

H. B. 2959

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(By Delegates Doyle, Swartzmiller, Guthrie and Morgan)
[Introduced February 1, 2011; referred to the
Committee on Government Organization then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §19-23-13b of the Code of West
Virginia, 1931, as amended, relating to providing additional
funds to the West Virginia Racing Commission for its
Administration and Promotion Account for the Thoroughbred
Development Fund.

Be it enacted by the Legislature of West Virginia:

That §19-23-13b of the Code of West Virginia, 1931, as
amended, be amended and reenacted, to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

**§19-23-13b. West Virginia Thoroughbred Development Fund;
distribution; restricted races; nonrestricted
purse supplements; preference for West Virginia
accredited thoroughbreds.**

(a) The Racing Commission shall deposit moneys required to be
withheld by an association or licensee in subsection (b), section
nine of this article in a banking institution of its choice in a
special account to be known as "West Virginia Racing Commission
Special Account -- West Virginia Thoroughbred Development Fund":

1 *Provided*, That after the West Virginia Lottery Commission has
2 divided moneys between the West Virginia Thoroughbred Development
3 Fund and the West Virginia Greyhound Breeding Development Fund
4 pursuant to the provisions of sections ten and ten-b, article
5 twenty-two-a, chapter twenty-nine of this code, the Racing
6 Commission shall, beginning October 1, 2005, deposit the remaining
7 moneys required to be withheld from an association or licensee
8 designated to the Thoroughbred Development Fund under the
9 provisions of subsection (b), section nine of this article,
10 subdivision (3), subsection (e), section twelve-b of this article,
11 subsection (b), section twelve-c of this article, paragraph (B),
12 subdivision (3), subsection (b), section thirteen-c of this article
13 and sections ten and ten-b, article twenty-two-a, chapter
14 twenty-nine of this code into accounts for each thoroughbred
15 racetrack licensee with a banking institution of its choice with a
16 separate account for each association or licensee. Each separate
17 account shall be a special account to be known as "West Virginia
18 Racing Commission Special Account - West Virginia Thoroughbred
19 Development Fund" and shall name the licensee for which the special
20 account has been established: *Provided, however*, That the Racing
21 Commission shall deposit all moneys paid into the Thoroughbred
22 Development Fund by a thoroughbred racetrack licensee that did not
23 participate in the Thoroughbred Development Fund for at least four
24 consecutive calendar years prior to December 31, 1992 from July 8,
25 2005 until the effective date of the amendment to this section
26 passed during the fourth extraordinary session of the
27 seventy-seventh Legislature shall be paid into the purse fund of

1 that thoroughbred racetrack licensee: *Provided further*, That the
2 moneys paid into the Thoroughbred Development Fund by a
3 thoroughbred racetrack licensee that did not participate in the
4 Thoroughbred Development Fund for at least four consecutive
5 calendar years prior to December 31, 1992, shall be transferred
6 into that licensee's purse fund until April 1, 2006. Notice of the
7 amount, date and place of the deposits shall be given by the Racing
8 Commission, in writing, to the state Treasurer. The purpose of the
9 funds is to promote better breeding and racing of thoroughbred
10 horses in the state through awards and purses for accredited
11 breeders/raisers, sire owners and thoroughbred race horse owners:
12 ~~And provided further~~ *Provided*, That five percent of the deposits
13 ~~required to be withheld by an association or licensee in subsection~~
14 ~~(b), section nine of this article~~ into the thoroughbred development
15 fund shall be placed in a special revenue account hereby created in
16 the state Treasury called the "Administration and Promotion
17 Account".

18 (b) The Racing Commission is authorized to expend the moneys
19 deposited in the administration and promotion account at times and
20 in amounts as the Commission determines to be necessary for
21 purposes of administering and promoting the thoroughbred
22 development program: *Provided*, That during any fiscal year in
23 which the Commission anticipates spending any money from the
24 account, the Commission shall submit to the executive department
25 during the budget preparation period prior to the Legislature
26 convening before that fiscal year for inclusion in the executive
27 budget document and budget bill the recommended expenditures, as

1 well as requests of appropriations for the purpose of
2 administration and promotion of the program. The Commission shall
3 make an annual report to the Legislature on the status of the
4 administration and promotion account, including the previous year's
5 expenditures and projected expenditures for the next year.

