

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3098**

4 (By Delegates Butcher, Stowers, Barker,
5 Kominar, Varner and Fragale)

6 (Originating in the Committee on Finance)

7 [February 25, 2011]

8
9

10 A BILL to amend and reenact §19-23-10 the Code of West Virginia,
11 1931, as amended, relating to the distribution of funds from
12 certain racing funds; providing purposes for the
13 distributions, including funding for greyhound adoption and
14 spay and neutering programs for West Virginia whelped
15 greyhounds; increasing percentages to be given as bonus
16 awards; and modifying the provisions for restricted races.

17 *Be it enacted by the Legislature of West Virginia:*

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

20 **ARTICLE 23. HORSE AND DOG RACING.**

21 **§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes**
22 **paid; alternate tax; credits.**

23 (a) Any racing association conducting thoroughbred racing at
24 any horse racetrack in this state shall pay each day upon which
25 horse races are run a daily license tax of \$250. Any racing
26 association conducting harness racing at any horse racetrack in

1 this state shall pay each day upon which horse races are run a
2 daily license tax of \$150. Any racing association conducting dog
3 races shall pay each day upon which dog races are run a daily
4 license tax of \$150. In the event thoroughbred racing, harness
5 racing, dog racing or any combination of the foregoing are
6 conducted on the same day at the same racetrack by the same racing
7 association, only one daily license tax in the amount of \$250 shall
8 be paid for that day. Any daily license tax shall not apply to any
9 local, county or state fair, horse show or agricultural or
10 livestock exposition at which horse racing is conducted for not
11 more than six days.

12 (b) Any racing association licensed by the Racing Commission
13 to conduct thoroughbred racing and permitting and conducting pari-
14 mutuel wagering under the provisions of this article shall, in
15 addition to the daily license tax set forth in subsection (a) of
16 this section, pay to the Racing Commission, from the commission
17 deducted each day by the licensee from the pari-mutuel pools on
18 thoroughbred racing a tax calculated on the total daily
19 contribution of all pari-mutuel pools conducted or made at any and
20 every thoroughbred race meeting of the licensee licensed under the
21 provisions of this article. The tax, on the pari-mutuel pools
22 conducted or made each day during the months of January, February,
23 March, October, November and December, shall be calculated at four-
24 tenths of one percent of the pool; and, on the pari-mutuel pools
25 conducted or made each day during all other months, shall be
26 calculated at one and four-tenths percent of the pool: *Provided,*

1 That out of the amount realized from the three tenths of one
2 percent decrease in the tax effective for fiscal year 1991 and
3 thereafter, which decrease correspondingly increases the amount of
4 commission retained by the licensee, the licensee shall annually
5 expend or dedicate: (i) One half of the realized amount for
6 capital improvements in its barn area at the track, subject to the
7 Racing Commission's prior approval of the plans for the
8 improvements; and (ii) the remaining one half of the realized
9 amount for capital improvements as the licensee may determine
10 appropriate at the track. The term "capital improvement" shall be
11 as defined by the Internal Revenue Code: *Provided, however,* That
12 any racing association operating a horse racetrack in this state
13 having an average daily pari-mutuel pool on horse racing of
14 \$280,000 or less per day for the race meetings of the preceding
15 calendar year shall, in lieu of payment of the pari-mutuel pool
16 tax, calculated as in this subsection, be permitted to conduct
17 pari-mutuel wagering at the horse racetrack on the basis of a daily
18 pari-mutuel pool tax fixed as follows: On the daily pari-mutuel
19 pool not exceeding \$300,000 the daily pari-mutuel pool tax shall be
20 \$1,000 plus the otherwise applicable percentage rate imposed by
21 this subsection of the daily pari-mutuel pool, if any, in excess of
22 \$300,000: *Provided further,* That upon the effective date of the
23 reduction of the daily pari-mutuel pool tax to \$1,000 from the
24 former \$2,000, the association or licensee shall daily deposit \$500
25 into the special fund for regular purses established by subdivision
26 (1), subsection (b), section nine of this article: *And provided*

1 *further*, That if an association or licensee qualifying for the
2 foregoing alternate tax conducts more than one racing performance,
3 each consisting of up to thirteen races in a calendar day, the
4 association or licensee shall pay both the daily license tax
5 imposed in subsection (a) of this section and the alternate tax in
6 this subsection for each performance: *And provided further*, That
7 a licensee qualifying for the foregoing alternate tax is excluded
8 from participation in the fund established by section thirteen-b of
9 this article: *And provided further*, That this exclusion shall not
10 apply to any thoroughbred racetrack at which the licensee has
11 participated in the West Virginia Thoroughbred Development Fund for
12 more than four consecutive years prior to December 31, 1992.

