

HB 2595

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2595

(By Delegate Pettit, Doyle, Manuel,
Seacrist and Faircloth)



Passed April 12, 1997

In Effect Ninety Days From Passage

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OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
STATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2595

(BY DELEGATES PETTIT, DOYLE, MANUEL,
SEACRIST AND FAIRCLOTH)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections twelve-b, twelve-c and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to simulcasting of horse and dog races and pari-mutuel wagering on simulcast races; providing for broadcast of televised horse and dog races between racetracks within the state of West Virginia; providing for live racing dates; providing for a negotiated signal transmission fee as consideration for a host racing association's televised racing services; providing for payments into racetrack employees' pension funds, the thoroughbred development fund and purse funds;" disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

Be it enacted by the Legislature of West Virginia:

That sections twelve-b, twelve-c and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a calendar day,
3 assigned by the commission, at a licensed racetrack on
4 which pari-mutuel betting is conducted on horse or dog
5 races run at other racetracks in this state or at racetracks
6 outside of this state which are broadcast by television at a
7 licensed racetrack and which day or days have had the
8 prior written approval of the representative of the majority
9 of the owners and trainers who hold permits required by
10 section two of this article; and

11 (2) "Host racing association" means any person
12 who, pursuant to a license or other permission granted by
13 the host governmental entity, conducts the horse or dog
14 race upon which wagers are placed.

15 (b) A licensee conducting not less than two hundred
16 twenty live racing dates for each horse or dog race
17 meeting may, with the prior approval of the state racing
18 commission, contract with any legal wagering entity in this
19 state or in any other governmental jurisdiction to receive
20 telecasts and accept wagers on races conducted by the
21 legal wagering entity: *Provided*, That at those
22 thoroughbred racetracks the licensee, in applying for
23 racing dates, shall apply for not less than two hundred ten
24 live racing dates for each horse race meeting: *Provided*,
25 *however*, That at those thoroughbred racetracks that have
26 participated in the West Virginia thoroughbred
27 development fund for a period of more than four
28 consecutive calendar years prior to the thirty-first day of
29 December, one thousand nine hundred ninety-two, the
30 licensee may apply for not less than one hundred fifty-
31 nine live racing dates during the calendar year of one
32 thousand nine hundred ninety-seven. If, thereafter, for
33 reasons beyond the licensee's control, related to adverse
34 weather conditions, unforeseen casualty occurrences or a
35 shortage of thoroughbred horses eligible to compete for
36 purses, the licensee concludes that this number of racing
37 days cannot be attained, the licensee may file a request
38 with the racing commission to reduce the authorized live

39 racing days. Upon receipt of the request the racing
40 commission shall within seventy-two hours of the receipt
41 of the request notify the licensee and the representative of
42 a majority of the owners and trainers at the requesting
43 track and the representative of the majority of the mutuel
44 clerks at the requesting track that such request has been
45 received and that if no objection to the request is received
46 within ten days of the notification the request will be
47 approved: *Provided*, That the commission shall give
48 consideration to whether there existed available
49 unscheduled potential live racing dates following the
50 adverse weather or casualty and prior to the end of the
51 race meeting which could be used as new live racing dates
52 in order to maintain the full live racing schedule
53 previously approved by the racing commission. If an
54 objection is received by the commission within the time
55 limits, the commission shall, within thirty days of receipt
56 of such objection, set a hearing on the question of
57 reducing racing days, which hearing shall be conducted at
58 a convenient place in the county in which the requesting
59 racetrack is located. The commission shall hear from all
60 parties concerned and, based upon testimony and
61 documentary evidence presented at the hearing, shall
62 determine the required number of live racing days:
63 *Provided*, That the commission shall not reduce the
64 number of live racing days below one hundred eighty-five
65 days for a horse race meeting unless the licensee
66 requesting such reduction has: (i) filed with the
67 commission a current financial statement, which shall be
68 subject to independent audit; and (ii) met the burden of
69 proving that just cause exists for such requested reduction
70 in live racing days. The telecasts may be received and
71 wagers accepted at any location authorized by the
72 provisions of section twelve-a of this article. The contract
73 must receive the approval of the representative of the
74 majority of the owners and trainers who hold permits
75 required by section two of this article at the receiving
76 thoroughbred racetrack.