6 (c) The fund or funds and the account or accounts established
7 in subsection (a) of this section shall operate on an annual basis.

8 (d) Funds in the Thoroughbred Development Fund or funds in the
9 separate accounts for each association or licensee as provided in
10 subsection (a) of this section shall be expended for awards and
11 purses except as otherwise provided in this section. Annually, the
12 first \$800,000 shall be available for distribution for a minimum of
13 fourteen accredited stakes races at a racetrack which has
14 participated in the West Virginia Thoroughbred Development Fund for
15 a period of more than four consecutive calendar years prior to
16 December 31, 1992. The weights for all accredited stakes races
17 shall be weight for age. One of the stakes races shall be the West
18 Virginia Futurity and the second shall be the Frank Gall Memorial
19 Stakes. For the purpose of participating in the West Virginia
20 Futurity only, all mares, starting with the breeding season
21 beginning February 1 through July 31, 2004, and each successive
22 breeding season thereafter shall be bred back that year to an
23 accredited West Virginia stallion only which is registered with the
24 West Virginia Thoroughbred Breeders Association. The accredited
25 stake races shall be chosen by the committee set forth in
26 subsection (f) of this section.

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

1 (1) The breeders/raisers of accredited thoroughbred horses
2 that earn a purse at a participating West Virginia meet shall
3 receive a bonus award calculated at the end of the year as a
4 percentage of the fund dedicated to the breeders/raisers, which
5 shall be sixty percent of the fund available for distribution in
6 any one year. The total amount available for the
7 breeders'/raisers' awards shall be distributed according to the
8 ratio of purses earned by an accredited race horse to the total
9 amount earned in the participating races by all accredited race
10 horses for that year as a percentage of the fund dedicated to the
11 breeders/raisers. However, no breeder/raiser may receive from the
12 fund dedicated to breeders'/raisers' awards an amount in excess of
13 the earnings of the accredited horse at West Virginia meets. In
14 addition, should a horse's breeder and raiser qualify for the same
15 award on the same horse, they will each be awarded one half of the
16 proceeds. The bonus referred to in this subdivision may only be
17 paid on the first \$100,000 of any purse and not on any amounts in
18 excess of the first \$100,000.

19 (2) The owner of an accredited West Virginia sire of an
20 accredited thoroughbred horse that earns a purse in any race at a
21 participating West Virginia meet shall receive a bonus award
22 calculated at the end of the year as a percentage of the fund
23 dedicated to sire owners, which shall be fifteen percent of the
24 fund available for distribution in any one year. The total amount
25 available for the sire owners' awards shall be distributed
26 according to the ratio of purses earned by the progeny of
27 accredited West Virginia stallions in the participating races for

1 a particular stallion to the total purses earned by the progeny of
2 all accredited West Virginia stallions in the participating races.
3 However, no sire owner may receive from the fund dedicated to sire
4 owners an amount in excess of thirty-five percent of the accredited
5 earnings for each sire. The bonus referred to in this subdivision
6 shall only be paid on the first \$100,000 of any purse and not on
7 any amounts in excess of the first \$100,000.

8 (3) The owner of an accredited thoroughbred horse that earns
9 a purse in any participating race at a West Virginia meet shall
10 receive a restricted purse supplement award calculated at the end
11 of the year, which shall be twenty-five percent of the fund
12 available for distribution in any one year, based on the ratio of
13 the earnings in the races of a particular race horse to the total
14 amount earned by all accredited race horses in the participating
15 races during that year as a percentage of the fund dedicated to
16 purse supplements. However, the owners may not receive from the
17 fund dedicated to purse supplements an amount in excess of
18 thirty-five percent of the total accredited earnings for each
19 accredited race horse. The bonus referred to in this subdivision
20 shall only be paid on the first \$100,000 of any purse and not on
21 any amounts in excess of the first \$100,000.

