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H. B. 2575

(By Delegates McGeehan and Zatezalo)
[Introduced February 3, 2015; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §19-23-12b and §19-23-13b of the Code of West Virginia, 1931, as amended, all relating to approvals of televised racing days and simulcast contracts by Horsemen’s Benevolent and Protective Association; reducing racing days; providing additional reason for reduction in live racing dates; relating to notification of mutual clerks and Horsemen’s Benevolent and Protective Association of request to reduce racing dates; revising commission procedures for determining reduction in live racing dates at special meeting; and eliminating certain restrictions on moneys placed in purse fund.

Be it enacted by the Legislature of West Virginia:

That §19-23-12b and §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted , all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

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

(a) For the purposes of this section:

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

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

10 (b) A licensee conducting not less than two hundred twenty live racing dates for each horse
11 or dog race meeting may, with the prior approval of the state Racing Commission, contract with any
12 legal wagering entity in this state or in any other governmental jurisdiction to receive telecasts and
13 accept wagers on races conducted by the legal wagering entity: *Provided*, That at those thoroughbred
14 racetracks the licensee, in applying for racing dates, shall apply for not less than two hundred ten live
15 racing dates for each horse race meeting: *Provided, however*, That at those thoroughbred racetracks
16 that have participated in the West Virginia Thoroughbred Development Fund for a period of more
17 than four consecutive calendar years prior to December 31, 1992, the licensee may apply for not less
18 than one hundred fifty-nine live racing dates during the calendar year 1997: *Provided further*, That
19 at those thoroughbred racetracks that have not participated in the West Virginia Thoroughbred
20 Development Fund for a period of more than four consecutive calendar years prior to December 31,
21 1992, the licensee may apply for not less than one hundred eight-five live racing dates during the
22 calendar year. If, thereafter, for reasons beyond the licensee's control, related to adverse weather

1 conditions, unforeseen casualty occurrences, ~~or a shortage of thoroughbred horses eligible to~~
2 ~~compete for purses; or a shortage of purse funds,~~ the licensee concludes that this number of racing
3 days cannot be attained, the licensee may file a request with the Racing Commission to reduce the
4 authorized live racing days. Upon receipt of the request the Racing Commission shall within
5 seventy-two hours of the receipt of the request notify the licensee and the ~~representative of a majority~~
6 ~~of the owners and trainers~~ Horsemen's Benevolent and Protective Association at the requesting track
7 ~~and the representative of the majority of the mutuel clerks at the requesting track~~ that such request
8 has been received and that if no objection to the request is received within ten days of the notification
9 the request will be approved: And provided further, That the commission shall give consideration
10 to whether there existed available unscheduled potential live racing dates following the adverse
11 weather or casualty and prior to the end of the race meeting which could be used as new live racing
12 dates in order to maintain the full live racing schedule previously approved by the Racing
13 Commission. If an objection is received by the commission within the time limits, the commission
14 shall, within thirty days of receipt of such objection, ~~set a hearing~~ schedule a special meeting to make
15 a determination on the question of reducing racing days, which ~~hearing~~ special meeting shall be
16 conducted at a convenient place in the county in which the requesting racetrack is located. The
17 commission shall hear from all parties concerned and, based upon testimony and documentary
18 evidence presented at the ~~hearing meeting,~~ shall determine the required number of live racing days:
19 And provided further, That the commission shall not reduce the number of live racing days below
20 one hundred eighty-five days for a horse race meeting unless the licensee requesting such reduction
21 has: ~~(i) Filed with the commission a current financial statement, which shall be subject to~~
22 ~~independent audit; and (ii) met the burden of proving that just cause exists for such requested~~

1 reduction in live racing days. The telecasts may be received and wagers accepted at any location
2 authorized by the provisions of section twelve-a of this article. The contract must receive the
3 approval of the ~~representative of the majority of the owners and trainers who hold permits required~~
4 ~~by section two of this article~~ Horsemen's Benevolent and Protective Association at the receiving
5 thoroughbred racetrack.

6 (c) The commission may allow the licensee to commingle its wagering pools with the
7 wagering pools of the host racing association. If the pools are commingled, the wagering at the
8 licensee's racetrack must be on tabulating equipment capable of issuing pari-mutuel tickets and be
9 electronically linked with the equipment at the sending racetrack. Subject to the approval of the
10 commission, the types of betting, licensee commissions and distribution of winnings on pari-mutuel
11 pools of the sending licensee racetrack are those in effect at the licensee racetrack. Breakage for
12 pari-mutuel pools on a televised racing day must be calculated in accordance with the law or rules
13 governing the sending racetrack and must be distributed in a manner agreed to between the licensee
14 and the sending racetrack. For the televised racing services it provides, the host racing association
15 shall receive a fee to be paid by the receiving licensee racetrack which shall be in an amount to be
16 agreed upon by the receiving licensee racetrack and the host racing association.

