

COMMITTEE SUBSTITUTE

FOR

H. B. 3098

(BY DELEGATES BUTCHER, STOWERS, BARKER,
KOMINAR, VARNER AND FRAGALE)

(Originating in the Committee on Finance)
[February 25, 2011]

A BILL to amend and reenact §19-23-10 of the Code of West Virginia, 1931, as amended, relating to the distribution of funds from certain racing funds; providing purposes for the distributions, including funding for greyhound adoption and spay and neutering programs for West Virginia whelped greyhounds; increasing percentages to be given as bonus awards; and modifying the provisions for restricted races.

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.

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

17 (b) Any racing association licensed by the Racing
18 Commission to conduct thoroughbred racing and permitting
19 and conducting pari-mutuel wagering under the provisions of
20 this article shall, in addition to the daily license tax set forth
21 in subsection (a) of this section, pay to the Racing
22 Commission, from the commission deducted each day by the
23 licensee from the pari-mutuel pools on thoroughbred racing
24 a tax calculated on the total daily contribution of all pari-
25 mutuel pools conducted or made at any and every
26 thoroughbred race meeting of the licensee licensed under the
27 provisions of this article. The tax, on the pari-mutuel pools
28 conducted or made each day during the months of January,
29 February, March, October, November and December, shall
30 be calculated at four-tenths of one percent of the pool; and,
31 on the pari-mutuel pools conducted or made each day during
32 all other months, shall be calculated at one and four-tenths
33 percent of the pool: *Provided*, That out of the amount
34 realized from the three tenths of one percent decrease in the
35 tax effective for fiscal year 1991 and thereafter, which
36 decrease correspondingly increases the amount of

37 commission retained by the licensee, the licensee shall
38 annually expend or dedicate: (i) One half of the realized
39 amount for capital improvements in its barn area at the track,
40 subject to the Racing Commission's prior approval of the
41 plans for the improvements; and (ii) the remaining one half
42 of the realized amount for capital improvements as the
43 licensee may determine appropriate at the track. The term
44 "capital improvement" shall be as defined by the Internal
45 Revenue Code: *Provided, however,* That any racing
46 association operating a horse racetrack in this state having an
47 average daily pari-mutuel pool on horse racing of \$280,000
48 or less per day for the race meetings of the preceding
49 calendar year shall, in lieu of payment of the pari-mutuel
50 pool tax, calculated as in this subsection, be permitted to
51 conduct pari-mutuel wagering at the horse racetrack on the
52 basis of a daily pari-mutuel pool tax fixed as follows: On the
53 daily pari-mutuel pool not exceeding \$300,000 the daily pari-
54 mutuel pool tax shall be \$1,000 plus the otherwise applicable
55 percentage rate imposed by this subsection of the daily pari-
56 mutuel pool, if any, in excess of \$300,000: *Provided further,*

57 That upon the effective date of the reduction of the daily pari-
58 mutuel pool tax to \$1,000 from the former \$2,000, the
59 association or licensee shall daily deposit \$500 into the
60 special fund for regular purses established by subdivision (1),
61 subsection (b), section nine of this article: *And provided*
62 *further*, That if an association or licensee qualifying for the
63 foregoing alternate tax conducts more than one racing
64 performance, each consisting of up to thirteen races in a
65 calendar day, the association or licensee shall pay both the
66 daily license tax imposed in subsection (a) of this section and
67 the alternate tax in this subsection for each performance: *And*
68 *provided further*, That a licensee qualifying for the foregoing
69 alternate tax is excluded from participation in the fund
70 established by section thirteen-b of this article: *And provided*
71 *further*, That this exclusion shall not apply to any
72 thoroughbred racetrack at which the licensee has participated
73 in the West Virginia Thoroughbred Development Fund for
74 more than four consecutive years prior to December 31, 1992.

75 (c) Any racing association licensed by the Racing
76 Commission to conduct harness racing and permitting and

77 conducting pari-mutuel wagering under the provisions of this
78 article shall, in addition to the daily license tax required
79 under subsection (a) of this section, pay to the Racing
80 Commission, from the commission deducted each day by the
81 licensee from the pari-mutuel pools on harness racing, as a
82 tax, three percent of the first \$100,000 wagered, or any part
83 thereof; four percent of the next \$150,000; and five and
84 three-fourths percent of all over that amount wagered each
85 day in all pari-mutuel pools conducted or made at any and
86 every harness race meeting of the licensee licensed under the
87 provisions of this article.

