WEST VIRGINIA LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 411

(By By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed September 13, 2005

In Effect from Passage
AN ACT to amend and reenact §19-23-9, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22A-10b of said code, all relating to amending certain provisions of the code involving horse and dog racing and distribution of certain proceeds; providing special funds, to be established by the Racing Commission, to be used for the payment of breeders’ awards, restrictive races and stakes purses; deleting obsolete provisions; deleting the stated objective for the Fund to aid in the rejuvenation and development of horse tracks in the state for capital improvements and other purposes; providing that the Commission establish funds and accounts for each association and licensee rather than holding funds in deposit in one fund; deleting current provisions concerning the distribution of balances remaining in breeders, raisers, sire owners and purse supplement funds; clarifying the meaning of the phrase “sufficient horses” for purposes of pari-mutuel thoroughbred horse tracks’
provision of restricted races; providing that the requirement increasing certain purses in restricted races is only applicable to thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years; providing the Racing Commission may transfer funds back to the general purse fund if less than seventy-five percent of the restricted races fail to receive enough entries; deleting the provision that prohibits associations and licensees who qualify for alternate tax provisions contained in subsection (b), section ten, article twenty-three, chapter nineteen of this code from eligibility for treatment under the provisions of section thirteen-b of said article; providing that on the first day of January, two thousand six, licensed racing associations must have a West Virginia Thoroughbred Racing Breeders’ Program; clarifying disbursement of funds for the benefit of the West Virginia Breeders’ Classic; requiring Racing Commission to conduct a study of the adequacy of funding of certain thoroughbred development funds and requiring a report thereon to the Legislature; allowing for different uses of thoroughbred development funds by thoroughbred racing tracks based upon differences in circumstance; deleting provisions of the Racetrack Video Lottery Act exempting certain licensees from paying into the thoroughbred and greyhound breeders’ funds; increasing maximum amount from the general purse fund for purposes of restricted races for the thoroughbred racetrack which participated in the Thoroughbred Development Fund for at least four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two; and making technical corrections and providing reversion of racetrack video lottery excess net terminal income diverted from the racetrack purse funds to Workers’ Compensation Debt Reduction Fund pursuant to Enrolled Senate Bill No. 1004 which took effect the twenty-ninth day of January, two thousand five, to revert to racetrack purse after a total amount of eleven million dollars of net terminal income and excess net terminal income has been diverted each fiscal year from the purse funds to the workers’ compensation debt.
Be it enacted by the Legislature of West Virginia:

That §19-23-9, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22A-10b of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

1 (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 in this article at any horse or dog race meeting within this state where horse or dog racing is 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.

15 (b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools as follows:

17 (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 mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided 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 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; and (iv) Any licensee which 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, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeders awards, restrictive races and stakes purses as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. 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 paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided 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 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; and (iv) any licensee which 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, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeder awards, for restrictive races and stakes purses which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. 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 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 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 deter-
mined 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 invol-
vling 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 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 commis-
sion 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 Municipal General
Fund; 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 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 notifica-
tion. 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; and (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 amend-
ment 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 immedi-
ately 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.

§19-23-13b. 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": Provided, That after the West Virginia Lottery Commission has divided moneys between the West Virginia Thoroughbred Development Fund and the West Virginia Greyhound Breeding Development Fund pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning the first day of October, two thousand five, deposit the remaining moneys required to be withheld from an association or licensee designated to the Thoroughbred Development Fund under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B), subdivision (3), subsection (b), section thirteen-c of this article and sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred racetrack licensee with a banking institution of its choice with a separate account for each association or licensee. Each separate account shall be a special account to be known as
“West Virginia Racing Commission Special Account – West Virginia Thoroughbred Development Fund” and shall name the licensee for which the special account has been established: 

Provided, however, That the Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two from the eighth day of July, two thousand five until the effective date of the amendment to this section passed during the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack licensee: Provided further, That the moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, shall be transferred into that licensee’s purse fund until the first day of April, two thousand six. Notice of the amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the funds 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: 

And provided further, 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 or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section. Annually, the first three hundred thousand dollars of each fund shall be available for distribution for stakes races at a racetrack which 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. 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 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 (f) 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 a participating 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 participating 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 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 participating 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 participating races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the participating 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 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 participating 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 participating races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this 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 Development 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 (f) of this section. Any amount not so used shall revert into the general account of the Thoroughbred Development Fund for each racing association or licensee for distribution in the next year. Distribution shall be made on the fifteenth day of each February for the preceding year’s achievements.

