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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# 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

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FOR

**H. B. 411**

(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  
2 any horse or dog race at any horse or dog race meeting con-  
3 ducted or held by any licensee is hereby authorized if, and only  
4 if, such pari-mutuel wagering is conducted by the licensee  
5 within the confines of the licensee's horse racetrack or dog  
6 racetrack and the provisions of section one, article ten, chapter  
7 sixty-one of this code relating to gaming shall not apply to the  
8 pari-mutuel system of wagering in manner and form as pro-  
9 vided in this article at any horse or dog race meeting within this  
10 state where horse or dog racing is permitted for any purse by  
11 any licensee. A licensee shall permit or conduct only the  
12 pari-mutuel system of wagering within the confines of the  
13 licensee's racetrack at which any horse or dog race meeting is  
14 conducted or held.

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

17 (1) The commission deducted by any licensee from the  
18 pari-mutuel pools on thoroughbred horse racing, except from  
19 thoroughbred horse racing pari-mutuel pools involving what is  
20 known as multiple betting in which the winning pari-mutuel  
21 ticket or tickets are determined by a combination of two or

22 more winning horses, shall not exceed seventeen and one-fourth  
23 percent of the total of the pari-mutuel pools for the day. Out of  
24 the commission mentioned in this subdivision, the licensee: (i)  
25 Shall pay the pari-mutuel pools tax provided in subsection (b),  
26 section ten of this article; (ii) shall make a deposit into a special  
27 fund to be established by the licensee and to be used for the  
28 payment of regular purses offered for thoroughbred racing by  
29 the licensee, which deposits out of pari-mutuel pools for each  
30 day during the months of January, February, March, October,  
31 November and December shall be seven and three hundred  
32 seventy-five one-thousandths percent of the pari-mutuel pools  
33 and which, out of pari-mutuel pools for each day during all  
34 other months, shall be six and eight hundred seventy-five  
35 one-thousandths percent of the pari-mutuel pools, which shall  
36 take effect beginning fiscal year one thousand nine hundred  
37 ninety; (iii) shall pay one tenth of one percent of the  
38 pari-mutuel pools into the general fund of the county commis-  
39 sion of the county in which the racetrack is located, except if  
40 within a municipality, then to the Municipal General Fund; and  
41 (iv) Any licensee which has participated in the West Virginia  
42 Thoroughbred Development Fund for a period of more than  
43 four consecutive calendar years prior to the thirty-first day of  
44 December, one thousand nine hundred ninety-two, shall make  
45 a deposit into a special fund to be established by the Racing  
46 Commission and to be used for the payment of breeders awards,  
47 restrictive races and stakes purses as authorized by section  
48 thirteen-b of this article, which deposits out of pari-mutuel  
49 pools shall, from the effective date of this section, be two  
50 percent of the pools. The remainder of the commission shall be  
51 retained by the licensee.

52 Each licensee that permits or conducts pari-mutuel wager-  
53 ing at the licensee's thoroughbred horse racetrack shall annually  
54 pay five hundred thousand dollars from the special fund  
55 required by this section to be established by the licensee for the  
56 payment of regular purses offered for thoroughbred racing by  
57 the licensee into a special fund established by the Racing

58 Commission for transfer to a pension plan established by the  
59 Racing Commission for all back stretch personnel, including,  
60 but not limited to, exercise riders, trainers, grooms and stable  
61 forepersons licensed by the Racing Commission to participate  
62 in horse racing in this state and their dependents.

63 Each thoroughbred racetrack licensee is authorized to enter  
64 into an agreement with its local Horsemen's Benevolent and  
65 Protective Association under which an agreed upon percentage  
66 of up to two percent of purses actually paid during the preced-  
67 ing month may be paid to the local Horsemen's Benevolent and  
68 Protective Association from the special fund required by this  
69 section for their respective medical trusts for backstretch  
70 personnel and administrative fees.

71 The commission deducted by any licensee from the  
72 pari-mutuel pools on thoroughbred horse racing involving what  
73 is known as multiple betting in which the winning pari-mutuel  
74 ticket or tickets are determined by a combination of two  
75 winning horses shall not exceed nineteen percent and by a  
76 combination of three or more winning horses shall not exceed  
77 twenty-five percent of the total of such pari-mutuel pools for  
78 the day. Out of the commission, as is mentioned in this para-  
79 graph, the licensee: (i) Shall pay the pari-mutuel pools tax  
80 provided in subsection (b), section ten of this article; (ii) shall  
81 make a deposit into a special fund to be established by the  
82 licensee and to be used for the payment of regular purses  
83 offered for thoroughbred racing by the licensee, which deposits  
84 out of pari-mutuel pools for each day during the months of  
85 January, February, March, October, November and December,  
86 for pools involving a combination of two winning horses shall  
87 be eight and twenty-five one-hundredths percent and out of  
88 pari-mutuel pools for each day during all other months shall be  
89 seven and seventy-five one-hundredths percent of the  
90 pari-mutuel pools, and involving a combination of three or  
91 more winning horses for the months of January, February,  
92 March, October, November and December the deposits out of

93 the fund shall be eleven and twenty-five one-hundredths percent  
94 of the pari-mutuel pools, and which, out of pari-mutuel pools  
95 for each day during all other months, shall be ten and sev-  
96 enty-five one-hundredths percent of the pari-mutuel pools; (iii)  
97 shall pay one tenth of one percent of the pari-mutuel pools into  
98 the general fund of the county commission of the county in  
99 which the racetrack is located, except if within a municipality,  
100 then to the Municipal General Fund; and (iv) any licensee  
101 which has participated in the West Virginia Thoroughbred  
102 Development Fund for a period of more than four consecutive  
103 calendar years prior to the thirty-first day of December, one  
104 thousand nine hundred ninety-two, shall make a deposit into a  
105 special fund to be established by the Racing Commission and  
106 to be used for the payment of breeder awards, for restrictive  
107 races and stakes purses which deposits out of pari-mutuel pools  
108 shall, from the effective date of this section, be two percent of  
109 the pools. The remainder of the commission shall be retained by  
110 the licensee.

111 The commission deducted by the licensee under this  
112 subdivision may be reduced only by mutual agreement between  
113 the licensee and a majority of the trainers and horse owners  
114 licensed by subsection (a), section two of this article or their  
115 designated representative. The reduction in licensee commis-  
116 sions may be for a particular race, racing day or days or for a  
117 horse race meeting. Fifty percent of the reduction shall be  
118 retained by the licensee from the amounts required to be paid  
119 into the special fund established by the licensee under the  
120 provisions of this subdivision. The Racing Commission shall  
121 promulgate any reasonable rules that are necessary to imple-  
122 ment the foregoing provisions.

123 (2) The commission deducted by any licensee from the  
124 pari-mutuel pools on harness racing shall not exceed seventeen  
125 and one-half percent of the total of the pari-mutuel pools for the  
126 day. Out of the commission the licensee shall pay the  
127 pari-mutuel pools tax provided in subsection (c), section ten of

128 this article and shall pay one tenth of one percent into the  
129 general fund of the county commission of the county in which  
130 the racetrack is located, except if within a municipality, then to  
131 the Municipal General Fund. The remainder of the commission  
132 shall be retained by the licensee.

133 (3) The commission deducted by any licensee from the  
134 pari-mutuel pools on dog racing, except from dog racing  
135 pari-mutuel pools involving what is known as multiple betting  
136 in which the winning pari-mutuel ticket or tickets are deter-  
137 mined by a combination of two or more winning dogs, shall not  
138 exceed sixteen and thirty one-hundredths percent of the total of  
139 all pari-mutuel pools for the day. The commission deducted by  
140 any licensee from the pari-mutuel pools on dog racing involv-  
141 ing what is known as multiple betting in which the winning  
142 pari-mutuel ticket or tickets are determined by a combination  
143 of two winning dogs shall not exceed nineteen percent, by a  
144 combination of three winning dogs shall not exceed twenty  
145 percent and by a combination of four or more winning dogs  
146 shall not exceed twenty-one percent of the total of such  
147 pari-mutuel pools for the day. The foregoing commissions are  
148 in effect for the fiscal years one thousand nine hundred ninety  
149 and one thousand nine hundred ninety-one. Thereafter, the  
150 commission shall be at the percentages in effect prior to the  
151 effective date of this article unless the Legislature, after review,  
152 determines otherwise. Out of the commissions, the licensee  
153 shall pay the pari-mutuel pools tax provided in subsection (d),  
154 section ten of this article and one tenth of one percent of such  
155 pari-mutuel pools into the general fund of the county commis-  
156 sion of the county in which the racetrack is located. In addition,  
157 out of the commissions, if the racetrack is located within a  
158 municipality, then the licensee shall also pay three tenths of one  
159 percent of the pari-mutuel pools into the Municipal General  
160 Fund; or, if the racetrack is located outside of a municipality,  
161 then the licensee shall also pay three tenths of one percent of  
162 the pari-mutuel pools into the State Road Fund for use by the  
163 Division of Highways in accordance with the provisions of this

164 subdivision. The remainder of the commission shall be retained  
165 by the licensee.

