

1 **H. B. 3098**

2  
3 (By Delegates Butcher, Stowers, Barker, Kominar,  
4 Varner and Fragale)

5  
6 [Introduced February 10, 2011; referred to the  
7 Committee on Agriculture then Finance.]

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9  
10 A BILL to amend and reenact §19-23-10 of the Code of West Virginia,  
11 1931, as amended, relating to clarifying levels of West  
12 Virginia Greyhound Breeding Development Fund payouts; and to  
13 provide funding for greyhound adoption and spay and neutering  
14 programs for West Virginia whelped greyhounds.

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

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

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

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

21 (a) Any racing association conducting thoroughbred racing at  
22 any horse racetrack in this state shall pay each day upon which  
23 horse races are run a daily license tax of \$250. Any racing  
24 association conducting harness racing at any horse racetrack in  
25 this state shall pay each day upon which horse races are run a  
26 daily license tax of \$150. Any racing association conducting dog

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

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

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

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

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

1 track facilities. Ten percent of the deposits into the Greyhound  
2 Breeding Development Fund each year is authorized to be expended by  
3 the Racing Commission for administration, promotion, education, and  
4 greyhound adoption programs to include spaying and neutering of  
5 West Virginia whelped greyhounds. All expenditures shall be for the  
6 West Virginia greyhound breeding development program involving West  
7 Virginia whelped greyhounds owned by residents of this state under  
8 rules promulgated by the Racing Commission. The Racing Commission  
9 shall pay out of the Greyhound Breeding Development Fund to each of  
10 the licensed dog racing tracks the sum of \$75,000 for the fiscal  
11 year ending June 30, 1994. The licensee shall deposit the sum into  
12 the special fund for regular purses established under the  
13 provisions of section nine of this article. The funds shall be  
14 expended solely for the purpose of supplementing regular purses  
15 under rules promulgated by the Racing Commission.

16 Supplemental purse awards will be distributed as follows:  
17 Supplemental purses shall be paid directly to the registered  
18 greyhound owner of an accredited greyhound.

19 The registered greyhound owner of accredited West Virginia  
20 whelped greyhounds that earn points at any West Virginia meet will  
21 receive a bonus award calculated at the end of each month as a  
22 percentage of the fund dedicated to the owners as purse  
23 supplements, which shall be a minimum of ~~fifty~~ seventy-five percent  
24 of the total moneys deposited into the West Virginia Greyhound  
25 Breeding Development Fund monthly.

1           The total amount of the fund available for the owners' awards  
2 shall be distributed according to the ratio of points earned by an  
3 accredited greyhound to the total amount earned in races by all  
4 accredited West Virginia whelped greyhounds for that month as a  
5 percentage of the funds dedicated to the owners' purse supplements.  
6 The point value at all greyhound tracks shall be the same as  
7 approved by the Racing Commission to be effective April 1, 2007.  
8 ~~The West Virginia Greyhound Owners and Breeders Association shall~~  
9 ~~submit a list of any additions or deletions to the registry of~~  
10 ~~accredited West Virginia whelped greyhounds on the first of each~~  
11 ~~month. The Racing Commission shall not require anyone to be a~~  
12 ~~member of a particular association in order to participate in the~~  
13 ~~West Virginia Greyhound Breeding Development Fund.~~

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

20           In no event shall points earned at a meet held at a track  
21 which did not make contributions to the West Virginia Greyhound  
22 Breeding Development Fund out of the daily pool on the day the meet  
23 was held qualify or count toward eligibility for supplemental purse  
24 awards.

