

Senate Bill No. 365

(By Senators Snyder, Klempa, Yost and McCabe)

[Introduced February 2, 2011; referred to the Committee on the
Judiciary; and then to the Committee on 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

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

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

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

1 convening before that fiscal year for inclusion in the executive
2 budget document and budget bill the recommended expenditures, as
3 well as requests of appropriations for the purpose of
4 administration and promotion of the program. The commission shall
5 make an annual report to the Legislature on the status of the
6 administration and promotion account, including the previous year's
7 expenditures and projected expenditures for the next year.

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

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

1 stake races shall be chosen by the committee set forth in
2 subsection (f) of this section.

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

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

22 (2) The owner of an accredited West Virginia sire of an
23 accredited thoroughbred horse that earns a purse in any race at a
24 participating West Virginia meet shall receive a bonus award
25 calculated at the end of the year as a percentage of the fund
26 dedicated to sire owners, which shall be fifteen percent of the

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

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

26 (4) In no event may purses earned at a meet held at a track

1 which did not make a contribution to the Thoroughbred Development
2 Fund out of the daily pool on the day the meet was held qualify or
3 count toward eligibility for an award under this subsection.

4 (5) Any balance in the breeders/raisers, sire owners and purse
5 supplement funds after yearly distributions shall first be used to
6 fund the races established in subsection (f) of this section. Any
7 amount not so used shall revert into the general account of the
8 Thoroughbred Development Fund for each racing association or
9 licensee for distribution in the next year.

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

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

25 (2) The restricted races established in this subsection shall
26 be administered by a three-member committee at each track

1 consisting of:

2 (A) The racing secretary;

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

5 (C) A member appointed by the West Virginia Thoroughbred
6 Breeders Association.

7 (3) Restricted races shall be funded by each racing
8 association from:

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

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

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

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

26 (g) As used in this section, "West Virginia bred-foal" means

1 a horse that was born in the State of West Virginia.

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

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

6 (2) The breeder of the West Virginia bred-foal is not a West
7 Virginia resident, but keeps his or her breeding stock in West
8 Virginia year round; or

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

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

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

24 (k) The commission shall, during calendar year 2009, conduct
25 a study of the adequacy of funding provided for the Thoroughbred
26 Development Fund at any thoroughbred racetrack which has not

1 participated in the West Virginia Thoroughbred Development Fund for
2 a period of more than four consecutive calendar years prior to
3 December 31, 1992, and shall report its findings and
4 recommendations to the Joint Committee on Government and Finance on
5 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.