17 (d) The commission may assign televised racing days at any time. When a televised racing
18 day is assigned, the commission shall assign either a steward or an Auditor to preside over the
19 televised races at the licensee racetrack.

20 (e)(1) From the licensee commissions authorized by subsection (c) of this section, the
21 licensee shall pay one tenth of one percent of each commission into the general fund of the county,
22 in which the racetrack is located and at which the wagering occurred and there is imposed and the

1 licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds ~~one~~
 2 ~~hundred thousand dollars~~ \$100,000, the greater of either: (i) The total of the daily license tax and the
 3 pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of ~~one thousand~~
 4 ~~two hundred fifty dollars~~ \$1,250. For each televised racing day on which the total pari-mutuel pool
 5 is ~~one hundred thousand dollars~~ \$100,000 or less, the licensee shall pay a daily license tax of ~~five~~
 6 ~~hundred dollars~~ \$500 plus an additional license tax of ~~one hundred dollars~~ \$100 for each ~~ten~~
 7 ~~thousand dollars~~ \$10,000, or part thereof, that the pari-mutuel pool exceeds ~~fifty thousand dollars,~~
 8 \$50,000 but does not exceed ~~one hundred thousand dollars~~ \$100,000. The calculation of the total
 9 pari-mutuel pool for purposes of this subsection shall include only one half of all wagers placed at
 10 a licensed racetrack in this state on televised races conducted at another licensed racetrack within
 11 this state. Payments of the tax imposed by this section are subject to the requirements of subsection
 12 (e), section ten of this article.

13 (2) From the licensee commissions authorized by subsection (c) of this section, after
 14 payments are made in accordance with the provisions of subdivision (1) of this subsection, the
 15 licensee shall pay, for each televised racing day, one fourth of one percent of the total pari-mutuel
 16 pools for and on behalf of all employees of the licensed racing association by making a deposit into
 17 a special fund to be established by the Racing Commission and to be used for payments into the
 18 pension plan for all employees of the licensed racing association.

19 (3) From the licensee commissions authorized by subsection (c) of this section, after
 20 payments are made in accordance with the provisions of subdivisions (1) and (2) of this subsection,
 21 thoroughbred licensees shall pay, one-half percent of net simulcast income and for each televised
 22 racing day on or after ~~the first day of July, one thousand nine hundred ninety-seven~~ July 1, 1997, an

1 additional five and one-half percent of net simulcast income into the West Virginia Thoroughbred
2 Development Fund established by the racing commission according to section thirteen-b of this
3 article: *Provided*, That no licensee qualifying for the alternate tax provisions of subsection (b),
4 section ten of this article shall be required to make the payments unless the licensee has participated
5 in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive
6 calendar years prior to ~~the thirty-first day of December, one thousand nine hundred ninety-two~~
7 December 31, 1992. For the purposes of this section, the term "net simulcast income" means the
8 total commission deducted each day by the licensee from the pari-mutuel pools on simulcast horse
9 or dog races, less direct simulcast expenses, including, but not limited to, the cost of simulcast
10 signals, telecommunication costs and decoder costs.

11 (f) After deducting the tax and other payments required by subsection (e) of this section, the
12 amount required to be paid under the terms of the contract with the host racing association and the
13 cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the
14 remainder into the purse fund established under the provisions of subdivision (1), subsection (b),
15 section nine of this article. After deducting the tax and other payments required by subsection (e) of
16 this section, dog racetracks shall pay an amount equal to two tenths of one percent of the daily
17 simulcast pari-mutuel pool to the "West Virginia Racing Commission Special Account-West
18 Virginia Greyhound Breeding Development Fund".

19 (g) The provisions of the "Federal Interstate Horse Racing Act of 1978", also known as
20 Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in determining
21 the intent of this section.

