

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 2989

(By Delegates Doyle, Swartzmiller, Ferns, Storch,
Guthrie and Morgan)
[By Request of the Racing Commission]



Passed March 9, 2011

In Effect Ninety Days From Passage

ENROLLED

H. B. 2989

(BY DELEGATES DOYLE, SWARTZMILLER, FERNS, STORCH,
GUTHRIE AND MORGAN)
[BY REQUEST OF THE RACING COMMISSION]

[Passed March 9, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §19-23-16 of the Code of West Virginia, 1931, as amended, relating to addressing appeals from decisions of stewards or judges generally; adding references to suspensions or revocations made by judges; providing a process for seeking a stay pending appeal and authority for granting such a request; providing that hearing examiners appointed by the Racing Commission may hear appeals; creating requirements for hearing examiner recommended decision; and providing options for the Racing Commission following a hearing examiner recommended decision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

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

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

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

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

32 adversely affected by an order of the stewards or judges, a
33 stay may be granted by the Racing Commission, its
34 chairman, or by a member of the commission designated by
35 the chairman. A request for a stay must be filed with the
36 Racing Commission's executive director no later than the
37 deadline for filing a written demand for a hearing before the
38 commission. If a stay is granted, it is not a presumption that
39 the order of the stewards or judges is invalid. The Racing
40 Commission may require the person demanding a hearing to
41 give reasonable security for the costs thereof and if such
42 person does not substantially prevail at such hearing such
43 costs shall be assessed against such person and may be
44 collected by an action at law or other proper remedy.

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

50 (e) All of the pertinent provisions of article five, chapter
51 twenty-nine-a of this code shall apply to and govern the
52 hearing and the administrative procedures in connection with
53 and following such hearing, with like effect as if the
54 provisions of said article five were set forth in this
55 subsection.

56 (f) Any such hearing shall be conducted by a quorum of
57 the Racing Commission or by a hearing examiner appointed
58 by the Racing Commission who is licensed to practice law in
59 the State of West Virginia. For the purpose of conducting
60 any such hearing, any member of the Racing Commission or
61 its appointed hearing examiner has the power and authority
62 to issue subpoenas and subpoenas duces tecum as provided
63 in section six of this article. Any such subpoenas and
64 subpoenas duces tecum shall be issued and served within the
65 time, for the fees and shall be enforced, as specified in

66 section one, article five of said chapter twenty- nine-a, and all
67 of the said section one provisions dealing with subpoenas and
68 subpoenas duces tecum shall apply to subpoenas and
69 subpoenas duces tecum issued for the purpose of a hearing
70 hereunder.

71 (g) At any such hearing the person who demanded the
72 same may represent such person's own interests or be
73 represented by an attorney-at-law admitted to practice before
74 any circuit court of this state. Upon request by the Racing
75 Commission, it shall be represented at any such hearing by
76 the Attorney General or his or her assistants without
77 additional compensation. The Racing Commission, with the
78 written approval of the Attorney General, may employ
79 special counsel to represent the Racing Commission at any
80 such hearing.

81 (h) After any such hearing and consideration of all of the
82 testimony, evidence and record in the case, the Racing
83 Commission shall render its decision in writing. The written
84 decision of the Racing Commission shall be accompanied by
85 findings of fact and conclusions of law as specified in section
86 three, article five, chapter twenty-nine-a of this code, and a
87 copy of such decision and accompanying findings and
88 conclusions shall be served by certified mail, return receipt
89 requested, upon the person demanding such hearing, and his
90 or her attorney of record, if any. If a hearing is conducted by
91 a hearing examiner appointed by the Racing Commission, he
92 or she shall prepare a written recommended decision that
93 meets the requirements of this subsection for the
94 commission's consideration. The Racing Commission, in its
95 discretion, may accept the recommendation in its entirety,
96 modify it, or reject it. If the Racing Commission modifies or
97 rejects a recommended decision of an appointed hearing
98 examiner, either in whole or in part, it shall issue a reasoned,
99 articulate explanation and a recitation of the underlying

100 evidence or other matters upon which it bases its decision,
101 including findings of fact and conclusions of law.

102 (i) The decision of the Racing Commission shall be final
103 unless reversed, vacated or modified upon judicial review
104 thereof in accordance with the provisions of section
105 seventeen of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor