

# H. B. 2989

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

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[Introduced February 2, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §19-23-16 of the Code of West Virginia, 1931, as amended, relating to creating a process by which the West Virginia Racing Commission may grant stay requests pending an appeals of orders by stewards or judges; permitting the appointment of hearing examiners who must be licensed to practice law in the state; and providing 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.

*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 ~~such a~~  
41 hearing to give reasonable security for the costs thereof and  
42 if such person does not substantially prevail at such hearing  
43 such 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 ~~scheduled~~ hearing may be continued by the Racing  
49 Commission or its appointed hearing examiner upon its own  
50 ~~motion or for good cause shown. by the person demanding~~  
51 ~~the hearing.~~

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

58 (f) Any such hearing shall be conducted by a quorum of  
59 the Racing Commission or by a hearing examiner appointed  
60 by the Racing Commission who is licensed to practice law in  
61 the State of West Virginia. For the purpose of conducting

62 any such hearing, any member of the Racing Commission  
63 ~~shall have~~ or its appointed hearing examiner has the power  
64 and authority to issue subpoenas and subpoenas duces tecum  
65 as provided in section six of this article. Any such subpoenas  
66 and subpoenas duces tecum shall be issued and served within  
67 the time, for the fees and shall be enforced, as specified in  
68 section one, article five of said chapter twenty- nine-a, and all  
69 of the said section one provisions dealing with subpoenas and  
70 subpoenas duces tecum shall apply to subpoenas and  
71 subpoenas duces tecum issued for the purpose of a hearing  
72 hereunder.

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

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

103 (i) The decision of the Racing Commission shall be final  
104 unless reversed, vacated or modified upon judicial review

105 thereof in accordance with the provisions of section  
106 seventeen of this article.

**The Judiciary Committee Title Amendment**

**H. B. 2989** - “A Bill to amend and reenact §19-23-16 of the Code of West Virginia, 1931, as amended, relating to changes in the way the Racing Commission considers appeals of decisions made by stewards or judges, and adding the term “judges” to the code section.”

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.