

HB 213

FILE

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OFFICE WILL  
SECRETARY OF STATE

**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

**ENROLLED**

FILED  
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**H. B. 213**

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(BY MR. SPEAKER, MR. THOMPSON)  
[BY REQUEST OF THE EXECUTIVE]

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[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.**

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

18       (b) Any racing association licensed by the Racing  
19 Commission to conduct thoroughbred racing and permitting  
20 and conducting pari-mutuel wagering under the provisions of  
21 this article shall, in addition to the daily license tax set forth

22 in subsection (a) of this section, pay to the Racing  
23 Commission, from the commission deducted each day by the  
24 licensee from the pari-mutuel pools on thoroughbred racing  
25 a tax calculated on the total daily contribution of all pari-  
26 mutuel pools conducted or made at any and every  
27 thoroughbred race meeting of the licensee licensed under the  
28 provisions of this article. The tax, on the pari-mutuel pools  
29 conducted or made each day during the months of January,  
30 February, March, October, November and December, shall  
31 be calculated at four tenths of one percent of the pool; and,  
32 on the pari-mutuel pools conducted or made each day during  
33 all other months, shall be calculated at one and four-tenths  
34 percent of the pool: *Provided*, That out of the amount  
35 realized from the three tenths of one percent decrease in the  
36 tax effective for fiscal year one thousand nine hundred  
37 ninety-one and thereafter, which decrease correspondingly  
38 increases the amount of commission retained by the licensee,  
39 the licensee shall annually expend or dedicate: (i) One half  
40 of the realized amount for capital improvements in its barn  
41 area at the track, subject to the Racing Commission's prior  
42 approval of the plans for the improvements; and (ii) the  
43 remaining one half of the realized amount for capital  
44 improvements as the licensee may determine appropriate at  
45 the track. The term "capital improvement" shall be as  
46 defined by the Internal Revenue Code: *Provided, however*,  
47 That any racing association operating a horse racetrack in this  
48 state having an average daily pari-mutuel pool on horse  
49 racing of two hundred eighty thousand dollars or less per day  
50 for the race meetings of the preceding calendar year shall, in  
51 lieu of payment of the pari-mutuel pool tax, calculated as in  
52 this subsection, be permitted to conduct pari-mutuel wagering  
53 at the horse racetrack on the basis of a daily pari-mutuel pool  
54 tax fixed as follows: On the daily pari-mutuel pool not  
55 exceeding three hundred thousand dollars the daily pari-  
56 mutuel pool tax shall be one thousand dollars plus the  
57 otherwise applicable percentage rate imposed by this

58 subsection of the daily pari-mutuel pool, if any, in excess of  
59 three hundred thousand dollars: *Provided further*, That upon  
60 the effective date of the reduction of the daily pari-mutuel  
61 pool tax to one thousand dollars from the former two  
62 thousand dollars, the association or licensee shall daily  
63 deposit five hundred dollars into the special fund for regular  
64 purses established by subdivision (1), subsection (b), section  
65 nine of this article: *And provided further*, That if an  
66 association or licensee qualifying for the foregoing alternate  
67 tax conducts more than one racing performance, each  
68 consisting of up to thirteen races in a calendar day, the  
69 association or licensee shall pay both the daily license tax  
70 imposed in subsection (a) of this section and the alternate tax  
71 in this subsection for each performance: *And provided*  
72 *further*, That a licensee qualifying for the foregoing alternate  
73 tax is excluded from participation in the fund established by  
74 section thirteen-b of this article: *And provided further*, That  
75 this exclusion shall not apply to any thoroughbred racetrack  
76 at which the licensee has participated in the West Virginia  
77 thoroughbred development fund for more than four  
78 consecutive years prior to the thirty-first day of December,  
79 one thousand nine hundred ninety-two.

80 (c) Any racing association licensed by the Racing  
81 Commission to conduct harness racing and permitting and  
82 conducting pari-mutuel wagering under the provisions of this  
83 article shall, in addition to the daily license tax required under  
84 subsection (a) of this section, pay to the Racing Commission,  
85 from the commission deducted each day by the licensee from  
86 the pari-mutuel pools on harness racing, as a tax, three percent  
87 of the first one hundred thousand dollars wagered, or any part  
88 thereof; four percent of the next one hundred fifty thousand  
89 dollars; and five and three-fourths percent of all over that  
90 amount wagered each day in all pari-mutuel pools conducted or  
91 made at any and every harness race meeting of the licensee  
92 licensed under the provisions of this article.

