

H. B. 4511

(By Delegates Eldridge, Caputo, Morgan,
Guthrie and White)

[Introduced February 13, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §19-23-10 of the Code of West Virginia,
1931, as amended, relating to distributing money that was set
aside from the West Virginia Greyhound Breeder Development
Fund for two dog training track facilities to West Virginia
residents who had earnings from the West Virginia Greyhound
Breeder Development Fund during the period 1996 through 2001.

Be it enacted by the Legislature of West Virginia:

That §19-23-10 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

**§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes
paid; alternate tax; credits.**

(a) Any racing association conducting thoroughbred racing at
any horse racetrack in this state shall pay each day upon which
horse races are run a daily license tax of \$250. Any racing

1 association conducting harness racing at any horse racetrack in
2 this state shall pay each day upon which horse races are run a
3 daily license tax of \$150. Any racing association conducting dog
4 races shall pay each day upon which dog races are run a daily
5 license tax of \$150. In the event thoroughbred racing, harness
6 racing, dog racing, or any combination of the foregoing are
7 conducted on the same day at the same racetrack by the same racing
8 association, only one daily license tax in the amount of \$250 shall
9 be paid for that day. ~~Any~~ The daily license tax ~~shall~~ does not
10 apply to any local, county or state fair, horse show or
11 agricultural or livestock exposition at which horse racing is
12 conducted for not more than six days.

13 (b) Any racing association licensed by the Racing Commission
14 to conduct thoroughbred racing and permitting and conducting pari-
15 mutuel wagering under the provisions of this article shall, in
16 addition to the daily license tax set forth in subsection (a) of
17 this section, pay to the Racing Commission, from the commission
18 deducted each day by the licensee from the pari-mutuel pools on
19 thoroughbred racing a tax calculated on the total daily
20 contribution of all pari-mutuel pools conducted or made at any and
21 every thoroughbred race meeting of the licensee licensed under the
22 provisions of this article. The tax, on the pari-mutuel pools
23 conducted or made each day during the months of January, February,
24 March, October, November and December, shall be calculated at four

1 tenths of one percent of the pool; and, on the pari-mutuel pools
2 conducted or made each day during all other months, shall be
3 calculated at one and four-tenths percent of the pool: *Provided,*
4 That out of the amount realized from the three tenths of one
5 percent decrease in the tax effective for fiscal year 1991 and
6 thereafter, which decrease correspondingly increases the amount of
7 commission retained by the licensee, the licensee shall annually
8 expend or dedicate: (i) One half of the realized amount for
9 capital improvements in its barn area at the track, subject to the
10 Racing Commission's prior approval of the plans for the
11 improvements; and (ii) the remaining one half of the realized
12 amount for capital improvements as the licensee may determine
13 appropriate at the track. The term "capital improvement" shall be
14 as defined by the Internal Revenue Code: *Provided, however,* That
15 any racing association operating a horse racetrack in this state
16 having an average daily pari-mutuel pool on horse racing of
17 \$280,000 or less per day for the race meetings of the preceding
18 calendar year shall, in lieu of payment of the pari-mutuel pool
19 tax, calculated as in this subsection, be permitted to conduct
20 pari-mutuel wagering at the horse racetrack on the basis of a daily
21 pari-mutuel pool tax fixed as follows: On the daily pari-mutuel
22 pool not exceeding \$300,000 the daily pari-mutuel pool tax shall be
23 \$1,000 plus the otherwise applicable percentage rate imposed by
24 this subsection of the daily pari-mutuel pool, if any, in excess of

1 \$300,000: *Provided further,* That upon the effective date of the
2 reduction of the daily pari-mutuel pool tax to \$1,000 from the
3 former \$2,000, the association or licensee shall daily deposit \$500
4 into the special fund for regular purses established by subdivision
5 (1), subsection (b), section nine of this article: *And provided*
6 *further,* That if an association or licensee qualifying for the
7 foregoing alternate tax conducts more than one racing performance,
8 each consisting of up to thirteen races in a calendar day, the
9 association or licensee shall pay both the daily license tax
10 imposed in subsection (a) of this section and the alternate tax in
11 this subsection for each performance: *And provided further,* That
12 a licensee qualifying for the foregoing alternate tax is excluded
13 from participation in the fund established by section thirteen-b of
14 this article: *And provided further,* That this exclusion ~~shall~~ does
15 not apply to any thoroughbred racetrack at which the licensee has
16 participated in the West Virginia Thoroughbred Development Fund for
17 more than four consecutive years prior to December 31, 1992.