13 (c) Any racing association licensed by the Racing Commission
14 to conduct harness racing and permitting and conducting pari-mutuel
15 wagering under the provisions of this article shall, in addition to
16 the daily license tax required under subsection (a) of this
17 section, pay to the Racing Commission, from the commission deducted
18 each day by the licensee from the pari-mutuel pools on harness
19 racing, as a tax, three percent of the first \$100,000 wagered, or
20 any part thereof; four percent of the next \$150,000; and five and
21 three-fourths percent of all over that amount wagered each day in
22 all pari-mutuel pools conducted or made at any and every harness
23 race meeting of the licensee licensed under the provisions of this
24 article.

25 (d) Any racing association licensed by the Racing Commission
26 to conduct dog racing and permitting and conducting pari-mutuel

1 wagering under the provisions of this article shall, in addition to
2 the daily license tax required under subsection (a) of this
3 section, pay to the Racing Commission, from the commission deducted
4 each day by the licensee from the pari-mutuel pools on dog racing,
5 as a tax, four percent of the first \$50,000 or any part thereof of
6 the pari-mutuel pools, five percent of the next \$50,000 of the
7 pari-mutuel pools, six percent of the next \$100,000 of the pari-
8 mutuel pools, seven percent of the next \$150,000 of the pari-mutuel
9 pools, and eight percent of all over \$350,000 wagered each day:
10 *Provided*, That the licensee shall deduct daily from the pari-mutuel
11 tax an amount equal to one tenth of one percent of the daily pari-
12 mutuel pools in dog racing in fiscal year 1990; fifteen hundredths
13 of one percent in fiscal year 1991; two tenths of one percent in
14 fiscal year 1992; one quarter of one percent in fiscal year 1993;
15 and three tenths of one percent in fiscal year 1994 and every
16 fiscal year thereafter. The amounts deducted shall be paid to the
17 Racing Commission to be deposited by the Racing Commission in a
18 banking institution of its choice in a special account to be known
19 as "West Virginia Racing Commission-Special Account-West Virginia
20 Greyhound Breeding Development Fund." The purpose of the fund is
21 to promote better breeding, training track facilities and racing of
22 greyhounds in the state through awards and purses to bona fide
23 resident registered greyhound owners of accredited West Virginia
24 whelped greyhounds. In order to participate and be eligible to
25 receive an award or purse through the fund, the registered
26 greyhound owner must have an appropriate license from the Racing

1 Commission to race in West Virginia. The registered greyhound dam
2 at the time of breeding must be wholly or solely owned or leased by
3 a bona fide resident or residents of West Virginia. The accredited
4 West Virginia whelped greyhound must be wholly or solely owned by
5 a bona fide resident or residents of this state. To qualify as a
6 bona fide resident of West Virginia, a registered greyhound owner
7 may not claim residency in any other state. A registered greyhound
8 owner must prove bona fide residency by providing to the commission
9 personal income tax returns filed in the State of West Virginia for
10 the most recent tax year and the three previous tax years, has real
11 or personal property in this state on which the owner has paid real
12 or personal property taxes during the most recent tax year and the
13 previous three tax years and an affidavit stating that the owner
14 claims no other state of residency. The Racing Commission shall
15 maintain a registry for West Virginia bred greyhounds. ~~The moneys~~
16 ~~shall be expended by the Racing Commission for purses for stake~~
17 ~~races, training track facilities, supplemental purse awards,~~
18 ~~administration, promotion, education and greyhound adoption~~
19 ~~programs involving West Virginia whelped dogs, owned by residents~~
20 ~~of this state under rules promulgated by the Racing Commission.~~
21 Ninety percent of the deposits into the greyhound breeding
22 development fund each year shall be expended by the Racing
23 Commission for supplemental purse awards, stake races, and training
24 track facilities. Seven percent of the deposits into the Greyhound
25 Breeding Development Fund each year is authorized to be expended by
26 the Racing Commission for administration, promotion, education, and

1 three percent of the deposits into the Greyhound Breeding
2 Development Fund each year is authorized to be expended by the
3 Racing Commission for greyhound adoption programs to include
4 spaying and neutering of West Virginia whelped greyhounds:
5 Provided, That no provision of this section may be construed to
6 prohibit the Racing Commission, in its discretion, from expending
7 funds from the seven percent of the deposits into the Greyhound
8 Breeding Development Fund each year for greyhound adoption programs
9 to include spaying and neutering of West Virginia whelped
10 greyhounds. All expenditures shall be for the West Virginia
11 greyhound breeding development program involving West Virginia
12 whelped greyhounds owned by residents of this state under rules
13 promulgated by the Racing Commission. The Racing Commission shall
14 pay out of the Greyhound Breeding Development Fund to each of the
15 licensed dog racing tracks the sum of \$75,000 for the fiscal year
16 ending June 30, 1994. The licensee shall deposit the sum into the
17 special fund for regular purses established under the provisions of
18 section nine of this article. The funds shall be expended solely
19 for the purpose of supplementing regular purses under rules
20 promulgated by the Racing Commission.

