SENATE BILL NO. 18

(BY SENATOR Snyder)

PASSED April 14, 2001

IN EFFECT July 1, 2001
ENROLLED

Senate Bill No. 18

(By Senator Snyder)

[Passed April 14, 2001; to take effect July 1, 2001.]

AN ACT to amend and reenact sections nine and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the pension funds for racetrack personnel; the distribution of proceeds from the purse fund to provide funds for pension and retirement benefits for eligible active, West Virginia backstretch personnel including but not limited to, exercise riders, trainers, grooms and stable foremen and their dependents; and the distribution of funds from pari-mutuel uncashed tickets to provide funds for health and disability benefits for eligible active or disabled West Virginia jockeys; and definitions.

Be it enacted by the Legislature of West Virginia:

That sections nine and thirteen, 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 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 thor-
oughbred 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 exclu-
sion 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 per-
cent; 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; (iv) shall
annually pay five hundred thousand dollars per thorough-
bred racetrack into a special fund established by the
racing commission for payment into a pension plan
established by the racing commission for all back-stretch
personnel, including, but not limited to, exercise riders,
trainers, grooms and stable foreperson licensed by the
racing commission to participate in horse racing in this
state and their dependents; and (v) 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 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 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 thor-
oughbred 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-hun-
dredths 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 this subdivision 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 this subdivision. 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.
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 nine 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, 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 of Delegates 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 calcu-
lated 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) of this section 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.

§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 the ninety-day period and the licensee shall give any information required by the racing commission concerning the outstanding and unredeemed tickets. The 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 each 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 the outstanding and unredeemed pari-mutuel tickets notifying them to present their unredeemed tickets for payment at
the principal office of the racing commission within ninety
days from the date of the publication of the notice. The
notice shall be published within fifteen days following the
receipt of the outstanding and unredeemed pari-mutuel
ticket moneys by the commission from the licensee as a
Class I legal advertisement in compliance with the provi-
sions of article three, chapter fifty-nine of this code and
the publication area for the publication shall be the county
in which the horse or dog race meeting was held and the
county in which the televised racing day wagering was
conducted in this state.

(b) Any outstanding and unredeemed pari-mutuel
tickets that are not presented for payment within ninety
days from the date of the publication of the notice are
thereafter irredeemable and the moneys theretofore held
for the redemption of the pari-mutuel tickets shall become
the property of the racing commission and shall be ex-
pended as provided in this subsection. The racing commis-
sion shall maintain separate accounts for each licensee and
shall record in each separate account the moneys turned
over by the licensee and the amount expended at the
licensee's track for the purposes set forth in this subsec-
tion. 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 the horse is at the time of the
horse race a bona fide resident of this state, a sum equal to
ten percent of the purse won by the horse at that race. 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 or she filed a personal income
tax return in this state for the previous two years and that
he or she owned real or personal property in this state and
paid taxes in this state on real or personal property for the
previous two years, he or she 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 the 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 the winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by the 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 the 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 the 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 commissions 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 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:

(A) Transfer annually two hundred thousand dollars to the West Virginia racing commission special account - West Virginia greyhound breeding development fund;

(B) Transfer annually two hundred thousand dollars into a separate account to be used for stakes races for West Virginia bred greyhounds at dog racetracks; and

(C) Transfer annually two hundred thousand dollars to a trust maintained and administered by the organization which is recognized by the West Virginia racing commission, pursuant to a legislative rule adopted by the commission, as the representative of the majority of the active jockeys in West Virginia for the purpose of providing health and disability benefits to eligible active or disabled West Virginia jockeys and their dependents in accordance with eligibility criteria established by said organization.

For purposes of this section in determining health benefits, an eligible active jockey is one who rides at least one hundred mounts per calendar year of which fifty-one must be in the state of West Virginia: Provided, That a jockey is not eligible for health benefits if he or she receives health benefits from any other state; and

(D) After all payments to satisfy the requirements of (A), (B) and (C) of this subdivision have been satisfied, the commission shall have authority to transfer one hundred fifty thousand dollars left from all uncashed pari-mutuel tickets to the trust maintained and administered by the organization which is recognized by the West Virginia racing commission, pursuant to legislative rule adopted by the commission as the representative of the majority of the active jockeys in West Virginia.

(c) 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.

(d) 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.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill was disapproved this the 2 nd Day of May, 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/23/01
Time 11:05 AM