

1 **H. B. 4376**

2
3 (By Delegates Eldridge, White (By Request), Hunt, Craig,
4 R. Phillips, Tomblin and Barker)
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6 [Introduced January 30, 2014; referred to the
7 Committee on the Judiciary then Finance.]
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10 A BILL to amend and reenact §19-23-9 of the Code of West Virginia,
11 1931, as amended, relating to requiring each thoroughbred
12 licensee to pay three percent of purses actually paid during
13 the proceeding month to the local Horsemen's Benevolent and
14 Protective Association for their respective medical trusts for
15 backstretch personnel and administrative fees.

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

17 That §19-23-9 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

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

20 **§19-23-9. Pari-mutuel system of wagering authorized; licensee**
21 **authorized to deduct commissions from pari-mutuel**
22 **pools; retention of breakage; auditing; minors.**

23 (a) The pari-mutuel system of wagering upon the results of any
24 horse or dog race at any horse or dog race meeting conducted or

1 held by any licensee is hereby authorized if, and only if, such
2 pari-mutuel wagering is conducted by the licensee within the
3 confines of the licensee's horse racetrack or dog racetrack and the
4 provisions of section one, article ten, chapter sixty-one of this
5 code relating to gaming shall not apply to the pari-mutuel system
6 of wagering in manner and form as provided in this article at any
7 horse or dog race meeting within this state where horse or dog
8 racing is permitted for any purse by any licensee. A licensee
9 shall permit or conduct only the pari-mutuel system of wagering
10 within the confines of the licensee's racetrack at which any horse
11 or dog race meeting is conducted or held.

12 (b) A licensee is hereby expressly authorized to deduct a
13 commission from the pari-mutuel pools as follows:

14 (1) The commission deducted by any licensee from the pari-
15 mutuel pools on thoroughbred horse racing, except from thoroughbred
16 horse racing pari-mutuel pools involving what is known as multiple
17 betting in which the winning pari-mutuel ticket or tickets are
18 determined by a combination of two or more winning horses, shall
19 not exceed seventeen and one-fourth percent of the total of the
20 pari-mutuel pools for the day. Out of the commission mentioned in
21 this subdivision, the licensee: (i) Shall pay the pari-mutuel
22 pools tax provided in subsection (b), section ten of this article;
23 (ii) shall make a deposit into a special fund to be established by
24 the licensee and to be used for the payment of regular purses

1 offered for thoroughbred racing by the licensee, which deposits out
2 of pari-mutuel pools for each day during the months of January,
3 February, March, October, November and December shall be seven and
4 three hundred seventy-five one-thousandths percent of the pari-
5 mutuel pools and which, out of pari-mutuel pools for each day
6 during all other months, shall be six and eight hundred seventy-
7 five one-thousandths percent of the pari-mutuel pools, which shall
8 take effect beginning fiscal year 1990; (iii) shall pay one tenth
9 of one percent of the pari-mutuel pools into the General Fund of
10 the county commission of the county in which the racetrack is
11 located, except if within a municipality, then to the Municipal
12 General Fund; and (iv) Any licensee which has participated in the
13 West Virginia Thoroughbred Development Fund for a period of more
14 than four consecutive calendar years prior to December 31, 1992,
15 shall make a deposit into a special fund to be established by the
16 Racing Commission and to be used for the payment of breeders
17 awards, restrictive races and stakes purses as authorized by
18 section thirteen-b of this article, which deposits out of pari-
19 mutuel pools shall, from the effective date of this section, be two
20 percent of the pools. The remainder of the commission shall be
21 retained by the licensee.

22 Each licensee that permits or conducts pari-mutuel wagering at
23 the licensee's thoroughbred horse racetrack shall annually pay
24 \$500,000 from the special fund required by this section to be

1 established by the licensee for the payment of regular purses
2 offered for thoroughbred racing by the licensee into a special fund
3 established by the Racing Commission for transfer to a pension plan
4 established by the Racing Commission for all back stretch
5 personnel, including, but not limited to, exercise riders,
6 trainers, grooms and stable forepersons licensed by the Racing
7 Commission to participate in horse racing in this state and their
8 dependents.