88 (d) Any racing association licensed by the Racing
89 Commission to conduct dog racing and permitting and
90 conducting pari-mutuel wagering under the provisions of this
91 article shall, in addition to the daily license tax required
92 under subsection (a) of this section, pay to the Racing
93 Commission, from the commission deducted each day by the
94 licensee from the pari-mutuel pools on dog racing, as a tax,
95 four percent of the first \$50,000 or any part thereof of the

96 pari-mutuel pools, five percent of the next \$50,000 of the
97 pari-mutuel pools, six percent of the next \$100,000 of the
98 pari-mutuel pools, seven percent of the next \$150,000 of the
99 pari-mutuel pools, and eight percent of all over \$350,000
100 wagered each day: *Provided*, That the licensee shall deduct
101 daily from the pari-mutuel tax an amount equal to one tenth
102 of one percent of the daily pari-mutuel pools in dog racing in
103 fiscal year 1990; fifteen hundredths of one percent in fiscal
104 year 1991; two tenths of one percent in fiscal year 1992; one
105 quarter of one percent in fiscal year 1993; and three tenths of
106 one percent in fiscal year 1994 and every fiscal year
107 thereafter. The amounts deducted shall be paid to the Racing
108 Commission to be deposited by the Racing Commission in a
109 banking institution of its choice in a special account to be
110 known as "West Virginia Racing Commission-Special
111 Account-West Virginia Greyhound Breeding Development
112 Fund." The purpose of the fund is to promote better
113 breeding, training track facilities and racing of greyhounds in
114 the state through awards and purses to bona fide resident

115 registered greyhound owners of accredited West Virginia
116 whelped greyhounds. In order to participate and be eligible
117 to receive an award or purse through the fund, the registered
118 greyhound owner must have an appropriate license from the
119 Racing Commission to race in West Virginia. The registered
120 greyhound dam at the time of breeding must be wholly or
121 solely owned or leased by a bona fide resident or residents of
122 West Virginia. The accredited West Virginia whelped
123 greyhound must be wholly or solely owned by a bona fide
124 resident or residents of this state. To qualify as a bona fide
125 resident of West Virginia, a registered greyhound owner may
126 not claim residency in any other state. A registered
127 greyhound owner must prove bona fide residency by
128 providing to the commission personal income tax returns
129 filed in the State of West Virginia for the most recent tax year
130 and the three previous tax years, has real or personal property
131 in this state on which the owner has paid real or personal
132 property taxes during the most recent tax year and the
133 previous three tax years and an affidavit stating that the

134 owner claims no other state of residency. The Racing
135 Commission shall maintain a registry for West Virginia bred
136 greyhounds. ~~The moneys shall be expended by the Racing~~
137 ~~Commission for purses for stake races, training track~~
138 ~~facilities, supplemental purse awards, administration,~~
139 ~~promotion, education and greyhound adoption programs~~
140 ~~involving West Virginia whelped dogs, owned by residents~~
141 ~~of this state under rules promulgated by the Racing~~
142 ~~Commission.~~ Ninety percent of the deposits into the
143 greyhound breeding development fund each year shall be
144 expended by the Racing Commission for supplemental purse
145 awards, stake races, and training track facilities. Seven
146 percent of the deposits into the Greyhound Breeding
147 Development Fund each year is authorized to be expended by
148 the Racing Commission for administration, promotion,
149 education, and three percent of the deposits into the
150 Greyhound Breeding Development Fund each year is
151 authorized to be expended by the Racing Commission for
152 greyhound adoption programs to include spaying and

153 neutering of West Virginia whelped greyhounds: *Provided,*
154 That no provision of this section may be construed to prohibit
155 the Racing Commission, in its discretion, from expending
156 funds from the seven percent of the deposits into the
157 Greyhound Breeding Development Fund each year for
158 greyhound adoption programs to include spaying and
159 neutering of West Virginia whelped greyhounds. All
160 expenditures shall be for the West Virginia greyhound
161 breeding development program involving West Virginia
162 whelped greyhounds owned by residents of this state under
163 rules promulgated by the Racing Commission. The Racing
164 Commission shall pay out of the Greyhound Breeding
165 Development Fund to each of the licensed dog racing tracks
166 the sum of \$75,000 for the fiscal year ending June 30, 1994.
167 The licensee shall deposit the sum into the special fund for
168 regular purses established under the provisions of section
169 nine of this article. The funds shall be expended solely for
170 the purpose of supplementing regular purses under rules
171 promulgated by the Racing Commission.

172 Supplemental purse awards will be distributed as follows:
173 Supplemental purses shall be paid directly to the registered
174 greyhound owner of an accredited greyhound.

175 The registered greyhound owner of accredited West
176 Virginia whelped greyhounds that earn points at any West
177 Virginia meet will receive a bonus award calculated at the
178 end of each month as a percentage of the fund dedicated to
179 the owners as purse supplements, which shall be a minimum
180 of ~~fifty~~ seventy-five percent of the total moneys deposited
181 into the West Virginia Greyhound Breeding Development
182 Fund monthly.