22 **§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races;**

1 **nonrestricted purse supplements; preference for West Virginia accredited**
2 **thoroughbreds.**

3 (a) The Racing Commission shall deposit moneys required to be withheld by an association
4 or licensee in subsection (b), section nine of this article in a banking institution of its choice in a
5 special account to be known as West Virginia Racing Commission Special Account - West Virginia
6 Thoroughbred Development Fund: Provided, That after the West Virginia Lottery Commission has
7 divided moneys between the West Virginia Thoroughbred Development Fund and the West Virginia
8 Greyhound Breeding Development Fund, pursuant to the provisions of sections ten and ten-b, article
9 twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning October
10 1, 2005, deposit the remaining moneys required to be withheld from an association or licensee
11 designated to the Thoroughbred Development Fund under the provisions of subsection (b), section
12 nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b),
13 section twelve-c of this article, paragraph (B), subdivision (3), subsection (b), section thirteen-c of
14 this article and sections ten and ten-b, article twenty-two-a, chapter twenty- nine of this code into
15 accounts for each thoroughbred racetrack licensee with a banking institution of its choice with a
16 separate account for each association or licensee. Each separate account shall be a special account
17 to be known as West Virginia Racing Commission Special Account - West Virginia Thoroughbred
18 Development Fund and shall name the licensee for which the special account has been established:
19 *Provided, however,* That the Racing Commission shall deposit all moneys paid into the
20 Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in
21 the Thoroughbred Development Fund for at least four consecutive calendar years prior to December
22 31, 1992, from July 8, 2005, until the effective date of the amendment to this section passed during

1 the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund
2 of that thoroughbred racetrack licensee: *Provided further*, That the moneys paid into the
3 Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in
4 the Thoroughbred Development Fund for at least four consecutive calendar years prior to December
5 31, 1992, shall be transferred into that licensee's purse fund until April 1, 2006. Notice of the
6 amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the
7 State Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred
8 horses in the state through awards and purses for accredited breeders/raisers, sire owners and
9 thoroughbred race horse owners: *Provided*, That five percent of the deposits required to be withheld
10 by an association or licensee in subsection (b), section nine of this article shall be placed in a special
11 revenue account hereby continued in the State Treasury called the Administration and Promotion
12 Account: *Provided, however*, That four and one-half percent of the deposits into the Thoroughbred
13 Development Fund shall be placed in the Administration and Promotion Account, except that of this
14 percentage, no more than \$305,000 shall be placed in the account in any year.

15 (b) The Racing Commission is authorized to expend the moneys deposited in the
16 administration and promotion account at times and in amounts as the commission determines to be
17 necessary for purposes of administering and promoting the thoroughbred development program:
18 *Provided*, That during any fiscal year in which the commission anticipates spending any money from
19 the account, the commission shall submit to the executive department during the budget preparation
20 period prior to the Legislature convening before that fiscal year for inclusion in the executive budget
21 document and budget bill the recommended expenditures, as well as requests of appropriations for
22 the purpose of administration and promotion of the program. The commission shall make an annual

1 report to the Legislature on the status of the administration and promotion account, including the
2 previous year's expenditures and projected expenditures for the next year.

3 (c) The fund or funds and the account or accounts established in subsection (a) of this section
4 shall operate on an annual basis.

5 (d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each
6 association or licensee as provided in subsection (a) of this section shall be expended for awards and
7 purses except as otherwise provided in this section. Annually, the first \$800,000 shall be available
8 for distribution for a minimum of fourteen accredited stakes races at a racetrack which has
9 participated in the West Virginia Thoroughbred Development Fund for a period of more than four
10 consecutive calendar years prior to December 31, 1992. The weights for all accredited stakes races
11 shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the second
12 shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia
13 Futurity only, all mares, starting with the breeding season beginning February 1, through July 31,
14 2004, and each successive breeding season thereafter, shall be bred back that year to an accredited
15 West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders
16 Association. The accredited stake races shall be chosen by the committee set forth in subsection (f)
17 of this section.

18 (e) Awards and purses shall be distributed as follows:

19 (1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating
20 West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of
21 the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for
22 distribution in any one year. The total amount available for the breeders'/raisers' awards shall be

1 distributed according to the ratio of purses earned by an accredited race horse to the total amount
2 earned in the participating races by all accredited race horses for that year as a percentage of the fund
3 dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated
4 to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West
5 Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the
6 same horse, they will each be awarded one half of the proceeds. The bonus referred to in this
7 subdivision may only be paid on the first ~~one hundred thousand~~ \$100,000 of any purse and not on
8 any amounts in excess of the ~~one hundred thousand~~ \$100,000.

9 (2) The owner of an accredited West Virginia sire of an accredited thoroughbred horse that
10 earns a purse in any race at a participating West Virginia meet shall receive a bonus award calculated
11 at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen
12 percent of the fund available for distribution in any one year. The total amount available for the sire
13 owners' awards shall be distributed according to the ratio of purses earned by the progeny of
14 accredited West Virginia stallions in the participating races for a particular stallion to the total purses
15 earned by the progeny of all accredited West Virginia stallions in the participating races. However,
16 no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five
17 percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only
18 be paid on the first \$100,000 of any purse and not on any amounts in excess of the first \$100,000.