9 Each thoroughbred racetrack licensee ~~is authorized to~~ shall
10 enter into an agreement with its local Horsemen's Benevolent and
11 Protective Association under which ~~an agreed upon~~ a percentage of
12 ~~up to two~~ three percent of purses actually paid during the
13 preceding month ~~may~~ shall be paid to the local Horsemen's
14 Benevolent and Protective Association from the special fund
15 required by this section for their respective medical trusts for
16 backstretch personnel and administrative fees.

17 The commission deducted by any licensee from the pari-mutuel
18 pools on thoroughbred horse racing involving what is known as
19 multiple betting in which the winning pari-mutuel ticket or tickets
20 are determined by a combination of two winning horses shall not
21 exceed nineteen percent and by a combination of three or more
22 winning horses shall not exceed twenty-five percent of the total of
23 such pari-mutuel pools for the day. Out of the commission, as is
24 mentioned in this paragraph, the licensee: (i) Shall pay the pari-

1 mutuel pools tax provided in subsection (b), section ten of this
2 article; (ii) shall make a deposit into a special fund to be
3 established by the licensee and to be used for the payment of
4 regular purses offered for thoroughbred racing by the licensee,
5 which deposits out of pari-mutuel pools for each day during the
6 months of January, February, March, October, November and December,
7 for pools involving a combination of two winning horses shall be
8 eight and twenty-five one-hundredths percent and out of pari-mutuel
9 pools for each day during all other months shall be seven and
10 seventy-five one-hundredths percent of the pari-mutuel pools, and
11 involving a combination of three or more winning horses for the
12 months of January, February, March, October, November and December
13 the deposits out of the fund shall be eleven and twenty-five one-
14 hundredths percent of the pari-mutuel pools, and which, out of
15 pari-mutuel pools for each day during all other months, shall be
16 ten and seventy-five one-hundredths percent of the pari-mutuel
17 pools; (iii) shall pay one tenth of one percent of the pari-mutuel
18 pools into the General Fund of the county commission of the county
19 in which the racetrack is located, except if within a municipality,
20 then to the Municipal General Fund; and (iv) any licensee which has
21 participated in the West Virginia Thoroughbred Development Fund for
22 a period of more than four consecutive calendar years prior to
23 December 31, 1992, shall make a deposit into a special fund to be
24 established by the Racing Commission and to be used for the payment

1 of breeder awards, for restrictive races and stakes purses which
2 deposits out of pari-mutuel pools shall, from the effective date of
3 this section, be two percent of the pools. The remainder of the
4 commission shall be retained by the licensee.

5 The commission deducted by the licensee under this subdivision
6 may be reduced only by mutual agreement between the licensee and a
7 majority of the trainers and horse owners licensed by subsection
8 (a), section two of this article or their designated
9 representative. The reduction in licensee commissions may be for
10 a particular race, racing day or days or for a horse race meeting.
11 Fifty percent of the reduction shall be retained by the licensee
12 from the amounts required to be paid into the special fund
13 established by the licensee under the provisions of this
14 subdivision. The Racing Commission shall promulgate any reasonable
15 rules that are necessary to implement the foregoing provisions.

16 (2) The commission deducted by any licensee from the pari-
17 mutuel pools on harness racing shall not exceed seventeen and one-
18 half percent of the total of the pari-mutuel pools for the day.
19 Out of the commission the licensee shall pay the pari-mutuel pools
20 tax provided in subsection (c), section ten of this article and
21 shall pay one tenth of one percent into the General Fund of the
22 county commission of the county in which the racetrack is located,
23 except if within a municipality, then to the Municipal General
24 Fund. The remainder of the commission shall be retained by the

1 licensee.