18 (c) Any racing association licensed by the Racing Commission
19 to conduct harness racing and permitting and conducting pari-mutuel
20 wagering under the provisions of this article shall, in addition to
21 the daily license tax required under subsection (a) of this
22 section, pay to the Racing Commission, from the commission deducted
23 each day by the licensee from the pari-mutuel pools on harness
24 racing, as a tax, three percent of the first \$100,000 wagered, or

1 any part thereof; four percent of the next \$150,000; and five and
2 three-fourths percent of all over that amount wagered each day in
3 all pari-mutuel pools conducted or made at any and every harness
4 race meeting of the licensee licensed under the provisions of this
5 article.

6 (d) Any racing association licensed by the Racing Commission
7 to conduct dog racing and permitting and conducting pari-mutuel
8 wagering under the provisions of this article shall, in addition to
9 the daily license tax required under subsection (a) of this
10 section, pay to the Racing Commission, from the commission deducted
11 each day by the licensee from the pari-mutuel pools on dog racing,
12 as a tax, four percent of the first \$50,000 or any part thereof of
13 the pari-mutuel pools, five percent of the next \$50,000 of the
14 pari-mutuel pools, six percent of the next \$100,000 of the pari-
15 mutuel pools, seven percent of the next \$150,000 of the pari-mutuel
16 pools, and eight percent of all over \$350,000 wagered each day:
17 *Provided*, That the licensee shall deduct daily from the pari-mutuel
18 tax an amount equal to ~~one tenth of one percent of the daily pari-~~
19 ~~mutuel pools in dog racing in fiscal year 1990; fifteen hundredths~~
20 ~~of one percent in fiscal year 1991; two tenths of one percent in~~
21 ~~fiscal year one 1992; one quarter of one percent in fiscal year~~
22 ~~1993; and three tenths of one percent in fiscal year 1994 and every~~
23 fiscal year ~~thereafter~~ after. The amounts deducted shall be paid
24 to the Racing Commission to be deposited by the Racing Commission

1 in a banking institution of its choice in a special account to be
2 known as "West Virginia Racing Commission-Special Account-West
3 Virginia Greyhound Breeding Development Fund". The purpose of the
4 fund is to promote better breeding, training track facilities and
5 racing of greyhounds in the state through awards and purses to bona
6 fide resident registered greyhound owners of accredited West
7 Virginia whelped greyhounds. In order to participate and be
8 eligible to receive an award or purse through the fund, the
9 registered greyhound owner must have an appropriate license from
10 the Racing Commission to race in West Virginia. The registered
11 greyhound dam at the time of breeding must be wholly or solely
12 owned or leased by a bona fide resident or residents of West
13 Virginia. The accredited West Virginia whelped greyhound must be
14 wholly or solely owned by a bona fide resident or residents of this
15 state. To qualify as a bona fide resident of West Virginia, a
16 registered greyhound owner may not claim residency in any other
17 state. A registered greyhound owner must prove bona fide residency
18 by providing to the commission personal income tax returns filed in
19 the State of West Virginia for the most recent tax year and the
20 three previous tax years, has real or personal property in this
21 state on which the owner has paid real or personal property taxes
22 during the most recent tax year and the previous three tax years
23 and an affidavit stating that the owner claims no other state of
24 residency. The Racing Commission shall maintain a registry for

1 West Virginia bred greyhounds. The moneys shall be expended by the
2 Racing Commission for purses for stake races, training track
3 facilities, supplemental purse awards, administration, promotion
4 and educational programs involving West Virginia whelped dogs,
5 owned by residents of this state under rules promulgated by the
6 Racing Commission. The Racing Commission shall pay out of the
7 Greyhound Breeding Development Fund to each of the licensed dog
8 racing tracks the sum of \$75,000 for the fiscal year ending June
9 30, 1994. The licensee shall deposit the sum into the special fund
10 for regular purses established under the provisions of section nine
11 of this article. The funds shall be expended solely for the
12 purpose of supplementing regular purses under rules promulgated by
13 the Racing Commission.

