WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2008

ENROLLED

House Bill No. 213

(By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]

Passed June 26, 2008

In Effect Ninety Days from Passage
AN ACT to amend and reenact §19-23-10 of the Code of West Virginia, 1931, as amended, relating to greyhound racing generally; limiting participation in the West Virginia Greyhound Breeding Development Fund to accredited West Virginia whelped greyhounds wholly or solely owned by bona fide residents of West Virginia; relating to greyhound training tracks constructed with monies from the West Virginia Greyhound Breeding Development Fund; providing for allocation and distribution of not more than two million dollars from the balance of the purse supplemental fund for the construction and maintenance of two greyhound training tracks and facilities subject to the approval of the Racing Commission; prohibiting the Racing Commission from requiring association membership as a prerequisite to participation in the West Virginia Greyhound Breeding Development Fund; requiring up to three races featuring accredited West Virginia whelped greyhounds per race card; requiring the Greyhound Owners and Breeders Association to submit additions or deletions to the accredited West Virginia whelped greyhounds registry; and requiring the Racing Commission to promulgate rules providing a process for competitive bidding of the construction and/or maintenance of
the training tracks and setting standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

Be it enacted by the Legislature of West Virginia:

That §19-23-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth
in subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall be calculated at four tenths of one percent of the pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at one and four-tenths percent of the pool: Provided, That out of the amount realized from the three tenths of one percent decrease in the tax effective for fiscal year one thousand nine hundred ninety-one and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate: (i) One half of the realized amount for capital improvements in its barn area at the track, subject to the Racing Commission's prior approval of the plans for the improvements; and (ii) the remaining one half of the realized amount for capital improvements as the licensee may determine appropriate at the track. The term "capital improvement" shall be as defined by the Internal Revenue Code: Provided, however, that any racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of two hundred eighty thousand dollars or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding three hundred thousand dollars the daily pari-mutuel pool tax shall be one thousand dollars plus the otherwise applicable percentage rate imposed by this
subsection of the daily pari-mutuel pool, if any, in excess of
three hundred thousand dollars: Provided further, That upon
the effective date of the reduction of the daily pari-mutuel
pool tax to one thousand dollars from the former two
thousand dollars, the association or licensee shall daily
deposit five hundred dollars into the special fund for regular
purses established by subdivision (1), subsection (b), section
nine of this article: And provided further, That if an
association or licensee qualifying for the foregoing alternate
tax conducts more than one racing performance, each
consisting of up to thirteen races in a calendar day, the
association or licensee shall pay both the daily license tax
imposed in subsection (a) of this section and the alternate tax
in this subsection for each performance: And provided
further, That a licensee qualifying for the foregoing alternate
tax is excluded from participation in the fund established by
section thirteen-b of this article: And provided further, That
this exclusion shall not apply to any thoroughbred racetrack
at which the licensee has participated in the West Virginia
thoroughbred development fund for more than four
consecutive years prior to the thirty-first day of December,
one thousand nine hundred ninety-two.

(c) Any racing association licensed by the Racing
Commission to conduct harness racing and permitting and
conducting pari-mutuel wagering under the provisions of this
article shall, in addition to the daily license tax required under
subsection (a) of this section, pay to the Racing Commission,
from the commission deducted each day by the licensee from
the pari-mutuel pools on harness racing, as a tax, three percent
of the first one hundred thousand dollars wagered, or any part
thereof; four percent of the next one hundred fifty thousand
dollars; and five and three-fourths percent of all over that
amount wagered each day in all pari-mutuel pools conducted or
made at any and every harness race meeting of the licensee
licensed under the provisions of this article.
(d) Any racing association licensed by the Racing Commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding, training track facilities and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to participate and be eligible to receive an award or purse through the fund, the registered greyhound owner must have an appropriate license from the Racing Commission to race in West Virginia. The
registered greyhound dam at the time of breeding must be wholly or solely owned or leased by a bona fide resident or residents of West Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned by a bona fide resident or residents of this state. To qualify as a bona fide resident of West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the State of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The Racing Commission shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses for stake races, training track facilities, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the Racing Commission. The Racing Commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the Racing Commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.
The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound Breeding Development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of points earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall be the same as approved by the Racing Commission to be effective April 1, 2007. The West Virginia Greyhound Owners and Breeders Association shall submit a list of any additions or deletions to the registry of accredited West Virginia whelped greyhounds on the first of each month. The Racing Commission shall not require anyone to be a member of a particular association in order to participate in the West Virginia Greyhound Breeding Development Fund.

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the Racing Commission for a percentage of his or her dog's earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.

In no event shall points earned at a meet held at a track which did not make contributions to the West Virginia Greyhound Breeding Development Fund out of the daily pool
on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: Provided, That not more than two million dollars from the balance in the purse supplemental fund shall be used for the construction and maintenance of two dog training track facilities if such be approved by the Racing Commission: Provided, however, That not more than one million dollars may be allocated for the construction and maintenance of each training track: Provided further, That both training track facilities must be located in West Virginia. The West Virginia Racing Commission shall be authorized to promulgate rules governing dog training tracks: And provided further, That the Racing Commission shall (1) provide a process in its rules for competitive bidding of the construction or maintenance, or both, of the training tracks, and (2) set standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

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

Provided, That each pari-mutuel track shall have one juvenile and one open stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for accredited West Virginia whelped greyhounds per race card: 

Provided, however, That sufficient dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West Virginia Racing Commission by the first day of July each year shall establish and announce the minimum number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West Virginia dog tracks must have on their racing active list during the calendar year following such action. The minimum number may vary from dog track to dog track. The minimum number shall be established after consultation with the West Virginia Greyhound Owners and Breeders Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel's racing license. The Racing
Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the "administration, promotion and educational and capital improvement account". The Racing Commission is authorized to expend the moneys deposited in the administration, promotion and educational and capital improvement account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: *Provided,* That beginning with fiscal year one thousand nine hundred ninety-five and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year's expenditures and projected expenditures for the next year.

The Racing Commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.
(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the Racing Commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the Racing Commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within is approved this the ___ day of ___, 2008.

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Governor