77 (c) The commission may allow the licensee to
78 commingle its wagering pools with the wagering pools of
79 the host racing association. If the pools are commingled,

80 the wagering at the licensee's racetrack must be on
81 tabulating equipment capable of issuing pari-mutuel
82 tickets and be electronically linked with the equipment at
83 the sending racetrack. Subject to the approval of the
84 commission, the types of betting, licensee commissions
85 and distribution of winnings on pari-mutuel pools of the
86 sending licensee racetrack are those in effect at the
87 licensee racetrack. Breakage for pari-mutuel pools on a
88 televised racing day must be calculated in accordance with
89 the law or rules governing the sending racetrack and must
90 be distributed in a manner agreed to between the licensee
91 and the sending racetrack. For the televised racing
92 services it provides, the host racing association shall
93 receive a fee to be paid by the receiving licensee racetrack
94 which shall be in an amount to be agreed upon by the
95 receiving licensee racetrack and the host racing
96 association.

97 (d) The commission may assign televised racing
98 days at any time. When a televised racing day is assigned,
99 the commission shall assign either a steward or an auditor
100 to preside over the televised races at the licensee racetrack.

101 (e) (1) From the licensee commissions authorized by
102 subsection (c) of this section, the licensee shall pay one
103 tenth of one percent of each commission into the general
104 fund of the county, in which the racetrack is located and at
105 which the wagering occurred and there is imposed and the
106 licensee shall pay, for each televised racing day on which
107 the total pari-mutuel pool exceeds one hundred thousand
108 dollars, the greater of either: (i) The total of the daily
109 license tax and the pari-mutuel pools tax required by
110 section ten of this article; or (ii) a daily license tax of one
111 thousand two hundred fifty dollars. For each televised
112 racing day on which the total pari-mutuel pool is one
113 hundred thousand dollars or less, the licensee shall pay a
114 daily license tax of five hundred dollars plus an additional
115 license tax of one hundred dollars for each ten thousand
116 dollars, or part thereof, that the pari-mutuel pool exceeds
117 fifty thousand dollars, but does not exceed one hundred
118 thousand dollars. The calculation of the total pari-mutuel
119 pool for purposes of this subsection shall include only
120 one-half of all wagers placed at a licensed racetrack in this

121 state on televised races conducted at another licensed
122 racetrack within this state. Payments of the tax imposed
123 by this section are subject to the requirements of
124 subsection (e), section ten of this article.

125 (2) From the licensee commissions authorized by
126 subsection (c) of this section, after payments are made in
127 accordance with the provisions of subdivision (1) of this
128 subsection, the licensee shall pay, for each televised racing
129 day, one fourth of one percent of the total pari-mutuel
130 pools for and on behalf of all employees of the licensed
131 racing association by making a deposit into a special fund
132 to be established by the racing commission and to be used
133 for payments into the pension plan for all employees of
134 the licensed racing association.

135 (3) From the licensee commissions authorized by
136 subsection (c) of this section, after payments are made in
137 accordance with the provisions of subdivisions (1) and (2)
138 of this subsection, thoroughbred licensees shall pay,
139 one-half percent of net simulcast income and for each
140 televised racing day on or after the first day of July, one
141 thousand nine hundred ninety-seven, an additional five
142 and one-half percent of net simulcast income into the West
143 Virginia thoroughbred development fund established by
144 the racing commission according to section thirteen-b of
145 this article: *Provided*, That no licensee qualifying for the
146 alternate tax provisions of subsection (b), section ten of
147 this article shall be required to make the payments unless
148 the licensee has participated in the West Virginia
149 thoroughbred development fund for a period of more
150 than four consecutive calendar years prior to the
151 thirty-first day of December, one thousand nine hundred
152 ninety-two. For the purposes of this section, the term "net
153 simulcast income" means the total commission deducted
154 each day by the licensee from the pari-mutuel pools on
155 simulcast horse or dog races, less direct simulcast
156 expenses, including, but not limited to, the cost of
157 simulcast signals, telecommunication costs and decoder
158 costs.

159 (f) After deducting the tax and other payments
160 required by subsection (e) of this section, the amount

161 required to be paid under the terms of the contract with
162 the host racing association and the cost of transmission,
163 the horse racing association shall make a deposit equal to
164 fifty percent of the remainder into the purse fund
165 established under the provisions of subdivision (1),
166 subsection (b), section nine of this article. After deducting
167 the tax and other payments required by subsection (e) of
168 this section, dog racetracks shall pay an amount equal to
169 two-tenths of one percent of the daily simulcast
170 parimutuel pool to the "West Virginia Racing
171 Commission Special Account-West Virginia Greyhound
172 Breeding Development Fund".