166 For the purposes of this section, "municipality" means and  
167 includes any Class I, Class II and Class III city and any Class  
168 IV town or village incorporated as a municipal corporation  
169 under the laws of this state prior to the first day of January, one  
170 thousand nine hundred eighty-seven.

171 Each dog racing licensee, when required by the provisions  
172 of this subdivision to pay a percentage of its commissions to the  
173 State Road Fund for use by the Division of Highways, shall  
174 transmit the required funds, in such manner and at such times  
175 as the Racing Commission shall by procedural rule direct, to the  
176 State Treasurer for deposit in the State Treasury to the credit of  
177 the Division of Highways State Road Fund. All funds collected  
178 and received in the State Road Fund pursuant to the provisions  
179 of this subdivision shall be used by the Division of Highways  
180 in accordance with the provisions of article seventeen-a, chapter  
181 seventeen of this code for the acquisition of right-of-way for,  
182 the construction of, the reconstruction of and the improvement  
183 or repair of any interstate or other highway, secondary road,  
184 bridge and toll road in the state. If on the first day of July, one  
185 thousand nine hundred eighty-nine, any area encompassing a  
186 dog racetrack has incorporated as a Class I, Class II or Class III  
187 city or as a Class IV town or village, whereas such city, town or  
188 village was not incorporated as such on the first day of January,  
189 one thousand nine hundred eighty-seven, then on and after the  
190 first day of July, one thousand nine hundred eighty-nine, any  
191 balances in the State Road Fund existing as a result of payments  
192 made under the provisions of this subdivision may be used by  
193 the State Road Fund for any purpose for which other moneys in  
194 the fund may lawfully be used and in lieu of further payments  
195 to the State Road Fund, the licensee of a racetrack which is  
196 located in the municipality shall thereafter pay three tenths of  
197 one percent of the pari-mutuel pools into the general fund of the  
198 municipality. If no incorporation occurs before the first day of

199 July, one thousand nine hundred eighty-nine, then payments to  
200 the State Road Fund shall thereafter continue as provided under  
201 the provisions of this subdivision.

202 A dog racing licensee, before deducting the commissions  
203 authorized by this subdivision, shall give written notification to  
204 the Racing Commission not less than thirty days prior to any  
205 change in the percentage rates for the commissions. The Racing  
206 Commission shall prescribe blank forms for filing the notifica-  
207 tion. The notification shall disclose the following: (A) The  
208 revised commissions to be deducted from the pari-mutuel pools  
209 each day on win, place and show betting and on different forms  
210 of multiple bettings; (B) the dates to be included in the revised  
211 betting; and (C) such other information as may be required by  
212 the Racing Commission.

213 The licensee shall establish a special fund to be used only  
214 for capital improvements or long-term debt amortization or  
215 both: *Provided*, That any licensee, heretofore licensed for a  
216 period of eight years prior to the effective date of the amend-  
217 ment made to this section during the regular session of the  
218 Legislature held in the year one thousand nine hundred  
219 eighty-seven, shall establish the special fund to be used only for  
220 capital improvements or physical plant maintenance, or both, at  
221 the licensee's licensed facility or at the licensee's commonly  
222 owned racing facility located within this state. Deposits made  
223 into the funds shall be in an amount equal to twenty-five  
224 percent of the increased rate total over and above the applicable  
225 rate in effect as of the first day of January, one thousand nine  
226 hundred eighty-seven, of the pari-mutuel pools for the day. Any  
227 amount deposited into the funds must be expended or liability  
228 therefor incurred within a period of two years from the date of  
229 deposit. Any funds not expended shall be transferred immedi-  
230 ately into the State General Fund after expiration of the  
231 two-year period.

