

1 **ENROLLED**

2 **H. B. 2989**

3
4 (By Delegates Doyle, Swartzmiller, Ferns, Storch,
5 Guthrie and Morgan)

6
7 [Passed March 9, 2011; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §19-23-16 of the Code of West Virginia,
11 1931, as amended, relating to addressing appeals from
12 decisions of stewards or judges generally; adding references
13 to suspensions or revocations made by judges; providing a
14 process for seeking a stay pending appeal and authority for
15 granting such a request; providing that hearing examiners
16 appointed by the Racing Commission may hear appeals; creating
17 requirements for hearing examiner recommended decision; and
18 providing options for the Racing Commission following a
19 hearing examiner recommended decision.

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

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

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

24 **§19-23-16. Entry of order suspending or revoking license or**
25 **permit; service of order; contents; hearing;**
26 **decision to be in writing.**

27 (a) Whenever the Racing Commission shall deny an application

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

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

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

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

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

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 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

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

11 (g) At any such hearing the person who demanded the same may
12 represent such person's own interests or be represented by an
13 attorney-at-law admitted to practice before any circuit court of
14 this state. Upon request by the Racing Commission, it shall be
15 represented at any such hearing by the Attorney General or his or
16 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 hearing.

20 (h) After any such 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

1 mail, return receipt requested, upon the person demanding such
2 hearing, and his or her attorney of record, if any. If a hearing is
3 conducted by a hearing examiner appointed by the Racing Commission,
4 he or she shall prepare a written recommended decision for the
5 commission's consideration. The Racing Commission, in its
6 discretion, may accept the recommendation in its entirety, modify
7 it, or reject it. If the Racing Commission modifies or rejects a
8 recommended decision of an appointed hearing examiner, either in
9 whole or in part, it shall issue a reasoned, articulate explanation
10 and a recitation of the underlying evidence or other matters upon
11 which it bases its decision, including findings of fact and
12 conclusions of law.

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