14 Supplemental purse awards will be distributed as follows:
15 Supplemental purses shall be paid directly to the registered
16 greyhound owner of an accredited greyhound.

17 The registered greyhound owner of accredited West Virginia
18 whelped greyhounds that earn points at any West Virginia meet will
19 receive a bonus award calculated at the end of each month as a
20 percentage of the fund dedicated to the owners as purse
21 supplements, which shall be a minimum of fifty percent of the total
22 moneys deposited into the West Virginia Greyhound Breeding
23 Development Fund monthly.

24 The total amount of the fund available for the owners' awards

1 shall be distributed according to the ratio of points earned by an
2 accredited greyhound to the total amount earned in races by all
3 accredited West Virginia whelped greyhounds for that month as a
4 percentage of the funds dedicated to the owners' purse supplements.
5 The point value at all greyhound tracks shall be the same as
6 approved by the Racing Commission to be effective April 1, 2007.
7 The West Virginia Greyhound Owners and Breeders Association shall
8 submit a list of any additions or deletions to the registry of
9 accredited West Virginia whelped greyhounds on the first of each
10 month. The Racing Commission ~~shall~~ may not require anyone to be a
11 member of a particular association in order to participate in the
12 West Virginia Greyhound Breeding Development Fund.

13 The registered greyhound owner of an accredited West Virginia
14 whelped greyhound shall file a purse distribution form with the
15 Racing Commission for a percentage of his or her dog's earnings to
16 be paid directly to the registered greyhound owner or owners of the
17 greyhound. Distribution shall be made on the fifteenth day of each
18 month for the preceding month's achievements.

19 In no event ~~shall~~ may points earned at a meet held at a track
20 which did not make contributions to the West Virginia Greyhound
21 Breeding Development Fund out of the daily pool on the day the meet
22 was held qualify or count toward eligibility for supplemental purse
23 awards.

24 Any balance in the purse supplement funds after all

1 distributions have been made for the year revert to the general
2 account of the fund for distribution in the following year:
3 ~~Provided, That not more than \$2,000,000 from the balance in the~~
4 ~~purse supplemental fund shall be used for the construction and~~
5 ~~maintenance of two dog training track facilities if such be~~
6 ~~approved by the Racing Commission: Provided, however, That not~~
7 ~~more than \$1,000,000 may be allocated for the construction and~~
8 ~~maintenance of each training track: Provided further, That both~~
9 ~~training track facilities must be located in West Virginia. The~~
10 ~~West Virginia Racing Commission shall be authorized to promulgate~~
11 ~~rules governing dog training tracks: And provided further, That~~
12 ~~the Racing Commission shall (1) provide a process in its rules for~~
13 ~~competitive bidding of the construction or maintenance, or both, of~~
14 ~~the training tracks, and (2) set standards to assure that only the~~
15 ~~actual costs of construction and maintenance shall be paid out of~~
16 ~~the foregoing fund. All money set aside under this paragraph for~~
17 ~~two dog training facilities shall be distributed by the West~~
18 ~~Virginia Racing Commission to those West Virginia residents who had~~
19 ~~earnings from the West Virginia Greyhound Breeder Development Fund~~
20 ~~during the period 1996 through 2001. The commission shall require~~
21 ~~individuals requesting money under this paragraph to submit~~
22 ~~substantiation of the amount of earnings through Internal Revenue~~
23 ~~Service form 1099 or other relevant tax forms. The total amount of~~
24 ~~money available shall be distributed according to the ratio of~~

1 dollars earned by an accredited greyhound to the total amount of
2 money plus interest set aside for training facilities. All money
3 shall be distributed by June 30, 2014.

4 In an effort to further promote the breeding of quality West
5 Virginia whelped greyhounds, a bonus purse supplement shall be
6 established in the amount of \$50,000 per annum, to be paid in equal
7 quarterly installments of \$12,500 per quarter using the same method
8 to calculate and distribute these funds as the regular supplemental
9 purse awards. This bonus purse supplement is for three years only,
10 commencing on July 1, 1993, and ending June 30, 1996. This money
11 would come from the current existing balance in the Greyhound
12 Development Fund.