232 The licensee shall make a deposit into a special fund  
233 established by the licensee and used for payment of regular  
234 purses offered for dog racing, which deposits out of the li-  
235 censee's commissions for each day shall be three and sev-  
236 enty-five one-hundredths percent of the pari-mutuel pools.

237 The licensee shall further establish a special fund to be used  
238 exclusively for marketing and promotion programs; the funds  
239 shall be in an amount equal to five percent over and above the  
240 applicable rates in effect as of the first day of January, one  
241 thousand nine hundred eighty-seven, of the total pari-mutuel  
242 pools for the day.

243 The Racing Commission shall prepare and transmit  
244 annually to the Governor and the Legislature a report of the  
245 activities of the Racing Commission under this subdivision. The  
246 report shall include a statement of: The amount of commissions  
247 retained by licensees; the amount of taxes paid to the state; the  
248 amounts paid to municipalities, counties and the Division of  
249 Highways Dog Racing Fund; the amounts deposited by licens-  
250 ees into special funds for capital improvements or long-term  
251 debt amortization and a certified statement of the financial  
252 condition of any licensee depositing into the fund; the amounts  
253 paid by licensees into special funds and used for regular purses  
254 offered for dog racing; the amounts paid by licensees into  
255 special funds and used for marketing and promotion programs;  
256 and such other information as the racing commission may  
257 consider appropriate for review.

258 (c) In addition to any commission, a licensee of horse race  
259 or dog race meetings shall also be entitled to retain the legiti-  
260 mate breakage, which shall be made and calculated to the dime,  
261 and from the breakage, the licensee of a horse race meeting  
262 (excluding dog race meetings), shall deposit daily fifty percent  
263 of the total of the breakage retained by the licensee into the  
264 special fund created pursuant to the provisions of subdivision  
265 (1), subsection (b) of this section for the payment of regular  
266 purses.

267 (d) The director of audit, and any other auditors employed  
268 by the Racing Commission who are also certified public  
269 accountants or experienced public accountants, shall have free  
270 access to the space or enclosure where the pari-mutuel system  
271 of wagering is conducted or calculated at any horse or dog race  
272 meeting for the purpose of ascertaining whether or not the  
273 licensee is deducting and retaining only a commission as  
274 provided in this section and is otherwise complying with the  
275 provisions of this section. They shall also, for the same pur-  
276 poses only, have full and free access to all records and papers  
277 pertaining to the pari-mutuel system of wagering and shall  
278 report to the Racing Commission in writing, under oath,  
279 whether or not the licensee has deducted and retained any  
280 commission in excess of that permitted under the provisions of  
281 this section or has otherwise failed to comply with the provi-  
282 sions of this section.

283 (e) No licensee shall permit or allow any individual under  
284 the age of eighteen years to wager at any horse or dog racetrack,  
285 knowing or having reason to believe that the individual is under  
286 the age of eighteen years.

287 (f) Notwithstanding the foregoing provisions of subdivision  
288 (1), subsection (b) of this section, to the contrary, a thorough-  
289 bred licensee qualifying for and paying the alternate reduced  
290 tax on pari-mutuel pools provided in section ten of this article  
291 shall distribute the commission authorized to be deducted by  
292 subdivision (1), subsection (b) of this section as follows: (i) The  
293 licensee shall pay the alternate reduced tax provided in section  
294 ten of this article; (ii) the licensee shall pay one tenth of one  
295 percent of the pari-mutuel pools into the general fund of the  
296 county commission of the county in which the racetrack is  
297 located, except if within a municipality, then to the Municipal  
298 General Fund; (iii) the licensee shall pay one half of the  
299 remainder of the commission into the special fund established  
300 by the licensee and to be used for the payment of regular purses  
301 offered for thoroughbred racing by the licensee; and (iv) the

302 licensee shall retain the amount remaining after making the  
303 payments required in this subsection.

