

Senate Bill No. 394

(By Senators Snyder, Klempa, McCabe and Yost)

[Introduced February 2, 2011; referred to the Committee on
Government Organization; and then to the Committee on the
Judiciary.]

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

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

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

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

25 **§19-23-16. Entry of order suspending or revoking license or**
26 **permit; service of order; contents; hearing;**

1 **decision to be in writing.**

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

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

19 (c) Any person adversely affected by any such order shall be
20 entitled to a hearing thereon if, within twenty days after service
21 of a copy thereof if served in any manner in which a summons may be
22 served as aforesaid or within twenty days after receipt of a copy
23 thereof if served by certified mail as aforesaid, such person files
24 with the Racing Commission a written demand for such hearing. A
25 demand for hearing shall operate automatically to stay or suspend
26 the execution of any order suspending or revoking a license, but a

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

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

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

1 (f) Any such hearing shall be conducted by a quorum of the
2 Racing Commission or by a hearing examiner appointed by the Racing
3 Commission who is licensed to practice law in the State of West
4 Virginia. For the purpose of conducting any such hearing, any
5 member of the Racing Commission ~~shall have~~ or its appointed hearing
6 examiner has the power and authority to issue subpoenas and
7 subpoenas duces tecum as provided in section six of this article.
8 Any such subpoenas and subpoenas duces tecum shall be issued and
9 served within the time, for the fees and shall be enforced, as
10 specified in section one, article five of said chapter twenty-
11 nine-a, and all of the said section one provisions dealing with
12 subpoenas and subpoenas duces tecum shall apply to subpoenas and
13 subpoenas duces tecum issued for the purpose of a hearing
14 hereunder.

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

24 (h) After any such hearing and consideration of all of the
25 testimony, evidence and record in the case, the Racing Commission
26 shall render its decision in writing. The written decision of the

1 Racing Commission shall be accompanied by findings of fact and
2 conclusions of law as specified in section three, article five,
3 chapter twenty-nine-a of this code, and a copy of such decision and
4 accompanying findings and conclusions shall be served by certified
5 mail, return receipt requested, upon the person demanding such
6 hearing, and his or her attorney of record, if any. If a hearing is
7 conducted by a hearing examiner appointed by the Racing Commission,
8 he or she shall prepare a written recommended decision for the
9 commission's consideration. The Racing Commission, in its
10 discretion, may accept the recommendation in its entirety, modify
11 it, or reject it. If the Racing Commission modifies or rejects a
12 recommended decision of an appointed hearing examiner, either in
13 whole or in part, it shall issue a reasoned, articulate explanation
14 and a recitation of the underlying evidence or other matters upon
15 which it bases its decision, including findings of fact and
16 conclusions of law.

17 (i) The decision of the Racing Commission shall be final
18 unless reversed, vacated or modified upon judicial review thereof
19 in accordance with the provisions of section seventeen of this
20 article.

NOTE: The purpose of this bill is to create a process by which the West Virginia Racing Commission may grant stay requests pending an appeals of orders by stewards or judges. The bill permits the appointment of hearing examiners who must be licensed to practice law in the state. The bill also provides that if the Racing Commission modifies or rejects a hearing examiner's recommended decision, its order doing so must provide findings of fact, conclusions of law and set forth with specificity the reasons for the modification or rejection.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.