183 The total amount of the fund available for the owners'
184 awards shall be distributed according to the ratio of points
185 earned by an accredited greyhound to the total amount earned
186 in races by all accredited West Virginia whelped greyhounds
187 for that month as a percentage of the funds dedicated to the
188 owners' purse supplements. The point value at all greyhound
189 tracks shall be the same as approved by the Racing
190 Commission to be effective April 1, 2007. ~~The West~~

191 ~~Virginia Greyhound Owners and Breeders Association shall~~
192 ~~submit a list of any additions or deletions to the registry of~~
193 ~~accredited West Virginia whelped greyhounds on the first of~~
194 ~~each month. The Racing Commission shall not require~~
195 ~~anyone to be a member of a particular association in order to~~
196 ~~participate in the West Virginia Greyhound Breeding~~
197 ~~Development Fund.~~

198 The registered greyhound owner of an accredited West
199 Virginia whelped greyhound shall file a purse distribution
200 form with the Racing Commission for a percentage of his or
201 her dog's earnings to be paid directly to the registered
202 greyhound owner or owners of the greyhound. Distribution
203 shall be made on the fifteenth day of each month for the
204 preceding month's achievements.

205 In no event shall points earned at a meet held at a track
206 which did not make contributions to the West Virginia
207 Greyhound Breeding Development Fund out of the daily pool
208 on the day the meet was held qualify or count toward
209 eligibility for supplemental purse awards.

210 ~~Any balance in the purse supplement funds after all~~
211 ~~distributions have been made for the year revert to the~~
212 ~~general account of the fund for distribution in the following~~
213 ~~year~~ Beginning with any balances generated by activity in
214 fiscal year 2011, any balance remaining at the end of a fiscal
215 year in the ninety percent of deposits into the Greyhound
216 Breeding Development Fund expended for supplemental
217 purse awards, stake races, and training track facilities, or in
218 the seven percent of the deposits into the Greyhound
219 Breeding Development Fund each year expended for
220 administration, promotion, education, or in the three percent
221 of the deposits into the Greyhound Breeding Development
222 Fund each year expended for greyhound adoption programs
223 to include spaying and neutering of West Virginia whelped
224 greyhounds, shall be promptly disbursed as supplemental
225 purse awards to owners and breeders of West Virginia
226 whelped greyhounds on a pro rata basis to those owners and
227 breeders having earned supplemental purse awards in said
228 fiscal year: *Provided*, That not more than \$2 million from the

229 balance in the purse supplemental fund shall be used for the
230 construction and maintenance of two dog training track
231 facilities if such be approved by the Racing Commission:
232 *Provided, however,* That not more than \$1 million may be
233 allocated for the construction and maintenance of each
234 training track: *Provided further,* That both training track
235 facilities must be located in West Virginia. The West
236 Virginia Racing Commission shall be authorized to
237 promulgate rules governing dog training tracks: *And*
238 *provided further,* That the Racing Commission shall: (1)
239 Provide a process in its rules for competitive bidding of the
240 construction or maintenance, or both, of the training tracks;
241 and (2) set standards to assure that only the actual costs of
242 construction and maintenance shall be paid out of the
243 foregoing fund.

244 ~~In an effort to further promote the breeding of quality~~
245 ~~West Virginia whelped greyhounds, a bonus purse~~
246 ~~supplement shall be established in the amount of \$50,000 per~~
247 ~~annum, to be paid in equal quarterly installments of \$12,500~~

248 per quarter using the same method to calculate and distribute
249 these funds as the regular supplemental purse awards. This
250 bonus purse supplement is for three years only, commencing
251 on July 1, 1993, and ending June 30, 1996. This money
252 would come from the current existing balance in the
253 greyhound development fund.

254 Each pari-mutuel greyhound track shall provide stakes
255 races for accredited West Virginia whelped greyhounds in the
256 name of the West Virginia Greyhound Owners and Breeders
257 Association, and all West Virginia whelped greyhounds to be
258 entered in the West Virginia stakes races shall be registered
259 with the West Virginia Greyhound Owners and Breeders
260 Association, who shall submit a list of those greyhounds to
261 each pari-mutuel track before the start of qualifying rounds:
262 *Provided*, That each pari-mutuel track shall have one juvenile
263 and one open stake race annually. ~~Each pari-mutuel dog~~
264 ~~track shall provide at least three restricted races for~~
265 ~~accredited West Virginia whelped greyhounds per race card:~~
266 ~~*Provided, however*, That sufficient dogs are available. Each~~