304 (g) Each kennel which provides or races dogs owned or  
305 leased by others shall furnish to the Commission a surety bond  
306 in an amount to be determined by the Commission to secure the  
307 payment to the owners or lessees of the dogs the portion of any  
308 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 ac-  
credited thoroughbreds.**

1 (a) The Racing Commission shall deposit moneys required  
2 to be withheld by an association or licensee in subsection (b),  
3 section nine of this article in a banking institution of its choice  
4 in a special account to be known as “West Virginia Racing  
5 Commission Special Account — West Virginia Thoroughbred  
6 Development Fund”: *Provided*, That after the West Virginia  
7 Lottery Commission has divided moneys between the West  
8 Virginia Thoroughbred Development Fund and the West  
9 Virginia Greyhound Breeding Development Fund pursuant to  
10 the provisions of sections ten and ten-b, article twenty-two-a,  
11 chapter twenty-nine of this code, the Racing Commission shall,  
12 beginning the first day of October, two thousand five, deposit  
13 the remaining moneys required to be withheld from an associa-  
14 tion or licensee designated to the Thoroughbred Development  
15 Fund under the provisions of subsection (b), section nine of this  
16 article, subdivision (3), subsection (e), section twelve-b of this  
17 article, subsection (b), section twelve-c of this article, paragraph  
18 (B), subdivision (3), subsection (b), section thirteen-c of this  
19 article and sections ten and ten-b, article twenty-two-a, chapter  
20 twenty-nine of this code into accounts for each thoroughbred  
21 racetrack licensee with a banking institution of its choice with  
22 a separate account for each association or licensee. Each  
23 separate account shall be a special account to be known as

24 “West Virginia Racing Commission Special Account – West  
25 Virginia Thoroughbred Development Fund” and shall name the  
26 licensee for which the special account has been established:  
27 *Provided, however,* That the Racing Commission shall deposit  
28 all moneys paid into the Thoroughbred Development Fund by  
29 a thoroughbred racetrack licensee that did not participate in the  
30 Thoroughbred Development Fund for at least four consecutive  
31 calendar years prior to the thirty-first day of December, one  
32 thousand nine hundred ninety-two from the eighth day of July,  
33 two thousand five until the effective date of the amendment to  
34 this section passed during the fourth extraordinary session of  
35 the seventy-seventh Legislature shall be paid into the purse  
36 fund of that thoroughbred racetrack licensee: *Provided further,*  
37 That the moneys paid into the Thoroughbred Development  
38 Fund by a thoroughbred racetrack licensee that did not partici-  
39 pate in the Thoroughbred Development Fund for at least four  
40 consecutive calendar years prior to the thirty-first day of  
41 December, one thousand nine hundred ninety-two, shall be  
42 transferred into that licensee’s purse fund until the first day of  
43 April, two thousand six. Notice of the amount, date and place  
44 of the deposits shall be given by the Racing Commission, in  
45 writing, to the State Treasurer. The purpose of the funds is to  
46 promote better breeding and racing of thoroughbred horses in  
47 the state through awards and purses for accredited breed-  
48 ers/raisers, sire owners and thoroughbred race horse owners:  
49 *And provided further,* That five percent of the deposits required  
50 to be withheld by an association or licensee in subsection (b),  
51 section nine of this article shall be placed in a special revenue  
52 account hereby created in the State Treasury called the “Ad-  
53 ministration and Promotion Account”.

54 (b) The Racing Commission is authorized to expend the  
55 moneys deposited in the administration and promotion account  
56 at times and in amounts as the Commission determines to be  
57 necessary for purposes of administering and promoting the  
58 thoroughbred development program: *Provided,* That during any  
59 fiscal year in which the Commission anticipates spending any

60 money from the account, the Commission shall submit to the  
61 executive department during the budget preparation period prior  
62 to the Legislature convening before that fiscal year for inclusion  
63 in the executive budget document and budget bill the recom-  
64 mended expenditures, as well as requests of appropriations for  
65 the purpose of administration and promotion of the program.  
66 The Commission shall make an annual report to the Legislature  
67 on the status of the administration and promotion account,  
68 including the previous year's expenditures and projected  
69 expenditures for the next year.

70 (c) The fund or funds and the account or accounts estab-  
71 lished in subsection (a) of this section shall operate on an  
72 annual basis.