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

26 (5) Any balance in the breeders/raisers, sire owners and purse
27 supplement funds after yearly distributions shall first be used to

1 fund the races established in subsection (f) of this section. Any
2 amount not so used shall revert into the general account of the
3 Thoroughbred Development Fund for each racing association or
4 licensee for distribution in the next year.

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

7 (f) (1) Each pari-mutuel thoroughbred horse track shall provide
8 at least one restricted race per racing day: *Provided*, That
9 sufficient horses and funds are available. For purposes of this
10 subsection, there are sufficient horses if there are at least seven
11 single betting interests received for the race: *Provided further*
12 That, if sufficient horses and funds are available, any
13 thoroughbred horse racetrack whose licensee participated in the
14 Thoroughbred Development Fund for at least four consecutive
15 calendar years prior to December 31, 1992, shall provide two
16 restricted races per racing day, at least one of which may be split
17 at the discretion of the racing secretary. The restricted race
18 required by this section must be included in the first nine races
19 written in the condition book for that racing day.

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

23 (A) The racing secretary;

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

26 (C) A member appointed by the West Virginia Thoroughbred
27 Breeders Association.

1 (3) Restricted races shall be funded by each racing
2 association from:

3 (A) Moneys placed in the general purse fund: *Provided*, That
4 a thoroughbred horse racetrack which did not participate in the
5 West Virginia Thoroughbred Development fund for a period of more
6 than four consecutive years prior to December 31, 1992, may fund
7 restricted races in an amount not to exceed \$1,000,000 per year.

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

11 (4) The racing schedules, purse amounts and types of races are
12 subject to the approval of the West Virginia Racing Commission.

13 (5) If less than seventy-five percent of the restricted races
14 required by this subsection fail to receive enough entries to race,
15 the Racing Commission shall, on a quarterly basis, dedicate funds
16 in each fund back to the general purse fund of the racing
17 association or licensee: *Provided*, That no moneys may be dedicated
18 back to a general purse fund if the dedication would leave less
19 than \$250,000 in the fund.

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

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

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

26 (2) The breeder of the West Virginia bred-foal is not a West
27 Virginia resident, but keeps his or her breeding stock in West

1 Virginia year round; or

2 (3) The breeder of the West Virginia bred-foal is not a West
3 Virginia resident and does not qualify under subdivision (2) of
4 this subsection, but either the sire of the West Virginia bred-foal
5 is a West Virginia stallion, or the mare is covered only by a West
6 Virginia accredited stallion or stallions before December 31 of the
7 calendar year following the birth of that West Virginia bred-foal.

8 (i) From July 1, 2001, West Virginia accredited thoroughbred
9 horses have preference for entry in all accredited races at a
10 thoroughbred race track at which the licensee participates in the
11 West Virginia Thoroughbred Development Fund.

12 (j) Beginning July 1, 2006, any racing association licensed by
13 the Racing Commission to conduct thoroughbred racing and permitting
14 and conducting pari-mutuel wagering under the provisions of this
15 article must have a West Virginia Thoroughbred Racing Breeders
16 Program.

17 (k) The Commission shall, during calendar year 2009, conduct
18 a study of the adequacy of funding provided for the Thoroughbred
19 Development Fund at any thoroughbred racetrack which has not
20 participated in the West Virginia Thoroughbred Development Fund for
21 a period of more than four consecutive calendar years prior to
22 December 31, 1992, and shall report its findings and
23 recommendations to the Joint Committee on Government and Finance on
24 or before December 1, 2009.

NOTE: The purpose of this bill is to provide additional funds

to the West Virginia Racing Commission for its Administration and Promotion Account for the Thoroughbred Development Fund.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.