WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

House Bill No. 4523

(By Delegates Michael, Doyle, G. White and Foster)

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Passed March 13, 2004

In Effect Ninety Days from Passage
AN ACT to amend and reenact §19-23-3, §19-23-9, §19-23-10, §19-23-13 and §19-23-13b of the code of West Virginia, 1931, as amended, all relating to horse and dog racing generally; defining certain terms; allowing a yearling horse to be shipped from the state to obtain veterinary services without losing its status as an accredited thoroughbred horse; authorizing thoroughbred racetrack licensees to enter into agreements with local Horsemen’s Benevolent and Protective Association for payment of up to two percent of purses actually paid for medical costs for backstretch personnel and administrative fees; allowing certain racing associations or licensees qualifying for an alternate tax, when conducting more than one racing performance a day, to increase the number of races each performance may have to thirteen, before it must pay both the daily license tax and the alternative tax; requiring owners of accredited West Virginia whelped greyhounds to be both bona fide residents of West Virginia and registered for purposes of receiving funds from the greyhound breeding development fund; establishing qualifications to be considered a bona fide resident; establishing qualifications for considerations as an accredited West Virginia whelped
greyhound; providing breeding requirements for mares participating in the West Virginia futurity; and increasing the amount of restricted thoroughbred horse races in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §19-23-3, §19-23-9, §19-23-10, §19-23-13 and §19-23-13b of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

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


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

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

(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;

(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;

(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;

(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: (a) Foaled in West Virginia; (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: (A) 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, or (B) for obtaining veterinary services, documented by veterinary reports;

(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) “Registered Greyhound Owner” means an owner of a greyhound that is registered with the National Greyhound Association.

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

(32) “Regular Purse” means both regular purses and stakes purses.

§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 thereaf-
ter, 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.

Each licensee that permits or conducts pari-mutuel wagering at the licensee’s thoroughbred horse racetrack shall annually pay five hundred thousand dollars from the special fund required by this section to be established by the licensee for the payment of regular purses offered for thoroughbred racing by the licensee into a special fund established by the racing commission for transfer to a pension plan established by the racing commission for all back-stretch personnel, including, but not limited to, exercise riders, trainers, grooms and stable forepersons licensed by the racing commission to participate in horse racing in this state and their dependents.

Each thoroughbred racetrack licensee is authorized to enter into an agreement with its local Horsemen’s Benevolent and Protective Association under which an agreed upon percentage of up to two percent of purses actually paid during the preceding month may be paid to the local Horsemen’s Benevolent and Protective Association from the special fund required by this section for their respective medical trusts for backstretch personnel and administrative fees.

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 para-
graph, 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 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 commis-
sions 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 that are necessary to imple-
ment 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 involv-
ing 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 betting; (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.

(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) 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.
§19-23-10. 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, be calculated at 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 ninety, be calculated at one and seven-tenths percent of the pool; and for fiscal year one thousand 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
thirteen 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 perfor-
manence: 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 commis-
sion 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 commis-
sion 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 commis-
sion 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 commis-
sion 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 Ac-
The purpose of the fund is to promote better breeding and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to be eligible to receive an award or purse through the fund, the registered greyhound owner of the accredited West Virginia whelped greyhound must be a bona fide resident of this state. To qualify as a bona fide resident of West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the state of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The racing commission and the West Virginia registered greyhound owners and breeders association shall maintain a registry for West Virginia bred greyhounds. 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 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 promulgated by the racing commission.
Supplemental purse awards will be distributed as follows:
Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.

The registered greyhound 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 registered greyhound 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 registered greyhound owner or owners 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, promotion 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.

§19-23-13. 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 provisions 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 expended as provided in this subsection. The
racing commission 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 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 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: Provided, however, That in the event there are more than ten races in any performance, the award to the resident owner of the winning horse will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance. 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: Provided, however, That in the event there are more than ten races in any performance, the award to the breeder will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance; 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: Provided, however, That in the event there are more than ten races in any performance, the award to the owner of the stallion will be percentage of the purse based upon the fractional share represented by the number of races on the day of the performance; 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 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 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 proposed for promulgation by the commission and authorized by the Legislature, 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 proviso 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 proposed for promulgation by the commission and authorized by the Legislature 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.

(f) The racing commission is authorized to promulgate emergency rules, prior to the first day of July, two thousand four, to incorporate the revisions to this article enacted during the two thousand four regular legislative session.

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

(a) The racing commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as “West Virginia racing commission special account — West Virginia thoroughbred development fund.” Notice of the amount, date and place of 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 development of the
present horse tracks now operating in West Virginia for capital improvements, operations or increased purses: *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.”

(b) The racing commission is authorized to expend the moneys deposited in the administration and promotion account at times and in amounts as the commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: *Provided*, 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 Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.

(c) The fund and the account established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the thoroughbred development fund shall be expended for awards and purses except as otherwise provided in this section. Annually, the first three hundred thousand dollars of the fund shall be available for distribution for stakes races. One of the stakes races shall be the West Virginia futurity and the second shall be the Frank Gall memorial stakes. For the purpose of participating in the West Virginia futurity only, all mares, starting with the breeding season beginning the first day
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of February through the thirty-first day of July, two thousand four, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia thoroughbred breeders association. The remaining races may be chosen by the committee set forth in subsection (g) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet shall 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. The bonus referred to in this subdivision (1) may only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess of the first one hundred thousand dollars.

(2) The owner of a West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a West Virginia meet shall 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 of
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 subdivision (2) shall only be paid on the first
one hundred thousand dollars of any purse, and not on any
amounts in excess of the first one hundred thousand dollars.

(3) The owner of an accredited thoroughbred horse that
earns a purse in any race at a West Virginia meet shall 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 the 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 supple-
ments. 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 subdivision shall only
be paid on the first one hundred thousand dollars of any purse,
and not on any amounts in excess of the first one hundred
thousand dollars.

(4) In no event may purses earned at a meet held at a track
which did not make a contribution to the thoroughbred develop-
ment fund out of the daily pool on the day the meet was held
qualify or count toward eligibility for an award under this
subsection.

(5) Any balance in the breeders/raisers, sire owners and
purse supplement funds after yearly distributions shall first be
used to fund the races established in subsection (g) of this
section. Any amount not so used shall revert back into the
general account of the thoroughbred development fund for distribution in the next year.

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

(f) The remainder, if any, of the thoroughbred development fund that is not available for distribution in the program provided for in subsection (e) of this section 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 (f).

(1) Fifty percent of the remainder shall be reserved for payments into the regular purse fund established in subsection (b), section nine of this article.

(2) Up to five hundred thousand dollars per year shall be available for:

(A) Capital improvements at the eligible licensed horse racing tracks in the state; and

(B) 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 in this subsection 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.
(g)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per racing day: Provided, That sufficient horses and funds are available.

(2) 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.

(3) The purses for the restricted races established in this subsection shall be twenty percent larger than the purses for similar type races at each track.

(4) Restricted races shall be funded by each racing association from:

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

(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the “West Virginia accredited race fund.”

(5) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia racing commission.

(h) As used in this section, “West Virginia bred-foal” means a horse that was born in the state of West Virginia.
(i) To qualify for the West Virginia accredited race fund, the breeder must qualify under one of the following:

1. The breeder of the West Virginia bred-foal is a West Virginia resident;

2. The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

3. The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered by a West Virginia stallion following the birth of that West Virginia bred-foal.

(j) 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: Provided, That the provisions of this subsection do not apply to a thoroughbred race track at which 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.

(k) From the first day of July, two thousand one, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred race track at which 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 4th day of April 2004.

Governor

[Signature]