173 (g) The provisions of the "Federal Interstate
174 Horseracing Act of 1978", also known as Public Law
175 95-515, Section 3001-3007 of Title 15, U.S. Code, as
176 amended, controls in determining the intent of this
177 section.

§19-23-12c. Interstate simulcasts by licensed racetracks.

1 (a) Any licensed racing association may be
2 authorized by the commission to transmit broadcasts of
3 races conducted at its racetrack to legal wagering entities
4 located outside this state, which legal wagering entities
5 located outside this state shall not be subject to the
6 provisions of subsection (e) of section twelve-b of this
7 article: *Provided*, That as consideration for the televised
8 racing services it provides, the host racing association shall
9 receive a signal transmission fee to be paid by the
10 receiving legal wagering entity which shall be in an
11 amount agreed upon by the receiving legal wagering
12 entity and the host racing association. All broadcasts of
13 horse races shall be in accordance with all of the
14 provisions of the "Federal Interstate Horseracing Act of
15 1978", also known as Public Law 95-515, section 3001-
16 3007 of Title 15 of the United States Code.

17 (b) One percent of the total signal transmission fee
18 provided in subsection (a) of this section shall be paid into
19 a special fund to be established by the racing commission
20 for and on behalf of all employees of the licensed racing
21 association to be used for payments into the pension plan
22 for all employees of the licensed racing association, and

23 any thoroughbred horse racetrack which has participated
24 in the West Virginia thoroughbred development fund for a
25 period of more than four consecutive calendar years prior
26 to the thirty-first day of December, one thousand nine
27 hundred ninety-two. Seven and one-half percent of the
28 signal transmission fee shall be paid into the West Virginia
29 thoroughbred development fund established by the racing
30 commission according to section thirteen-b of this article.
31 After deducting (i) the amounts required to be placed into
32 the pension plan for all employees of the licensed racing
33 association under this section, (ii) the amounts, if any,
34 required to be paid into the West Virginia thoroughbred
35 development fund under this section. The racing
36 association may deduct from the signal transmission fee
37 direct costs necessary to send a live audio and visual signal
38 of horse races or dog races from any racetrack licensed
39 under the provisions of section one of this article to any
40 legal wagering entities outside this state for the purpose of
41 pari-mutuel wagering, which direct costs shall include the
42 cost of satellite equipment necessary to transmit the signal,
43 a satellite operator and the satellite time necessary to
44 broadcast the signal and the cost of telecommunication
45 and facsimile services needed to communicate necessary
46 information to all legal wagering entities for the purpose
47 of pari-mutuel wagering. After the deductions provided
48 for in this subsection are made, thoroughbred horseracing
49 associations shall make a deposit equal to fifty percent of
50 the remainder into the purse fund established under the
51 provisions of subdivision (b), subsection (1), section nine
52 of this article.

**§19-23-13. Disposition of funds for payment of outstanding
and unredeemed pari-mutuel tickets; publica-
tion of notice; irredeemable tickets; stake races
for dog tracks.**

1 (a) All moneys held by any licensee for the payment
2 of outstanding and unredeemed pari-mutuel tickets, if not
3 claimed within ninety days after the close of a horse or
4 dog race meeting or the televised racing day, as the case
5 may be, in connection with which the tickets were issued,
6 shall be turned over by the licensee to the racing
7 commission within fifteen days after the expiration of

8 such ninety-day period, and the licensee shall give such
9 information as the racing commission may require
10 concerning such outstanding and unredeemed tickets. All
11 such moneys shall be deposited by the racing commission
12 in a banking institution of its choice in a special account
13 to be known as "West Virginia Racing Commission
14 Special Account — Unredeemed Pari-Mutuel Tickets".
15 Notice of the amount, date and place of such deposit shall
16 be given by the racing commission, in writing, to the state
17 treasurer. The racing commission shall then cause to be
18 published a notice to the holders of such outstanding and
19 unredeemed pari-mutuel tickets, notifying them to present
20 such tickets for payment at the principal office of the
21 racing commission within ninety days from the date of the
22 publication of such notice. Such notice shall be published
23 within fifteen days following the receipt of said moneys
24 by the commission from the licensee as a Class I legal
25 advertisement in compliance with the provisions of article
26 three, chapter fifty-nine of this code, and the publication
27 area for such publication shall be the county in which
28 such horse or dog race meeting was held and the county
29 in which the televised racing day wagering conducted in
30 this state.