19 (3) The owner of an accredited thoroughbred horse that earns a purse in any participating race
20 at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of
21 the year, which shall be twenty-five percent of the fund available for distribution in any one year,
22 based on the ratio of the earnings in the races of a particular race horse to the total amount earned

1 by all accredited race horses in the participating races during that year as a percentage of the fund
2 dedicated to purse supplements. However, the owners may not receive from the fund dedicated to
3 purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each
4 accredited race horse. The bonus referred to in this subdivision shall only be paid on the first
5 \$100,000 of any purse and not on any amounts in excess of the first \$100,000.

6 (4) In no event may purses earned at a meet held at a track which did not make a contribution
7 to the Thoroughbred Development Fund out of the daily pool on the day the meet was held qualify
8 or count toward eligibility for an award under this subsection.

9 (5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly
10 distributions shall first be used to fund the races established in subsection (f) of this section. Any
11 amount not so used shall revert into the general account of the Thoroughbred Development Fund for
12 each racing association or licensee for distribution in the next year.

13 Distribution shall be made on the fifteenth day of each February for the preceding year's
14 achievements.

15 (f)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per
16 racing day: *Provided*, That sufficient horses and funds are available. For purposes of the one
17 restricted race required by this subdivision, there are sufficient horses if there are at least seven single
18 betting interests received for the race: *Provided, however*, That if sufficient horses and funds are
19 available, any thoroughbred horse racetrack whose licensee participated in the Thoroughbred
20 Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall
21 provide three restricted races per racing day, at least one of which may be split at the discretion of
22 the racing secretary. For the purposes of a second restricted race there shall be at least seven single

1 betting interests and for purposes of a third restricted race there must be at least nine single betting
2 interests in one of the restricted races run that day. The restricted race required by this section must
3 be included in the first nine races written in the condition book for that racing day.

4 (2) The restricted races established in this subsection shall be administered by a
5 three-member committee at each track consisting of:

6 (A) The racing secretary at each track;

7 (B) A member appointed by the authorized representative of a majority of the owners and
8 trainers at the thoroughbred track; and

9 (C) A member appointed by the West Virginia Thoroughbred Breeders Association.

10 (3) Restricted races shall be funded by each racing association from:

11 (A) Moneys placed in the general purse fund. ~~Provided, That a thoroughbred horse racetrack~~
12 ~~which did not participate in the West Virginia Thoroughbred Development fund for a period of more~~
13 ~~than four consecutive years prior to December 31, 1992, may fund restricted races in an amount not~~
14 ~~to exceed \$1,000,000 per year.~~

15 (B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be
16 placed in a special fund called the West Virginia Accredited Race Fund.

17 (4) The racing schedules, purse amounts and types of races are subject to the approval of the
18 West Virginia Racing Commission.

19 (g) As used in this section, "West Virginia-bred foal" means a horse that was born in the State
20 of West Virginia.

21 (h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under
22 one of the following:

1 (1) The breeder of the West Virginia-bred foal is a West Virginia resident;

2 (2) The breeder of the West Virginia-bred foal is not a West Virginia resident, but keeps his
3 or her breeding stock in West Virginia year round; or

4 (3) The breeder of the West Virginia-bred foal is not a West Virginia resident and does not
5 qualify under subdivision (2) of this subsection, but either the sire of the West Virginia-bred foal is
6 a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or
7 stallions before December 31, of the calendar year following the birth of that West Virginia-bred
8 foal.

9 (i) From July 1, 2001, West Virginia accredited thoroughbred horses have preference for
10 entry in all accredited races at a thoroughbred race track at which the licensee participates in the
11 West Virginia Thoroughbred Development Fund.

12 (j) Beginning July 1, 2006, any racing association licensed by the Racing Commission to
13 conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the
14 provisions of this article must have a West Virginia Thoroughbred Racing Breeders Program.

NOTE: The purpose of this bill is to require approval of televised racing days and simulcast contracts by Horsemen's Benevolent and Protective Association; reduce racing days; provide additional reason for reduction in live racing dates; amend provisions relating to notification of mutual clerks and Horsemen's Benevolent and Protective Association of request to reduce racing dates; revise commission procedures regarding determination of reduction in live racing dates at special meeting; and eliminate certain restrictions on moneys placed in purse fund.

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