

1 SB394 SUB1

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 394**

5 (By Senators Snyder, Klempa, McCabe and Yost)

6 _____
7 [Originating in the Committee on Government Organization;
8 reported February 10, 2011.]
9 _____

10
11
12 A BILL to amend and reenact §19-23-16 of the Code of West Virginia,
13 1931, as amended, relating to creating a process by which the
14 West Virginia Racing Commission may grant stay requests
15 pending appeals of orders by stewards or judges; permitting
16 the appointment of hearing examiners who must be licensed to
17 practice law in the state; and providing that if the Racing
18 Commission modifies or rejects a hearing examiner's
19 recommended decision, its order doing so must provide findings
20 of fact, conclusions of law and set forth with specificity the
21 reasons for the modification or rejection.

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

23 That §19-23-16 of the Code of West Virginia, 1931, as amended,
24 be amended and reenacted to read as follows:

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

26 **§19-23-16. Entry of order suspending or revoking license or**
27 **permit; service of order; contents; hearing;**
28 **decision to be in writing.**

1 (a) Whenever the Racing Commission shall deny an application
2 for a license or a permit or shall suspend or revoke a license or
3 a permit, it shall make and enter an order to that effect and serve
4 a copy thereof on the applicant, licensee or permit holder, as the
5 case may be, in any manner in which a summons may be served in a
6 civil action or by certified mail, return receipt requested. Such
7 order shall state the grounds for the action taken, and, in the
8 case of an order of suspension or revocation, shall state the
9 effective date of such suspension or revocation.

10 (b) Whenever a majority of the stewards or judges at any horse
11 or dog race meeting shall suspend or revoke a permit, such
12 suspension or revocation shall be effective immediately. The
13 stewards or judges shall, as soon as thereafter practicable, make
14 and enter an order to that effect and serve a copy thereof on the
15 permit holder, in any manner in which a summons may be served in a
16 civil action or by certified mail, return receipt requested. Such
17 order shall state the grounds for the action taken.

18 (c) Any person adversely affected by any such order shall be
19 entitled to a hearing thereon if, within twenty days after service
20 of a copy thereof if served in any manner in which a summons may be
21 served as aforesaid or within twenty days after receipt of a copy
22 thereof if served by certified mail as aforesaid, such person files
23 with the Racing Commission a written demand for such hearing. A
24 demand for hearing shall operate automatically to stay or suspend
25 the execution of any order suspending or revoking a license, but a
26 demand for hearing shall not operate automatically to stay or
27 suspend the execution of any order suspending or revoking a permit.
28 Upon the written request of any permit holder who has been

1 adversely affected by an order of the stewards or judges, a stay
2 may be granted by the Racing Commission, its chairman, or by a
3 member of the commission designated by the chairman. A request for
4 a stay must be filed with the Racing Commission's executive
5 director no later than the deadline for filing a written demand for
6 a hearing before the commission as provided in subsection (c). If
7 a stay is granted, it is not a presumption that the order of the
8 stewards or judges is invalid. The Racing Commission may require
9 the person demanding ~~such~~ a hearing to give reasonable security for
10 the costs thereof and if such person does not substantially prevail
11 at such hearing such costs shall be assessed against such person
12 and may be collected by an action at law or other proper remedy.

13 (d) Upon receipt of a written demand for such hearing, the
14 Racing Commission shall set a time and place therefor not less than
15 ten and not more than thirty days thereafter. ~~Any scheduled A~~
16 hearing may be continued by the Racing Commission or its appointed
17 hearing examiner ~~upon its own motion or for good cause shown. by~~
18 ~~the person demanding the hearing.~~

19 (e) All of the pertinent provisions of article five, chapter
20 twenty-nine-a of this code shall apply to and govern the hearing
21 and the administrative procedures in connection with and following
22 such hearing, with like effect as if the provisions of said article
23 five were set forth in this subsection.

24 (f) ~~Any such~~ A hearing shall be conducted by a quorum of the
25 Racing Commission or by a hearing examiner appointed by the Racing
26 Commission who is licensed to practice law in the State of West
27 Virginia. For the purpose of conducting ~~any such~~ a hearing, any
28 member of the Racing Commission ~~shall have~~ or its appointed hearing

1 examiner has the power and authority to issue subpoenas and
2 subpoenas duces tecum as provided in section six of this article.
3 ~~Any such subpoenas~~ Subpoenas and subpoenas duces tecum shall be
4 issued and served within the time, for the fees and shall be
5 enforced, as specified in section one, article five of said chapter
6 twenty- nine-a, and all of the said section one provisions dealing
7 with subpoenas and subpoenas duces tecum shall apply to subpoenas
8 and subpoenas duces tecum issued for the purpose of a hearing
9 hereunder.

10 (g) At ~~any such~~ a hearing the person who demanded the same may
11 represent ~~such person's~~ his or her own interests or may be
12 represented by an attorney-at-law ~~admitted to practice before any~~
13 ~~circuit court of this state~~ licensed to practice law in the State
14 of West Virginia. Upon request by the Racing Commission, it shall
15 be represented at ~~any such~~ a hearing by the Attorney General or his
16 or her assistants without additional compensation. The Racing
17 Commission, with the written approval of the Attorney General, may
18 employ special counsel to represent the Racing Commission at ~~any~~
19 ~~such~~ a hearing.

20 (h) After ~~any such~~ a hearing and consideration of all of the
21 testimony, evidence and record in the case, the Racing Commission
22 shall render its decision in writing. The written decision of the
23 Racing Commission shall be accompanied by findings of fact and
24 conclusions of law as specified in section three, article five,
25 chapter twenty-nine-a of this code, and a copy of such decision and
26 accompanying findings and conclusions shall be served by certified
27 mail, return receipt requested, upon the person demanding such
28 hearing, and his or her attorney of record, if any. If a hearing is

1 conducted by a hearing examiner appointed by the Racing Commission,
2 the hearing examiner shall prepare a written recommended decision
3 for the commission's consideration. The Racing Commission, in its
4 discretion, may accept the recommendation in its entirety, modify
5 it, or reject it. If the Racing Commission modifies or rejects a
6 recommended decision of an appointed hearing examiner, either in
7 whole or in part, it shall issue a reasoned, articulate explanation
8 and a recitation of the underlying evidence or other matters upon
9 which it bases its decision, including findings of fact and
10 conclusions of law.

11 (i) The decision of the Racing Commission shall be final
12 unless reversed, vacated or modified upon judicial review thereof
13 in accordance with the provisions of section seventeen of this
14 article.