31 (b) Any such pari-mutuel tickets that shall not be
32 presented for payment within ninety days from the date of
33 the publication of the notice shall thereafter be
34 irredeemable, and the moneys theretofore held for the
35 redemption of such pari-mutuel tickets shall become the
36 property of the racing commission and shall be expended
37 as provided in this subsection. The racing commission
38 shall maintain separate accounts for each licensee and
39 shall record therein the moneys turned over by such
40 licensee and the amount expended at such licensee's track
41 for the purposes set forth in this subsection. The moneys
42 in the "West Virginia Racing Commission Special
43 Account — Unredeemed Pari-Mutuel Tickets" shall be
44 expended as follows:

45 (1) To the owner of the winning horse in any horse
46 race at a horse race meeting held or conducted by any
47 licensee: *Provided*, That the owner of such horse is at the
48 time of such horse race a bona fide resident of this state, a

49 sum equal to ten percent of the purse won by such horse.
50 The commission may require proof that the owner was, at
51 the time of the race, a bona fide resident of this state.
52 Upon proof by the owner that he filed a personal income
53 tax return in this state for the previous two years and that
54 he owned real or personal property in this state and paid
55 taxes in this state on said property for the previous two
56 years, he shall be presumed to be a bona fide resident of
57 this state; and

58 (2) To the breeder (that is, the owner of the mare) of
59 the winning horse in any horse race at a horse race
60 meeting held or conducted by any licensee: *Provided*,
61 That the mare foaled in this state, a sum equal to ten
62 percent of the purse won by such horse; and

63 (3) To the owner of the stallion which sired the
64 winning horse in any horse race at a horse race meeting
65 held or conducted by any licensee: *Provided*, That the
66 mare which foaled such winning horse was served by a
67 stallion standing and registered in this state, a sum equal to
68 ten percent of the purse won by such horse; and

69 (4) To those horse racing licensees not participating
70 in the thoroughbred development fund authorized in
71 section thirteen-b of this article the unexpended balance
72 of such licensee's account not expended as provided in
73 subdivisions (1), (2) and (3) of this subsection: *Provided*,
74 That all moneys distributed under this subdivision shall be
75 expended solely for capital improvements at the licensee's
76 track: *Provided, however*, That such capital improvements
77 must be approved, in writing, by the West Virginia racing
78 commission before funds are expended by the licensee for
79 that capital improvement; and

80 (5) When the moneys in the special account, known
81 as the "West Virginia Racing Commission Special
82 Account — Unredeemed Pari-Mutuel Tickets" will more
83 than satisfy the requirements of subdivisions (1), (2), (3)
84 and (4) of this subsection, the West Virginia racing
85 commission shall have the authority to expend the excess
86 moneys from unredeemed horse racing pari-mutuel
87 tickets as purse money in any race conditioned exclusively
88 for West Virginia bred or sired horses, and to expend the

89 excess moneys from unredeemed dog racing pari-mutuel
90 tickets in supplementing purses and establishing stake
91 races and dog racing handicaps at the dog tracks:
92 *Provided*, That during the fiscal year beginning on the
93 first day of July one thousand nine hundred ninety-six,
94 but not thereafter, and subject to availability of funds, the
95 commission shall, after the requirements of subdivisions
96 (1), (2), (3) and (4) of this subsection have been satisfied,
97 transfer three hundred thousand dollars of such excess
98 moneys into a separate account to be used for
99 promotional activities and purses for stakes races for the
100 West Virginia thoroughbred breeders classics, which shall
101 give equal consideration to all horses qualifying under the
102 West Virginia breeders program for each stake race, based
103 solely on the horses' sex, age and earnings: *Provided*
104 *however*, That beginning with the fiscal year beginning on
105 the first day of July, one thousand nine hundred ninety-
106 seven, and subject to the availability of funds, the
107 commission shall, after the requirements of subdivisions
108 (1), (2), (3) and (4) of this subsection have been satisfied:

109 (i) Transfer annually two hundred thousand dollars
110 to the "West Virginia Racing Commission Special
111 Account - West Virginia Greyhound Breeding
112 Development Fund"; and

113 (ii) Transfer annually two hundred thousand dollars
114 into a separate account to be used for stakes races for West
115 Virginia bred greyhounds at dog racetracks.