93 (d) Any racing association licensed by the Racing  
94 Commission to conduct dog racing and permitting and  
95 conducting pari-mutuel wagering under the provisions of this  
96 article shall, in addition to the daily license tax required  
97 under subsection (a) of this section, pay to the Racing  
98 Commission, from the commission deducted each day by the  
99 licensee from the pari-mutuel pools on dog racing, as a tax,  
100 four percent of the first fifty thousand dollars or any part  
101 thereof of the pari-mutuel pools, five percent of the next fifty  
102 thousand dollars of the pari-mutuel pools, six percent of the  
103 next one hundred thousand dollars of the pari-mutuel pools,  
104 seven percent of the next one hundred fifty thousand dollars  
105 of the pari-mutuel pools, and eight percent of all over three  
106 hundred fifty thousand dollars wagered each day: *Provided*,  
107 That the licensee shall deduct daily from the pari-mutuel tax  
108 an amount equal to one tenth of one percent of the daily pari-  
109 mutuel pools in dog racing in fiscal year one thousand nine  
110 hundred ninety; fifteen hundredths of one percent in fiscal  
111 year one thousand nine hundred ninety-one; two tenths of one  
112 percent in fiscal year one thousand nine hundred ninety-two;  
113 one quarter of one percent in fiscal year one thousand nine  
114 hundred ninety-three; and three tenths of one percent in fiscal  
115 year one thousand nine hundred ninety-four and every fiscal  
116 year thereafter. The amounts deducted shall be paid to the  
117 Racing Commission to be deposited by the Racing  
118 Commission in a banking institution of its choice in a special  
119 account to be known as "West Virginia Racing Commission-  
120 Special Account-West Virginia Greyhound Breeding  
121 Development Fund". The purpose of the fund is to promote  
122 better breeding, training track facilities and racing of  
123 greyhounds in the state through awards and purses to bona  
124 fide resident registered greyhound owners of accredited West  
125 Virginia whelped greyhounds. In order to participate and be  
126 eligible to receive an award or purse through the fund, the  
127 registered greyhound owner must have an appropriate license  
128 from the Racing Commission to race in West Virginia. The

129 registered greyhound dam at the time of breeding must be  
130 wholly or solely owned or leased by a bona fide resident or  
131 residents of West Virginia. The accredited West Virginia  
132 whelped greyhound must be wholly or solely owned by a  
133 bona fide resident or residents of this state. To qualify as a  
134 bona fide resident of West Virginia, a registered greyhound  
135 owner may not claim residency in any other state. A  
136 registered greyhound owner must prove bona fide residency  
137 by providing to the commission personal income tax returns  
138 filed in the State of West Virginia for the most recent tax year  
139 and the three previous tax years, has real or personal property  
140 in this state on which the owner has paid real or personal  
141 property taxes during the most recent tax year and the  
142 previous three tax years and an affidavit stating that the  
143 owner claims no other state of residency. The Racing  
144 Commission shall maintain a registry for West Virginia bred  
145 greyhounds. The moneys shall be expended by the Racing  
146 Commission for purses for stake races, training track  
147 facilities, supplemental purse awards, administration,  
148 promotion and educational programs involving West Virginia  
149 whelped dogs, owned by residents of this state under rules  
150 promulgated by the Racing Commission. The Racing  
151 Commission shall pay out of the greyhound breeding  
152 development fund to each of the licensed dog racing tracks  
153 the sum of seventy-five thousand dollars for the fiscal year  
154 ending the thirtieth day of June, one thousand nine hundred  
155 ninety-four. The licensee shall deposit the sum into the  
156 special fund for regular purses established under the  
157 provisions of section nine of this article. The funds shall be  
158 expended solely for the purpose of supplementing regular  
159 purses under rules promulgated by the Racing Commission.

160 Supplemental purse awards will be distributed as follows:  
161 Supplemental purses shall be paid directly to the registered  
162 greyhound owner of an accredited greyhound.

163       The registered greyhound owner of accredited West  
164 Virginia whelped greyhounds that earn points at any West  
165 Virginia meet will receive a bonus award calculated at the  
166 end of each month as a percentage of the fund dedicated to  
167 the owners as purse supplements, which shall be a minimum  
168 of fifty percent of the total moneys deposited into the West  
169 Virginia Greyhound Breeding Development fund monthly.

