to be eligible to receive an award or purse through the fund, the owner of the accredited West Virginia whelped greyhound must be a resident of this state. The moneys shall be expended by the racing commission for purses for stake races, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules and regulations promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules and regulations promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the owner of an accredited greyhound or, if the greyhound is leased, the owner may choose to designate a percentage of the purse earned directly to the lessor as agreed to via a written purse distribution form on file with the racing commission.

The owner of accredited West Virginia whelped greyhounds that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of purses earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements.

The owner of an accredited West Virginia whelped

greyhound shall file a purse distribution form with the racing commission for a percentage of his or her dog's earnings to be paid directly to the lessor of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.

In no event shall purses earned at a meet held at a track which did not make contributions to the West Virginia greyhound breeder's development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of fifty thousand dollars per annum, to be paid in equal quarterly installments of twelve thousand five hundred dollars per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on the first day of July, one thousand nine hundred ninety-three, and ending the thirtieth day of June, one thousand nine hundred ninety-six. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: *Provided*, That each pari-mutuel track shall have one juvenile and one open stake race annually. The racing commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the racing commission and placed in a special revenue account hereby created in the state treasury called the "administration, promo-

tion and educational account". The racing commission is authorized to expend the moneys deposited in the administration, promotion and educational account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: *Provided,* That beginning with fiscal year one thousand nine hundred ninety-five and in each fiscal year thereafter 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, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year's expenditures and projected expenditures for the next year.

The racing commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

(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 of this article, 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.

§19-23-12b. 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: *Provided,* That at those thoroughbred racetracks, the licensee, in applying for racing dates, shall apply for not less than two hundred twenty live racing dates for each horse race meeting. If, thereafter, for reasons beyond the licensees control, related to adverse weather conditions or unforeseen casualty occurrences the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the racing commission to reduce the authorized live racing days. Upon receipt of the request the racing commission shall within seventy-two hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track that such request has been received and that if no objection to the request is received within ten days of the notifi-

35 cation the request will be approved: *Provided*, That the
36 commission shall give consideration to whether there ex-
37 isted available unscheduled potential live racing dates
38 following the adverse weather or casualty and prior to the
39 end of the race meeting which could be used as new live
40 racing dates in order to maintain a full two hundred twen-
41 ty day live racing schedule. If an objection is received by
42 the commission within the time limits, the commission
43 shall establish a binding arbitration board. The board
44 shall consist of one member appointed by the licensee,
45 one member appointed by the representative of a majority
46 of the owners and trainers at the racetrack and a third
47 member to be selected by the two appointed members. In
48 the event the two members cannot agree on the third
49 member, each member shall submit two names to the rac-
50 ing commission and from those names the racing commis-
51 sion shall appoint the third member of the board. The
52 board shall hear from all parties concerned and thereupon
53 shall make recommendations to the racing commission on
54 the required number of live racing days. The recommen-
55 dations of the board are final. The telecasts may be re-
56 ceived and wagers accepted at any location authorized by
57 the provisions of section twelve-a of this article. The con-
58 tract must receive the approval of the representative of the
59 majority of the owners and trainers who hold permits
60 required by section two of this article at the receiving
61 racetrack.

62 (c) The commission may allow the licensee to com-
63 mingle its wagering pools with the wagering pools of the
64 host racing association. If the pools are commingled, the
65 wagering at the licensee's racetrack must be on tabulating
66 equipment capable of issuing pari-mutuel tickets and be
67 electronically linked with the equipment at the sending
68 racetrack. Subject to the approval of the commission, the
69 types of betting, licensee commissions and distribution of
70 winnings on pari-mutuel pools of the sending licensee
71 racetrack are those in effect at the licensee racetrack.
72 Breakage for pari-mutuel pools on a televised racing day
73 must be calculated in accordance with the law or rules
74 governing the sending racetrack and must be distributed
75 in a manner agreed to between the licensee and the send-

ing 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) (1) From the licensee commissions authorized by subsection (c) of this section, the licensee shall pay one tenth of one percent of each commission into the general fund of the county, in which the racetrack is located and at which the wagering occurred and 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.

(2) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivision (1) of this subsection, the licensee shall pay, for each televised racing day, one fourth of one percent of the total pari-mutuel pools for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission and to be used for payments into the pension plan for all employees of the licensed racing association.

(3) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivisions (1) and (2) of this subsection, the licensee shall pay, for each televised racing day on or after the first day of July, one thousand

nine hundred ninety-six, one-half percent of net simulcast income and for each televised racing day on or after the first day of July, one thousand nine hundred ninety-seven, an additional one-half percent of net simulcast income into the West Virginia thoroughbred development fund established by the racing commission according to section thirteen-b of this article: *Provided*; That the payments shall be reduced by an amount equal to one-third of direct simulcast expenses which shall include, but not be limited to, the cost of simulcast signals and decoder costs: *Provided, however,* That no licensee qualifying for the alternate tax provisions of subsection (b), section ten of this article shall be required to make the payments unless the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two. The term "net simulcast income " means the total simulcast handle less direct simulcast expenses, including but not limited to the cost of simulcast signals and decoder costs.

(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 (1), subsection (b), 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.

§ 19-23-12c. Interstate simulcasts by licensed racetracks.

Any racing association which is licensed under this article to hold live races may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state: *Provided,* That all broadcasts of horse races shall be in accordance with all of the provisions of the "Federal

7 Interstate Horseracing Act of 1978", also known as Public
8 Law 95-515, section 3007 of Title 15 of the United States
9 Code.

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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _____ this the _____

day of _____, 1995.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/95

Time 9:00 am