116 (6) Notwithstanding any limitations on use of funds
117 pursuant to subdivision six of subsection c, section ten,
118 article twenty-two-a, chapter twenty-nine of this code to
119 the contrary, beginning on the first day of July, one
120 thousand nine hundred ninety-seven, those funds
121 deposited into the separate account previously dedicated
122 solely to the West Virginia thoroughbred breeders classics
123 shall thereafter be allocated as follows:

124 (A) For each fiscal year, the first eight hundred
125 thousand dollars deposited in the separate account,
126 together with any balance remaining in the separate
127 account on the thirtieth day of June one thousand nine
128 hundred ninety-seven, shall be used by the commission

129 for promotional activities, advertising, administrative costs
130 and purses for the West Virginia thoroughbred breeders
131 classics, which shall give equal consideration to all horses
132 qualifying under the West Virginia breeders program for
133 each stake race, based solely on the horses' sex, age and
134 earnings.

135 (B) For each fiscal year, the next two hundred
136 thousand dollars deposited into the separate account shall
137 be used by the commission for promotional activities and
138 purses for open stake races for a race event to be known as
139 the West Virginia derby to be held at a thoroughbred
140 racetrack which does not participate in the West Virginia
141 thoroughbred development fund.

142 (C) For each fiscal year, once the amounts provided
143 in paragraphs A and B of this subdivision have been
144 deposited into the separate account for use in connection
145 with the West Virginia thoroughbred breeders classics and
146 the West Virginia derby, the commission shall return to
147 each racetrack all additional amounts deposited which
148 originate during that fiscal year from each respective
149 racetrack pursuant to subdivision six of subsection c,
150 section ten, article twenty-two-a, chapter twenty-nine of
151 this code, which returned excess funds shall be used as
152 follows:

153 (i) For each dog racetrack, one-half of the returned
154 excess funds shall be used for capital improvements at the
155 racetrack and one-half of the returned excess funds shall
156 be deposited into the "West Virginia Racing Commission
157 Special Account - West Virginia Greyhound Breeding
158 Development Fund".

159 (ii) At those thoroughbred racetracks that have
160 participated in the West Virginia thoroughbred
161 development fund for a period of more than four
162 consecutive calendar years prior to the thirty-first day of
163 December, one thousand nine hundred ninety-two, one-
164 half of the returned excess funds shall be used for capital
165 improvements at the licensee's racetrack and one-half of
166 the returned excess funds shall be equally divided between
167 the West Virginia thoroughbred breeders classics and the
168 West Virginia thoroughbred development fund.

169 (iii) At those thoroughbred horse racetracks which
170 do not participate in the West Virginia thoroughbred
171 development fund, one-half of the returned excess funds
172 shall be used for capital improvements at the licensee's
173 racetrack and one-half of the returned excess funds shall
174 be used for purses for the open stakes race event known as
175 the West Virginia derby as provided in paragraph (B) of
176 this subdivision.

177 (iv) All expenditures which are funded under this
178 subdivision six must be approved in writing by the West
179 Virginia racing commission before the funds are
180 expended for any of the purposes authorized by this
181 subdivision.

182 The commission shall submit to the legislative
183 auditor a quarterly report and accounting of the income,
184 expenditures and unobligated balance in the special
185 account created by this section known as the "West
186 Virginia Racing Commission Special Account —
187 Unredeemed Pari-Mutuel Tickets".

188 (c) Nothing contained in this article shall prohibit
189 one person from qualifying for all or more than one of
190 the aforesaid awards or for awards under section thirteen-b
191 of this article.

192 (d) The cost of publication of the notice provided
193 for in this section shall be paid from the funds in the
194 hands of the state treasurer collected from the pari-mutuel
195 pools' tax provided for in section ten of this article, when
196 not otherwise provided in the budget; but no such costs
197 shall be paid unless an itemized account thereof, under
198 oath, be first filed with the state auditor.

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

Paul Schumaker
Chairman Senate Committee

Nick Santasia
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll Adams
Clerk of the Senate

Gregory M. Bay
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

R. R. Ruffin
Speaker of the House of Delegates

The within *is approved* this the *7th*
day of *May*, 1997.

Jeff Abernethy
Governor

PRESENTED TO THE

GOVERNOR

Date

4/29/97

Time

2:58 pm