25           ~~Any balance in the purse supplement funds after all~~



1 ~~distributions have been made for the year revert to the general~~  
2 ~~account of the fund for distribution in the following year Any~~  
3 balance at the end of a fiscal year in the ninety percent of  
4 deposits into the Greyhound Breeding Development Fund expended for  
5 supplemental purse awards, stake races, and training track  
6 facilities, or in the ten percent of the deposits into the  
7 Greyhound Breeding Development Fund each year expended for  
8 administration, promotion, education, or adoption programs to  
9 include spaying and neutering of West Virginia whelped greyhounds  
10 shall be promptly disbursed at the end of the fiscal year as  
11 supplemental purse awards to owners and breeders of West Virginia  
12 whelped greyhounds on a pro rata basis to those owners and breeders  
13 having earned supplemental purse awards in said fiscal year:  
14 *Provided*, That not more than \$2 million from the balance in the  
15 purse supplemental fund shall be used for the construction and  
16 maintenance of two dog training track facilities if such be  
17 approved by the Racing Commission: *Provided, however*, That not  
18 more than \$1 million may be allocated for the construction and  
19 maintenance of each training track: *Provided further*, That both  
20 training track facilities must be located in West Virginia. The  
21 West Virginia Racing Commission shall be authorized to promulgate  
22 rules governing dog training tracks: *And provided further*, That  
23 the Racing Commission shall: (1) Provide a process in its rules  
24 for competitive bidding of the construction or maintenance, or  
25 both, of the training tracks; and (2) set standards to assure that

1 only the actual costs of construction and maintenance shall be paid  
2 out of the foregoing fund.

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

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

1 Virginia whelped greyhounds; the number of restricted races per  
2 race card shall be at a ratio of one restricted race per card for  
3 every sixty active West Virginia whelped greyhounds racing at the  
4 track. The West Virginia Racing Commission shall promulgate rules  
5 and regulations to allow accredited individual West Virginia  
6 greyhound owners to enter into contracts with the greyhound  
7 racetracks to race their own West Virginia whelped greyhounds at  
8 the racetracks. To assure breeders of accredited West Virginia  
9 whelped greyhounds an opportunity to participate in the West  
10 Virginia Greyhound Breeding Development Fund the West Virginia  
11 Racing Commission by July 1, each year shall establish and announce  
12 the minimum number of accredited West Virginia whelped greyhounds  
13 that greyhound racing kennels at West Virginia dog tracks must have  
14 on their racing active list during the calendar year following such  
15 action. The minimum number may vary from dog track to dog track.  
16 The minimum number shall be established after consultation with the  
17 West Virginia Greyhound Owners and Breeders Association and kennel  
18 owners and operators. ~~Factors to be considered in establishing~~  
19 ~~this minimum number shall be the number of individually registered~~  
20 ~~accredited West Virginia whelped greyhounds whelped in the previous~~  
21 ~~two years. The number of all greyhounds seeking qualification at~~  
22 ~~each West Virginia dog track, the ratio of active running~~  
23 ~~greyhounds to housed number of greyhounds at each West Virginia dog~~  
24 ~~track, and the size and number of racing kennels at each West~~  
25 ~~Virginia dog track.~~ Any greyhound racing kennel not having the

1 minimum number of accredited West Virginia whelped greyhounds  
2 determined by the West Virginia Racing Commission on their active  
3 list shall only be permitted to race the maximum allowable number  
4 on the active list less the number of accredited West Virginia  
5 whelped greyhounds below the established minimum number.

6 Consistent violations of this minimum requirement may be reviewed  
7 by the Racing Commission and may constitute cause for denial or  
8 revocation of a kennel's racing license. The Racing Commission  
9 shall oversee and approve racing schedules and purse amounts.

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

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

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

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

25 (f) Every association or licensee subject to the provisions of

1 this article, including the changed provisions of sections nine and  
2 ten of this article, shall annually submit to the Racing Commission  
3 and the Legislature financial statements, including a balance sheet,  
4 income statement, statement of change in financial position and an  
5 audit of any electronic data system used for pari-mutuel tickets and  
6 betting, prepared in accordance with generally accepted auditing  
7 standards, as certified by an experienced public accountant or a  
8 certified public accountant.

NOTE: The purpose of this bill is to clarify levels of West Virginia Greyhound Breeding Development Fund payouts, and to provide funding for greyhound adoption and spay and neutering programs for West Virginia whelped greyhounds.

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