2 (3) The commission deducted by any licensee from the pari-
3 mutuel pools on dog racing, except from dog racing pari-mutuel
4 pools involving what is known as multiple betting in which the
5 winning pari-mutuel ticket or tickets are determined by a
6 combination of two or more winning dogs, shall not exceed sixteen
7 and thirty one-hundredths percent of the total of all pari-mutuel
8 pools for the day. The commission deducted by any licensee from
9 the pari-mutuel pools on dog racing involving what is known as
10 multiple betting in which the winning pari-mutuel ticket or tickets
11 are determined by a combination of two winning dogs shall not
12 exceed nineteen percent, by a combination of three winning dogs
13 shall not exceed twenty percent and by a combination of four or
14 more winning dogs shall not exceed twenty-one percent of the total
15 of such pari-mutuel pools for the day. The foregoing commissions
16 are in effect for the fiscal years 1990 and 1991. Thereafter, the
17 commission shall be at the percentages in effect prior to the
18 effective date of this article unless the Legislature, after
19 review, determines otherwise. Out of the commissions, the licensee
20 shall pay the pari-mutuel pools tax provided in subsection (d),
21 section ten of this article and one tenth of one percent of such
22 pari-mutuel pools into the General Fund of the county commission of
23 the county in which the racetrack is located. In addition, out of
24 the commissions, if the racetrack is located within a municipality,

1 then the licensee shall also pay three tenths of one percent of the
2 pari-mutuel pools into the Municipal General Fund; or, if the
3 racetrack is located outside of a municipality, then the licensee
4 shall also pay three tenths of one percent of the pari-mutuel pools
5 into the State Road Fund for use by the Division of Highways in
6 accordance with the provisions of this subdivision. The remainder
7 of the commission shall be retained by the licensee.

8 For the purposes of this section, "municipality" means and
9 includes any Class I, Class II and Class III city and any Class IV
10 town or village incorporated as a municipal corporation under the
11 laws of this state prior to January 1, 1987.

12 Each dog racing licensee, when required by the provisions of
13 this subdivision to pay a percentage of its commissions to the
14 State Road Fund for use by the Division of Highways, shall transmit
15 the required funds, in such manner and at such times as the Racing
16 Commission shall by procedural rule direct, to the State Treasurer
17 for deposit in the State Treasury to the credit of the Division of
18 Highways State Road Fund. All funds collected and received in the
19 State Road Fund pursuant to the provisions of this subdivision
20 shall be used by the Division of Highways in accordance with the
21 provisions of article seventeen-a, chapter seventeen of this code
22 for the acquisition of right-of-way for, the construction of, the
23 reconstruction of and the improvement or repair of any interstate
24 or other highway, secondary road, bridge and toll road in the

1 state. If on July 1, 1989, any area encompassing a dog racetrack
2 has incorporated as a Class I, Class II or Class III city or as a
3 Class IV town or village, whereas such city, town or village was
4 not incorporated as such on January 1, 1987, then on and after July
5 1, 1989, any balances in the State Road Fund existing as a result
6 of payments made under the provisions of this subdivision may be
7 used by the State Road Fund for any purpose for which other moneys
8 in the fund may lawfully be used and in lieu of further payments to
9 the State Road Fund, the licensee of a racetrack which is located
10 in the municipality shall thereafter pay three tenths of one
11 percent of the pari-mutuel pools into the General Fund of the
12 municipality. If no incorporation occurs before July 1, 1989, then
13 payments to the State Road Fund shall thereafter continue as
14 provided under the provisions of this subdivision.

15 A dog racing licensee, before deducting the commissions
16 authorized by this subdivision, shall give written notification to
17 the Racing Commission not less than thirty days prior to any change
18 in the percentage rates for the commissions. The Racing Commission
19 shall prescribe blank forms for filing the notification. The
20 notification shall disclose the following: (A) The revised
21 commissions to be deducted from the pari-mutuel pools each day on
22 win, place and show betting and on different forms of multiple
23 bettings; (B) the dates to be included in the revised betting; and
24 (C) such other information as may be required by the Racing

1 Commission.

2 The licensee shall establish a special fund to be used only
3 for capital improvements or long-term debt amortization or both:
4 *Provided*, That any licensee, heretofore licensed for a period of
5 eight years prior to the effective date of the amendment made to
6 this section during the regular session of the Legislature held in
7 the year 1987, shall establish the special fund to be used only for
8 capital improvements or physical plant maintenance, or both, at the
9 licensee's licensed facility or at the licensee's commonly owned
10 racing facility located within this state. Deposits made into the
11 funds shall be in an amount equal to twenty-five percent of the
12 increased rate total over and above the applicable rate in effect
13 as of January 1, 1987, of the pari-mutuel pools for the day. Any
14 amount deposited into the funds must be expended or liability
15 therefor incurred within a period of two years from the date of
16 deposit. Any funds not expended shall be transferred immediately
17 into the state General Fund after expiration of the two-year
18 period.