21 Supplemental purse awards will be distributed as follows:
22 Supplemental purses shall be paid directly to the registered
23 greyhound owner of an accredited greyhound.

24 The registered greyhound owner of accredited West Virginia
25 whelped greyhounds that earn points at any West Virginia meet will
26 receive a bonus award calculated at the end of each month as a

1 percentage of the fund dedicated to the owners as purse
2 supplements, which shall be a minimum of ~~fifty~~ seventy-five percent
3 of the total moneys deposited into the West Virginia Greyhound
4 Breeding Development Fund monthly.

5 The total amount of the fund available for the owners' awards
6 shall be distributed according to the ratio of points earned by an
7 accredited greyhound to the total amount earned in races by all
8 accredited West Virginia whelped greyhounds for that month as a
9 percentage of the funds dedicated to the owners' purse supplements.
10 The point value at all greyhound tracks shall be the same as
11 approved by the Racing Commission to be effective April 1, 2007.

12 ~~The West Virginia Greyhound Owners and Breeders Association shall~~
13 ~~submit a list of any additions or deletions to the registry of~~
14 ~~accredited West Virginia whelped greyhounds on the first of each~~
15 ~~month. The Racing Commission shall not require anyone to be a~~
16 ~~member of a particular association in order to participate in the~~
17 ~~West Virginia Greyhound Breeding Development Fund.~~

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

24 In no event shall points earned at a meet held at a track
25 which did not make contributions to the West Virginia Greyhound
26 Breeding Development Fund out of the daily pool on the day the meet

1 was held qualify or count toward eligibility for supplemental purse
2 awards.

3 ~~Any balance in the purse supplement funds after all~~
4 ~~distributions have been made for the year revert to the general~~
5 ~~account of the fund for distribution in the following year~~
6 Beginning with any balances generated by activity in fiscal year
7 2011, any balance remaining at the end of a fiscal year in the
8 ninety percent of deposits into the Greyhound Breeding Development
9 Fund expended for supplemental purse awards, stake races, and
10 training track facilities, or in the seven percent of the deposits
11 into the Greyhound Breeding Development Fund each year expended for
12 administration, promotion, education, or in the three percent of
13 the deposits into the Greyhound Breeding Development Fund each year
14 expended for greyhound adoption programs to include spaying and
15 neutering of West Virginia whelped greyhounds, shall be promptly
16 disbursed as supplemental purse awards to owners and breeders of
17 West Virginia whelped greyhounds on a pro rata basis to those
18 owners and breeders having earned supplemental purse awards in said
19 fiscal year: *Provided,* That not more than \$2 million from the
20 balance in the purse supplemental fund shall be used for the
21 construction and maintenance of two dog training track facilities
22 if such be approved by the Racing Commission: *Provided, however,*
23 That not more than \$1 million may be allocated for the construction
24 and maintenance of each training track: *Provided further,* That
25 both training track facilities must be located in West Virginia.
26 The West Virginia Racing Commission shall be authorized to

1 promulgate rules governing dog training tracks: *And provided*
2 *further*, That the Racing Commission shall: (1) Provide a process
3 in its rules for competitive bidding of the construction or
4 maintenance, or both, of the training tracks; and (2) set standards
5 to assure that only the actual costs of construction and
6 maintenance shall be paid out of the foregoing fund.

7 ~~In an effort to further promote the breeding of quality West~~
8 ~~Virginia whelped greyhounds, a bonus purse supplement shall be~~
9 ~~established in the amount of \$50,000 per annum, to be paid in equal~~
10 ~~quarterly installments of \$12,500 per quarter using the same method~~
11 ~~to calculate and distribute these funds as the regular supplemental~~
12 ~~purse awards. This bonus purse supplement is for three years only,~~
13 ~~commencing on July 1, 1993, and ending June 30, 1996. This money~~
14 ~~would come from the current existing balance in the greyhound~~
15 ~~development fund.~~

16 Each pari-mutuel greyhound track shall provide stakes races
17 for accredited West Virginia whelped greyhounds in the name of the
18 West Virginia Greyhound Owners and Breeders Association, and all
19 West Virginia whelped greyhounds to be entered in the West Virginia
20 stakes races shall be registered with the West Virginia Greyhound
21 Owners and Breeders Association, who shall submit a list of those
22 greyhounds to each pari-mutuel track before the start of qualifying
23 rounds: *Provided*, That each pari-mutuel track shall have one
24 juvenile and one open stake race annually. ~~Each pari-mutuel dog~~
25 ~~track shall provide at least three restricted races for accredited~~
26 ~~West Virginia whelped greyhounds per race card: *Provided, however,*~~