(f) (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. For purposes of this subsection, there are sufficient horses if there are at least seven single betting interests received for the race. The re-
(2) The restricted races established in this subsection shall be administered by a three-member committee at each track 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 the West Virginia Thoroughbred Breeders Association.

(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 or equal to or of greater value than a comparable race: Provided, That sufficient funds are available: Provided, however, That the twenty percent requirement is applicable only to a thoroughbred racetrack which 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.

(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: Provided, That a thoroughbred horse racetrack which has participated in the West Virginia Thoroughbred Development fund for a period of more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two, may fund restricted races in an amount not to
(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.

(6) If less than seventy-five percent of the restricted races required by this subsection fail to receive enough entries to race, the Racing Commission shall, on a quarterly basis, dedicate funds in each fund back to the general purse fund of the racing association or licensee: Provided, That no moneys may be dedicated back to a general purse fund if the dedication would leave less than two hundred fifty thousand dollars in the fund.

(g) As used in this section, “West Virginia bred-foal” means a horse that was born in the State of West Virginia.

(h) 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.

(i) 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 participates in the West Virginia Thoroughbred Development Fund.

(j) Beginning the first day of July, two thousand six, 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 must have a West Virginia Thoroughbred Racing Breeders Program.

(k) The Commission shall, during calendar year two thousand nine, conduct a study of the adequacy of funding provided for the Thoroughbred Development Fund at any thoroughbred racetrack which has not 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, and shall report its findings and recommendations to the Joint Committee on Government and Finance on or before the first day of December, two thousand nine.

§19-23-13c. Expenditure of racetrack video lottery distribution.

(a) Funds received by the Racing Commission pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, and subdivision (5), subsection (a), section ten-b, article twenty-two-a, chapter twenty-nine of this code, after the effective date of this section together with the balance in the bank account previously established by the Commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission
Racetrack Video Lottery Account”. Notice of the amount, date and place of each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

(b) Funds in this account shall be allocated and expended as follows:

(1) For each fiscal year, the first eight hundred thousand dollars deposited in the separate account plus the amount then remaining of the June thirtieth, one thousand nine hundred ninety-seven, balance in the separate account previously established for the West Virginia breeders classic under section thirteen of this article, shall be used by the Commission for promotional activities, advertising, administrative costs and purses for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses’ sex, age and earnings.

(2) For each fiscal year, the next two hundred thousand dollars deposited into the separate account shall be used by the Commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia Derby to be held at a thoroughbred racetrack which does not participate in the West Virginia Breeders Classic.

(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection have been deposited into separate bank accounts for use in connection with the West Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the Commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:
(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund.

(B) At those thoroughbred racetracks that have 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, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia Thoroughbred Development Fund.

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia Breeders Classic, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia Derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia Racing Commission before the funds are expended for any of the purposes authorized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after the first day of July, two thousand one, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net
terminal income generated by that licensed racetrack during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as follows:

(1) The Commission shall receive forty-one percent of net terminal income, which the Commission shall deposit in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter;

(2) Until the first day of July, two thousand five, eight percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in article twenty-three, chapter nineteen of this code; on and after the first day of July, two thousand five, the rate shall be four percent of net terminal income;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income Provided, That:

(A) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and
(B) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid 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 to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten of said article shall receive an equal share of a total of not less than one and one-half percent of the net terminal income.

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;
(7) A licensee shall receive forty-two percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: Provided, That for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income shall be distributed pursuant to the provisions of paragraph (B), subdivision (8), subsection (c), section ten of this article;

(9) (A) On and after the first day of July, two thousand five, four percent of net terminal income shall be deposited into the Workers’ Compensation Debt Reduction Fund created in section five, article two-d, chapter twenty-three of this code: Provided, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of subdivision (9), subsection (c), section ten of this article totals eleven million dollars, all subsequent distributions under this subdivision (9) during that fiscal year shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in article twenty-three, chapter nineteen of this code;

(B) The deposit of the four percent of net terminal income into the Worker’s Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds, which shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in article twenty-three, chapter nineteen of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code have been retired or payment of the debt service is provided for; and (ii) that an independent certified actuary has determined that the
unfunded liability of the Old Fund, as defined in chapter twenty-three of this code, has been paid or provided in its entirety; and

(10) (A) One percent of the net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this one percent of net terminal income shall be distributed pursuant to the provisions of subparagraph (ii), paragraph (B), subdivision (9), subsection (c), section ten of this article.

(b) The Commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and section ten of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Darrell Elicker
Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of September, 2005.

Governor
PRESENTED TO THE
GOVERNOR

Date 9/6/05
Time 4:20P