73 (d) Funds in the Thoroughbred Development Fund or funds  
74 in the separate accounts for each association or licensee as  
75 provided in subsection (a) of this section shall be expended for  
76 awards and purses except as otherwise provided in this section.  
77 Annually, the first three hundred thousand dollars of each fund  
78 shall be available for distribution for stakes races at a racetrack  
79 which has participated in the West Virginia Thoroughbred  
80 Development Fund for a period of more than four consecutive  
81 calendar years prior to the thirty-first day of December, one  
82 thousand nine hundred ninety-two. One of the stakes races shall  
83 be the West Virginia Futurity and the second shall be the Frank  
84 Gall Memorial Stakes. For the purpose of participating in the  
85 West Virginia Futurity only, all mares, starting with the  
86 breeding season beginning the first day of February through the  
87 thirty-first day of July, two thousand four, and each successive  
88 breeding season thereafter shall be bred back that year to an  
89 accredited West Virginia stallion only which is registered with  
90 the West Virginia Thoroughbred Breeders Association. The  
91 remaining races may be chosen by the committee set forth in  
92 subsection (f) of this section.

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

94 (1) The breeders/raisers of accredited thoroughbred horses  
95 that earn a purse at a participating West Virginia meet shall  
96 receive a bonus award calculated at the end of the year as a  
97 percentage of the fund dedicated to the breeders/raisers, which  
98 shall be sixty percent of the fund available for distribution in  
99 any one year. The total amount available for the breed-  
100 ers'/raisers' awards shall be distributed according to the ratio of  
101 purses earned by an accredited race horse to the total amount  
102 earned in the participating races by all accredited race horses  
103 for that year as a percentage of the fund dedicated to the  
104 breeders/raisers. However, no breeder/raiser may receive from  
105 the fund dedicated to breeders'/raisers' awards an amount in  
106 excess of the earnings of the accredited horse at West Virginia  
107 meets. In addition, should a horse's breeder and raiser qualify  
108 for the same award on the same horse, they will each be  
109 awarded one half of the proceeds. The bonus referred to in this  
110 subdivision may only be paid on the first one hundred thousand  
111 dollars of any purse and not on any amounts in excess of the  
112 first one hundred thousand dollars.

113 (2) The owner of a West Virginia sire of an accredited  
114 thoroughbred horse that earns a purse in any race at a participat-  
115 ing West Virginia meet shall receive a bonus award calculated  
116 at the end of the year as a percentage of the fund dedicated to  
117 sire owners, which shall be fifteen percent of the fund available  
118 for distribution in any one year. The total amount available for  
119 the sire owners' awards shall be distributed according to the  
120 ratio of purses earned by the progeny of accredited West  
121 Virginia stallions in the participating races for a particular  
122 stallion to the total purses earned by the progeny of all accred-  
123 ited West Virginia stallions in the participating races. However,  
124 no sire owner may receive from the fund dedicated to sire  
125 owners an amount in excess of thirty-five percent of the  
126 accredited earnings for each sire. The bonus referred to in this  
127 subdivision shall only be paid on the first one hundred thousand  
128 dollars of any purse and not on any amounts in excess of the  
129 first one hundred thousand dollars.

130 (3) The owner of an accredited thoroughbred horse that  
131 earns a purse in any participating race at a West Virginia meet  
132 shall receive a restricted purse supplement award calculated at  
133 the end of the year, which shall be twenty-five percent of the  
134 fund available for distribution in any one year, based on the  
135 ratio of the earnings in the races of a particular race horse to the  
136 total amount earned by all accredited race horses in the partici-  
137 pating races during that year as a percentage of the fund  
138 dedicated to purse supplements. However, the owners may not  
139 receive from the fund dedicated to purse supplements an  
140 amount in excess of thirty-five percent of the total accredited  
141 earnings for each accredited race horse. The bonus referred to  
142 in this subdivision shall only be paid on the first one hundred  
143 thousand dollars of any purse and not on any amounts in excess  
144 of the first one hundred thousand dollars.

145 (4) In no event may purses earned at a meet held at a track  
146 which did not make a contribution to the Thoroughbred  
147 Development Fund out of the daily pool on the day the meet  
148 was held qualify or count toward eligibility for an award under  
149 this subsection.

150 (5) Any balance in the breeders/raisers, sire owners and  
151 purse supplement funds after yearly distributions shall first be  
152 used to fund the races established in subsection (f) of this  
153 section. Any amount not so used shall revert into the general  
154 account of the Thoroughbred Development Fund for each  
155 racing association or licensee for distribution in the next year.