19 The licensee shall make a deposit into a special fund
20 established by the licensee and used for payment of regular purses
21 offered for dog racing, which deposits out of the licensee's
22 commissions for each day shall be three and seventy-five one-
23 hundredths percent of the pari-mutuel pools.

24 The licensee shall further establish a special fund to be used

1 exclusively for marketing and promotion programs; the funds shall
2 be in an amount equal to five percent over and above the applicable
3 rates in effect as of January 1, 1987, of the total pari-mutuel
4 pools for the day.

5 The Racing Commission shall prepare and transmit annually to
6 the Governor and the Legislature a report of the activities of the
7 Racing Commission under this subdivision. The report shall include
8 a statement of: The amount of commissions retained by licensees;
9 the amount of taxes paid to the state; the amounts paid to
10 municipalities, counties and the Division of Highways Dog Racing
11 Fund; the amounts deposited by licensees into special funds for
12 capital improvements or long-term debt amortization and a certified
13 statement of the financial condition of any licensee depositing
14 into the fund; the amounts paid by licensees into special funds and
15 used for regular purses offered for dog racing; the amounts paid by
16 licensees into special funds and used for marketing and promotion
17 programs; and such other information as the Racing Commission may
18 consider appropriate for review.

19 (c) In addition to any commission, a licensee of horse race or
20 dog race meetings shall also be entitled to retain the legitimate
21 breakage, which shall be made and calculated to the dime, and from
22 the breakage, the licensee of a horse race meeting (excluding dog
23 race meetings), shall deposit daily fifty percent of the total of
24 the breakage retained by the licensee into the special fund created

1 pursuant to the provisions of subdivision (1), subsection (b) of
2 this section for the payment of regular purses.

3 (d) The director of audit, and any other auditors employed by
4 the Racing Commission who are also certified public accountants or
5 experienced public accountants, shall have free access to the space
6 or enclosure where the pari-mutuel system of wagering is conducted
7 or calculated at any horse or dog race meeting for the purpose of
8 ascertaining whether or not the licensee is deducting and retaining
9 only a commission as provided in this section and is otherwise
10 complying with the provisions of this section. They shall also,
11 for the same purposes only, have full and free access to all
12 records and papers pertaining to the pari-mutuel system of wagering
13 and shall report to the Racing Commission in writing, under oath,
14 whether or not the licensee has deducted and retained any
15 commission in excess of that permitted under the provisions of this
16 section or has otherwise failed to comply with the provisions of
17 this section.

18 (e) No licensee shall permit or allow any individual under the
19 age of eighteen years to wager at any horse or dog racetrack,
20 knowing or having reason to believe that the individual is under
21 the age of eighteen years.

22 (f) Notwithstanding the foregoing provisions of subdivision
23 (1), subsection (b) of this section, to the contrary, a
24 thoroughbred licensee qualifying for and paying the alternate

1 reduced tax on pari-mutuel pools provided in section ten of this
2 article shall distribute the commission authorized to be deducted
3 by subdivision (1), subsection (b) of this section as follows: (i)
4 The licensee shall pay the alternate reduced tax provided in
5 section ten of this article; (ii) the licensee shall pay one tenth
6 of one percent of the pari-mutuel pools into the General Fund of
7 the county commission of the county in which the racetrack is
8 located, except if within a municipality, then to the Municipal
9 General Fund; (iii) the licensee shall pay one half of the
10 remainder of the commission into the special fund established by
11 the licensee and to be used for the payment of regular purses
12 offered for thoroughbred racing by the licensee; and (iv) the
13 licensee shall retain the amount remaining after making the
14 payments required in this subsection.

15 (g) Each kennel which provides or races dogs owned or leased
16 by others shall furnish to the commission a surety bond in an
17 amount to be determined by the commission to secure the payment to
18 the owners or lessees of the dogs the portion of any purse owed to
19 the owner or lessee.

NOTE: The purpose of this bill is to change from two to three percent of purse money paid to the local Horsemen's Benevolent and Protective Association for their respective medical trusts for backstretch personnel and administrative fees.

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

be added.