1 ~~That sufficient dogs are available.~~ Each pari-mutual greyhound
2 racetrack shall keep a record of the pool of graded West Virginia
3 whelped greyhounds and shall provide restricted races for West
4 Virginia whelped greyhounds; the number of restricted races per
5 race card shall be at a ratio of one restricted race per card for
6 every sixty active West Virginia whelped greyhounds racing at the
7 track. The West Virginia Racing Commission shall promulgate rules
8 and regulations to allow accredited individual West Virginia
9 greyhound owners to enter into contracts with the greyhound
10 racetracks to race their own West Virginia whelped greyhounds at
11 the racetracks. To assure breeders of accredited West Virginia
12 whelped greyhounds an opportunity to participate in the West
13 Virginia Greyhound Breeding Development Fund the West Virginia
14 Racing Commission by July 1, each year shall establish and announce
15 the minimum number of accredited West Virginia whelped greyhounds
16 that greyhound racing kennels at West Virginia dog tracks must have
17 on their racing active list during the calendar year following such
18 action. The minimum number may vary from dog track to dog track.
19 The minimum number shall be established after consultation with the
20 West Virginia Greyhound Owners and Breeders Association and kennel
21 owners and operators. ~~Factors to be considered in establishing~~
22 ~~this minimum number shall be the number of individually registered~~
23 ~~accredited West Virginia whelped greyhounds whelped in the previous~~
24 ~~two years. The number of all greyhounds seeking qualification at~~
25 ~~each West Virginia dog track, the ratio of active running~~
26 ~~greyhounds to housed number of greyhounds at each West Virginia dog~~

1 ~~track, and the size and number of racing kennels at each West~~
2 ~~Virginia dog track.~~ Any greyhound racing kennel not having the
3 minimum number of accredited West Virginia whelped greyhounds
4 determined by the West Virginia Racing Commission on their active
5 list shall only be permitted to race the maximum allowable number
6 on the active list less the number of accredited West Virginia
7 whelped greyhounds below the established minimum number.
8 Consistent violations of this minimum requirement may be reviewed
9 by the Racing Commission and may constitute cause for denial or
10 revocation of a kennel's racing license. The Racing Commission
11 shall oversee and approve racing schedules and purse amounts.

12 Ten percent of the deposits into the Greyhound Breeding
13 Development Fund beginning July 1, 1993 and continuing each year
14 thereafter, shall be withheld by the Racing Commission and placed
15 in a special revenue account hereby created in the State Treasury
16 called the "administration, promotion, education, capital
17 improvement and greyhound adoption programs to include spaying and
18 neutering account." The Racing Commission is authorized to expend
19 the moneys deposited in the administration, promotion, education,
20 capital improvement and greyhound adoption programs to include
21 spaying and neutering account at such times and in such amounts as
22 the commission determines to be necessary for purposes of
23 administering and promoting the greyhound development program:
24 *Provided*, That beginning with fiscal year 1995 and in each fiscal
25 year thereafter in which the commission anticipates spending any
26 money from the account, the commission shall submit to the executive

1 department during the budget preparation period prior to the
2 Legislature convening before that fiscal year for inclusion in the
3 executive budget document and budget bill, the recommended
4 expenditures, as well as requests of appropriations for the purpose
5 of administration, promotion, education, capital improvement and
6 greyhound adoption programs to include spaying and neutering. The
7 commission shall make an annual report to the Legislature on the
8 status of the administration, promotion, education, capital
9 improvement and greyhound adoption programs to include spaying and
10 neutering account, including the previous year's expenditures and
11 projected expenditures for the next year.

12 ~~The Racing Commission, for the fiscal year 1994 only, may~~
13 ~~expend up to \$35,000 from the West Virginia Greyhound Breeding~~
14 ~~Development Fund to accomplish the purposes of this section without~~
15 ~~strictly following the requirements in the previous paragraph.~~

16 (e) All daily license and pari-mutuel pools tax payments
17 required under the provisions of this section shall be made to the
18 Racing Commission or its agent after the last race of each day of
19 each horse or dog race meeting, and the pari-mutuel pools tax
20 payments shall be made from all contributions to all pari-mutuel
21 pools to each and every race of the day.

22 (f) Every association or licensee subject to the provisions of
23 this article, including the changed provisions of sections nine and
24 ten of this article, shall annually submit to the Racing Commission
25 and the Legislature financial statements, including a balance sheet,
26 income statement, statement of change in financial position and an

1 audit of any electronic data system used for pari-mutuel tickets and
2 betting, prepared in accordance with generally accepted auditing
3 standards, as certified by an experienced public accountant or a
4 certified public accountant.