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

158 (f) (1) Each pari-mutuel thoroughbred horse track shall  
159 provide at least one restricted race per racing day: *Provided*,  
160 That sufficient horses and funds are available. For purposes of  
161 this subsection, there are sufficient horses if there are at least  
162 seven single betting interests received for the race. The re-

163 restricted race required by this section must be included in the  
164 first nine races written in the condition book for that racing day.

165 (2) The restricted races established in this subsection shall  
166 be administered by a three-member committee at each track  
167 consisting of:

168 (A) The racing secretary;

169 (B) A member appointed by the authorized representative  
170 of a majority of the owners and trainers at the thoroughbred  
171 track; and

172 (C) A member appointed by the West Virginia Thorough-  
173 bred Breeders Association.

174 (3) The purses for the restricted races established in this  
175 subsection shall be twenty percent larger than the purses for  
176 similar type races at each track or equal to or of greater value  
177 than a comparable race: *Provided*, That sufficient funds are  
178 available: *Provided, however*, That the twenty percent require-  
179 ment is applicable only to a thoroughbred racetrack which has  
180 participated in the West Virginia Thoroughbred Development  
181 Fund for a period of more than four consecutive calendar years  
182 prior to the thirty-first day of December, one thousand nine  
183 hundred ninety-two.

184 (4) Restricted races shall be funded by each racing associa-  
185 tion from:

186 (A) Moneys placed in the general purse fund up to a  
187 maximum of three hundred fifty thousand dollars per year:  
188 *Provided*, That a thoroughbred horse racetrack which has  
189 participated in the West Virginia Thoroughbred Development  
190 fund for a period of more than four consecutive years prior to  
191 the thirty-first day of December, one thousand nine hundred  
192 ninety-two, may fund restricted races in an amount not to

193 exceed one million five hundred thousand dollars from the  
194 general purse fund.

195 (B) Moneys as provided in subdivision (5), subsection (e)  
196 of this section, which shall be placed in a special fund called the  
197 "West Virginia Accredited Race Fund".

198 (5) The racing schedules, purse amounts and types of races  
199 are subject to the approval of the West Virginia Racing Com-  
200 mission.

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

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

211 (h) To qualify for the West Virginia Accredited Race Fund,  
212 the breeder must qualify under one of the following:

213 (1) The breeder of the West Virginia bred-foal is a West  
214 Virginia resident;

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

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

222 a West Virginia stallion following the birth of that West  
223 Virginia bred-foal.

224 (i) From the first day of July, two thousand one, West  
225 Virginia accredited thoroughbred horses have preference for  
226 entry in all accredited races at a thoroughbred race track at  
227 which the licensee participates in the West Virginia Thorough-  
228 bred Development Fund.

229 (j) Beginning the first day of July, two thousand six, any  
230 racing association licensed by the Racing Commission to  
231 conduct thoroughbred racing and permitting and conducting  
232 pari-mutuel wagering under the provisions of this article must  
233 have a West Virginia Thoroughbred Racing Breeders Program.

234 (k) The Commission shall, during calendar year two  
235 thousand nine, conduct a study of the adequacy of funding  
236 provided for the Thoroughbred Development Fund at any  
237 thoroughbred racetrack which has not participated in the West  
238 Virginia Thoroughbred Development Fund for a period of more  
239 than four consecutive calendar years prior to the thirty-first day  
240 of December, one thousand nine hundred ninety-two, and shall  
241 report its findings and recommendations to the Joint Committee  
242 on Government and Finance on or before the first day of  
243 December, two thousand nine.

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

1 (a) Funds received by the Racing Commission pursuant to  
2 subdivision (6), subsection (c), section ten, article  
3 twenty-two-a, chapter twenty-nine of this code, and subdivision  
4 (5), subsection (a), section ten-b, article twenty-two-a, chapter  
5 twenty-nine of this code, after the effective date of this section  
6 together with the balance in the bank account previously  
7 established by the Commission to receive those funds shall be  
8 deposited in a banking institution of its choice in a special  
9 account to be known as “West Virginia Racing Commission

10 Racetrack Video Lottery Account”. Notice of the amount, date  
11 and place of each deposit shall be given by the Racing Commis-  
12 sion, in writing, to the State Treasurer.