13 Each pari-mutuel greyhound track shall provide stakes races
14 for accredited West Virginia whelped greyhounds: *Provided*, That
15 each pari-mutuel track shall have one juvenile and one open stake
16 race annually. Each pari-mutuel dog track shall provide at least
17 three restricted races for accredited West Virginia whelped
18 greyhounds per race card: *Provided, however*, That sufficient dogs
19 are available. To assure breeders of accredited West Virginia
20 whelped greyhounds an opportunity to participate in the West
21 Virginia Greyhound Breeding Development Fund the West Virginia
22 Racing Commission by July 1, each year shall establish and announce
23 the minimum number of accredited West Virginia whelped greyhounds
24 that greyhound racing kennels at West Virginia dog tracks must have

1 on their racing active list during the calendar year following such
2 action. The minimum number may vary from dog track to dog track.
3 The minimum number shall be established after consultation with the
4 West Virginia Greyhound Owners and Breeders Association and kennel
5 owners and operators. Factors to be considered in establishing this
6 minimum number ~~shall be~~ are the number of individually registered
7 accredited West Virginia whelped greyhounds whelped in the previous
8 two years, the number of all greyhounds seeking qualification at
9 each West Virginia dog track, the ratio of active running
10 greyhounds to housed number of greyhounds at each West Virginia dog
11 track and the size and number of racing kennels at each West
12 Virginia dog track. Any greyhound racing kennel not having the
13 minimum number of accredited West Virginia whelped greyhounds
14 determined by the West Virginia Racing Commission on their active
15 list ~~shall~~ is only ~~be~~ permitted to race the maximum allowable
16 number on the active list less the number of accredited West
17 Virginia whelped greyhounds below the established minimum number.
18 Consistent violations of this minimum requirement may be reviewed
19 by the Racing Commission and may ~~constitute~~ be cause for denial or
20 revocation of a kennel's racing license. The Racing Commission
21 shall oversee and approve racing schedules and purse amounts.

22 Ten percent of the deposits into the Greyhound Breeding
23 Development Fund beginning July 1, 1993 and continuing each year
24 ~~thereafter,~~ after, shall be withheld by the Racing Commission and

1 placed in a special revenue account hereby created in the State
2 Treasury called the "Administration, Promotion and Educational and
3 Capital Improvement Account". The Racing Commission is authorized
4 to expend the moneys deposited in the Administration, Promotion and
5 Educational and Capital Improvement Account at ~~such~~ times and in
6 ~~such~~ amounts ~~as~~ the commission determines to be necessary for
7 purposes of administering and promoting the greyhound development
8 program: *Provided*, That beginning with fiscal year 1995 and in
9 each fiscal year ~~thereafter~~ after in which the commission
10 anticipates spending any money from the account, the commission
11 shall submit to the executive department during the budget
12 preparation period prior to the Legislature convening before that
13 fiscal year for inclusion in the executive budget document and
14 budget bill, the recommended expenditures, as well as requests of
15 appropriations for the purpose of administration, promotion and
16 education. The commission shall make an annual report to the
17 Legislature on the status of the administration, promotion and
18 education account, including the previous year's expenditures and
19 projected expenditures for the next year.

20 ~~The Racing Commission, for the fiscal year 1994 only, may~~
21 ~~expend up to \$35,000 from the West Virginia greyhound breeding~~
22 ~~development fund to accomplish the purposes of this section without~~
23 ~~strictly following the requirements in the previous paragraph.~~

24 (e) All daily license and pari-mutuel pools tax payments

1 required under the provisions of this section shall be made to the
2 Racing Commission or its agent after the last race of each day of
3 each horse or dog race meeting, and the pari-mutuel pools tax
4 payments shall be made from all contributions to all pari-mutuel
5 pools to each and every race of the day.

6 (f) Every association or licensee subject to the provisions of
7 this article, including the changed provisions of sections nine and
8 ten of this article, shall annually submit to the Racing Commission
9 and the Legislature financial statements, including a balance
10 sheet, income statement, statement of change in financial position
11 and an audit of any electronic data system used for pari-mutuel
12 tickets and betting, prepared in accordance with generally accepted
13 auditing standards, as certified by an experienced public
14 accountant or a certified public accountant.

NOTE: The purpose of this bill is to distribute money that was set aside from the West Virginia Greyhound Breeder Development Fund for two dog training track facilities to West Virginia residents who had earnings from the West Virginia Greyhound Breeder Development Fund for the period 1996 through 2001, since it is not economically feasible to construct and maintain two dog training track facilities.

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