267 pari-mutual greyhound racetrack shall keep a record of the
268 pool of graded West Virginia whelped greyhounds and shall
269 provide restricted races for West Virginia whelped
270 greyhounds; the number of restricted races per race card shall
271 be at a ratio of one restricted race per card for every sixty
272 active West Virginia whelped greyhounds racing at the track.
273 The West Virginia Racing Commission shall promulgate
274 rules and regulations to allow accredited individual West
275 Virginia greyhound owners to enter into contracts with the
276 greyhound racetracks to race their own West Virginia
277 whelped greyhounds at the racetracks. To assure breeders of
278 accredited West Virginia whelped greyhounds an opportunity
279 to participate in the West Virginia Greyhound Breeding
280 Development Fund the West Virginia Racing Commission by
281 July 1, each year shall establish and announce the minimum
282 number of accredited West Virginia whelped greyhounds that
283 greyhound racing kennels at West Virginia dog tracks must
284 have on their racing active list during the calendar year
285 following such action. The minimum number may vary from

286 dog track to dog track. The minimum number shall be
287 established after consultation with the West Virginia
288 Greyhound Owners and Breeders Association and kennel
289 owners and operators. ~~Factors to be considered in~~
290 ~~establishing this minimum number shall be the number of~~
291 ~~individually registered accredited West Virginia whelped~~
292 ~~greyhounds whelped in the previous two years. The number~~
293 ~~of all greyhounds seeking qualification at each West Virginia~~
294 ~~dog track, the ratio of active running greyhounds to housed~~
295 ~~number of greyhounds at each West Virginia dog track, and~~
296 ~~the size and number of racing kennels at each West Virginia~~
297 ~~dog track.~~ Any greyhound racing kennel not having the
298 minimum number of accredited West Virginia whelped
299 greyhounds determined by the West Virginia Racing
300 Commission on their active list shall only be permitted to
301 race the maximum allowable number on the active list less
302 the number of accredited West Virginia whelped greyhounds
303 below the established minimum number. Consistent
304 violations of this minimum requirement may be reviewed by

305 the Racing Commission and may constitute cause for denial
306 or revocation of a kennel's racing license. The Racing
307 Commission shall oversee and approve racing schedules and
308 purse amounts.

309 Ten percent of the deposits into the Greyhound Breeding
310 Development Fund beginning July 1, 1993 and continuing
311 each year thereafter, shall be withheld by the Racing
312 Commission and placed in a special revenue account hereby
313 created in the State Treasury called the "administration,
314 promotion, education, capital improvement and greyhound
315 adoption programs to include spaying and neutering
316 account." The Racing Commission is authorized to expend
317 the moneys deposited in the administration, promotion,
318 education, capital improvement and greyhound adoption
319 programs to include spaying and neutering account at such
320 times and in such amounts as the commission determines to
321 be necessary for purposes of administering and promoting
322 the greyhound development program: *Provided, That*
323 beginning with fiscal year 1995 and in each fiscal year

324 thereafter in which the commission anticipates spending any
325 money from the account, the commission shall submit to the
326 executive department during the budget preparation period
327 prior to the Legislature convening before that fiscal year for
328 inclusion in the executive budget document and budget bill,
329 the recommended expenditures, as well as requests of
330 appropriations for the purpose of administration, promotion,
331 education, capital improvement and greyhound adoption
332 programs to include spaying and neutering. The
333 commission shall make an annual report to the Legislature
334 on the status of the administration, promotion, education,
335 capital improvement and greyhound adoption programs to
336 include spaying and neutering account, including the
337 previous year's expenditures and projected expenditures for
338 the next year.

339 ~~The Racing Commission, for the fiscal year 1994 only,~~
340 ~~may expend up to \$35,000 from the West Virginia~~
341 ~~Greyhound Breeding Development Fund to accomplish the~~
342 ~~purposes of this section without strictly following the~~
343 ~~requirements in the previous paragraph.~~

344 (e) All daily license and pari-mutuel pools tax payments
345 required under the provisions of this section shall be made
346 to the Racing Commission or its agent after the last race of
347 each day of each horse or dog race meeting, and the pari-
348 mutuel pools tax payments shall be made from all
349 contributions to all pari-mutuel pools to each and every race
350 of the day.

351 (f) Every association or licensee subject to the
352 provisions of this article, including the changed provisions
353 of sections nine and ten of this article, shall annually submit
354 to the Racing Commission and the Legislature financial
355 statements, including a balance sheet, income statement,
356 statement of change in financial position and an audit of any
357 electronic data system used for pari-mutuel tickets and
358 betting, prepared in accordance with generally accepted
359 auditing standards, as certified by an experienced public
360 accountant or a certified public accountant.