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

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

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

32 (3) For each fiscal year, once the amounts provided in  
33 subdivisions (1) and (2) of this subsection have been deposited  
34 into separate bank accounts for use in connection with the West  
35 Virginia Thoroughbred Breeders Classics and the West Virginia  
36 Derby, the Commission shall return to each racetrack all  
37 additional amounts deposited which originate during that fiscal  
38 year from each respective racetrack pursuant to subdivision (6),  
39 subsection (c), section ten, article twenty-two-a, chapter  
40 twenty-nine of this code, which returned excess funds shall be  
41 used as follows:

42 (A) For each dog racetrack, one half of the returned excess  
43 funds shall be used for capital improvements at the racetrack  
44 and one half of the returned excess funds shall be deposited into  
45 the West Virginia Racing Commission Special Account - West  
46 Virginia Greyhound Breeding Development Fund.

47 (B) At those thoroughbred racetracks that have participated  
48 in the West Virginia Thoroughbred Development Fund for a  
49 period of more than four consecutive calendar years prior to the  
50 thirty-first day of December, one thousand nine hundred  
51 ninety-two, one half of the returned excess funds shall be used  
52 for capital improvements at the licensee's racetrack and one  
53 half of the returned excess funds shall be equally divided  
54 between the West Virginia Thoroughbred Breeders Classic and  
55 the West Virginia Thoroughbred Development Fund.

56 (C) At those thoroughbred horse racetracks which do not  
57 participate in the West Virginia Breeders Classic, one half of  
58 the returned excess funds shall be used for capital improve-  
59 ments at the licensee's racetrack and one half of the returned  
60 excess funds shall be used for purses for the open stakes race  
61 event known as the West Virginia Derby.

62 (c) All expenditures that are funded under this section must  
63 be approved in writing by the West Virginia Racing Commis-  
64 sion before the funds are expended for any of the purposes  
65 authorized by this section.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22A. RACETRACK VIDEO LOTTERY.**

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

1 (a) For all years beginning on or after the first day of July,  
2 two thousand one, any amount of net terminal income generated  
3 annually by a licensed racetrack in excess of the amount of net

4 terminal income generated by that licensed racetrack during the  
5 fiscal year ending on the thirtieth day of June, two thousand  
6 one, shall be divided as follows:

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

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

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

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

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

31 (ii) The municipalities of the county shall receive fifty  
32 percent of the excess amount, the fifty percent to be divided  
33 among the municipalities on a per capita basis as determined by  
34 the most recent decennial United States census of population;  
35 and

36 (B) Any amount by which the total amount under this  
37 section and subdivision (3), subsection (c), section ten of this  
38 article is in excess of the two percent received during fiscal year  
39 one thousand nine hundred ninety-nine by a county in which a  
40 racetrack other than a racetrack described in paragraph (A) of  
41 this proviso is located and where the racetrack has been located  
42 in a municipality within the county since on or before the first  
43 day of January, one thousand nine hundred ninety-nine, shall be  
44 divided, if applicable, as follows:

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

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

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

52 (4) One half of one percent of net terminal income shall be  
53 paid for and on behalf of all employees of the licensed racing  
54 association by making a deposit into a special fund to be  
55 established by the Racing Commission to be used for payment  
56 into the pension plan for all employees of the licensed racing  
57 association;

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

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

68 (7) A licensee shall receive forty-two percent of net  
69 terminal income;

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

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

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

102 unfunded liability of the Old Fund, as defined in chapter  
103 twenty-three of this code, has been paid or provided in its  
104 entirety; and

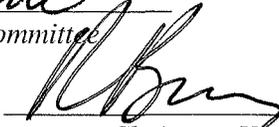
105 (10) (A) One percent of the net terminal income shall be  
106 deposited in equal amounts in the capitol dome and improve-  
107 ments fund created under section two, article four, chapter five-  
108 a of this code and cultural facilities and capitol resources  
109 matching grant program fund created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

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

117 (b) The Commission may establish orderly and effective  
118 procedures for the collection and distribution of funds under  
119 this section in accordance with the provisions of this section  
120 and section ten of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

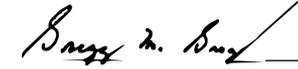
  
Chairman Senate Committee

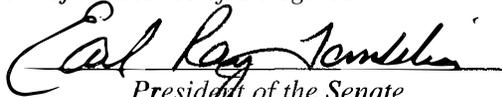
  
Chairman House Committee

Originating in the House.

In effect from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 30<sup>th</sup>  
day of September, 2005.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 9/16/05

Time 4:25 P