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

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

192       In no event shall points earned at a meet held at a track  
193 which did not make contributions to the West Virginia  
194 Greyhound Breeding Development Fund out of the daily pool

195 on the day the meet was held qualify or count toward  
196 eligibility for supplemental purse awards.

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

216 In an effort to further promote the breeding of quality  
217 West Virginia whelped greyhounds, a bonus purse  
218 supplement shall be established in the amount of fifty  
219 thousand dollars per annum, to be paid in equal quarterly  
220 installments of twelve thousand five hundred dollars per  
221 quarter using the same method to calculate and distribute  
222 these funds as the regular supplemental purse awards. This  
223 bonus purse supplement is for three years only, commencing  
224 on the first day of July, one thousand nine hundred ninety-  
225 three, and ending the thirtieth day of June, one thousand nine  
226 hundred ninety-six. This money would come from the current  
227 existing balance in the greyhound development fund.

228 Each pari-mutuel greyhound track shall provide stakes  
229 races for accredited West Virginia whelped greyhounds:  
230 *Provided*, That each pari-mutuel track shall have one juvenile  
231 and one open stake race annually. Each pari-mutuel dog  
232 track shall provide at least three restricted races for  
233 accredited West Virginia whelped greyhounds per race card:  
234 *Provided, however*, That sufficient dogs are available. To  
235 assure breeders of accredited West Virginia whelped  
236 greyhounds an opportunity to participate in the West Virginia  
237 Greyhound Breeding Development Fund the West Virginia  
238 Racing Commission by the first day of July each year shall  
239 establish and announce the minimum number of accredited  
240 West Virginia whelped greyhounds that greyhound racing  
241 kennels at West Virginia dog tracks must have on their racing  
242 active list during the calendar year following such action.  
243 The minimum number may vary from dog track to dog track.  
244 The minimum number shall be established after consultation  
245 with the West Virginia Greyhound Owners and Breeders  
246 Association and kennel owners and operators. Factors to be  
247 considered in establishing this minimum number shall be the  
248 number of individually registered accredited West Virginia  
249 whelped greyhounds whelped in the previous two years. The  
250 number of all greyhounds seeking qualification at each West  
251 Virginia dog track, the ratio of active running greyhounds to  
252 housed number of greyhounds at each West Virginia dog  
253 track, and the size and number of racing kennels at each West  
254 Virginia dog track. Any greyhound racing kennel not having  
255 the minimum number of accredited West Virginia whelped  
256 greyhounds determined by the West Virginia Racing  
257 Commission on their active list shall only be permitted to  
258 race the maximum allowable number on the active list less  
259 the number of accredited West Virginia whelped greyhounds  
260 below the established minimum number. Consistent  
261 violations of this minimum requirement may be reviewed by  
262 the Racing Commission and may constitute cause for denial  
263 or revocation of a kennel's racing license. The Racing

264 Commission shall oversee and approve racing schedules and  
265 purse amounts.

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

292 The Racing Commission, for the fiscal year one thousand  
293 nine hundred ninety-four only, may expend up to thirty-five  
294 thousand dollars from the West Virginia greyhound breeding  
295 development fund to accomplish the purposes of this section  
296 without strictly following the requirements in the previous  
297 paragraph.

298 (e) All daily license and pari-mutuel pools tax payments  
299 required under the provisions of this section shall be made to  
300 the Racing Commission or its agent after the last race of each  
301 day of each horse or dog race meeting, and the pari-mutuel  
302 pools tax payments shall be made from all contributions to all  
303 pari-mutuel pools to each and every race of the day.

304 (f) Every association or licensee subject to the provisions  
305 of this article, including the changed provisions of sections  
306 nine and ten of this article, shall annually submit to the  
307 Racing Commission and the Legislature financial statements,  
308 including a balance sheet, income statement, statement of  
309 change in financial position and an audit of any electronic  
310 data system used for pari-mutuel tickets and betting, prepared  
311 in accordance with generally accepted auditing standards, as  
312 certified by an experienced public accountant or a certified  
313 public accountant.

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

Chandy White  
Chairman Senate Committee

[Signature]  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Daniel Ekblaw  
Clerk of the Senate

Buffy W. Sol  
Clerk of the House of Delegates

Carl Ray Tomblin  
President of the Senate

[Signature]  
Speaker of the House of Delegates

The within is approved this the 9<sup>th</sup>  
day of July, 2008.

[Signature]  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 28 2008

Time 1:39 pm