

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 682

An Act to amend and reenact §§ 59.1-369, 59.1-391, and 59.1-395 of the Code of Virginia, relating to the Virginia Racing Commission; powers; local referenda.

[S 1152]

Approved March 19, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-369, 59.1-391, and 59.1-395 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-369. Powers and duties of the Commission.

The Commission shall have all powers and duties necessary to carry out the provisions of this chapter and to exercise the control of horse racing as set forth in § 59.1-364. Such powers and duties shall include but not be limited to the following:

1. The Commission is vested with jurisdiction and supervision over all horse racing licensed under the provisions of this chapter including all persons conducting, participating in, or attending any race meeting. It shall employ such persons to be present at race meetings as are necessary to ensure that they are conducted with order and the highest degree of integrity. It may eject or exclude from the enclosure or from any part thereof any person, whether or not he possesses a license or permit, whose conduct or reputation is such that his presence may, in the opinion of the Commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

2. The Commission, its representatives, and employees shall visit, investigate, and have free access to the office, track, facilities, satellite facilities or other places of business of any license or permit holder, and may compel the production of any of the books, documents, records, or memoranda of any license or permit holder for the purpose of satisfying itself that this chapter and its regulations are strictly complied with. In addition, the Commission may require the production of an annual balance sheet and operating statement of any person licensed or granted a permit pursuant to the provisions of this chapter and may require the production of any contract to which such person is or may be a party.

3. The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter, including a requirement that licensees post, in a conspicuous place in every place where pari-mutuel wagering is conducted, a sign which bears a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers. Such regulations shall include provisions for affirmative action to assure participation by minority persons in contracts granted by the Commission and its licensees. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any horse racetrack. Such regulations may include penalties for violations. The regulations shall be subject to the Administrative Process Act (§ 2.2-4000 et seq.).

4. The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter. Such regulations shall include provisions that all simulcast horse racing shall comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days ~~through calendar year 2005~~ based on what the Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to six satellite facilities and restrict majority ownership of satellite facilities to an entity licensed by the Commission which owns a horse racetrack in the Commonwealth. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. Wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

5. *The Commission shall promulgate regulations and conditions regulating and controlling a method of pari-mutuel wagering conducted in the Commonwealth that is permissible under the Interstate Horseracing Act, § 3001 et seq. of Chapter 57 of Title 15 of the United States Code, and in which an individual may establish an account with an entity, approved by the Commission, to place pari-mutuel wagers in person or electronically. Such regulations shall include, but not be limited to, (i) standards, qualifications, and procedures for the issuance of a license to any such entity or entities pursuant to § 59.1-375 to operate pari-mutuel wagering in the Commonwealth, (ii) provisions regarding access to books, records, and memoranda, and submission to investigations and audits, as authorized by subdivisions 2 and 10 of this section, and (iii) provisions regarding the collection of all revenues due to*

the Commonwealth from the placing of such wagers. No pari-mutuel wager may be made on or with any computer owned or leased by the Commonwealth, or any of its subdivisions, or at any public elementary or secondary school, or any public college or university. The Commission also shall ensure that, except for this method of pari-mutuel wagering, all wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

Notwithstanding the provisions of § 59.1-392, the allocation of revenue from a method of pari-mutuel wagering in which an individual may establish an account with an entity approved by the Commission to place pari-mutuel wagers in person or electronically shall include a licensee fee to the Commission, and shall be subject to a contractual agreement, approved by the Commission, between such entity and an unlimited licensee and representatives of the recognized majority horsemen groups concerning the distribution of the remaining portion of the retainage. Nothing in this subdivision shall be construed to limit the Commission's authority as set forth elsewhere in this section.

6. The Commission may issue subpoenas for the attendance of witnesses before it, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever, in the judgment of the Commission, it is necessary to do so for the effectual discharge of its duties.

~~6.~~ 7. The Commission may compel any person holding a license or permit to file with the Commission such data as shall appear to the Commission to be necessary for the performance of its duties including but not limited to financial statements and information relative to stockholders and all others with any pecuniary interest in such person. It may prescribe the manner in which books and records of such persons shall be kept.

~~7.~~ 8. The Commission may enter into arrangements with any foreign or domestic government or governmental agency, for the purposes of exchanging information or performing any other act to better ensure the proper conduct of horse racing.

~~8.~~ 9. The Commission shall report annually to the Governor and the General Assembly, which report shall include a financial statement of the operation of the Commission.

~~9.~~ 10. The Commission may order such audits, in addition to those required by § 59.1-394, as it deems necessary and desirable.

~~10.~~ 11. The Commission shall upon the receipt of a complaint of an alleged criminal violation of this chapter immediately report the complaint to the Attorney General of the Commonwealth and the State Police for appropriate action.

~~11.~~ 12. The Commission shall provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize or pay-off for a winning wager and shall establish the thresholds for such withholdings.

~~12.~~ 13. The Commission, its representatives and employees may, within the enclosure, stable, or other facility related to the conduct of racing, and during regular or usual business hours, subject any (i) permit holder to personal inspections, including alcohol and drug testing for illegal drugs, inspections of personal property, and inspections of other property or premises under the control of such permit holder and (ii) horse eligible to race at a race meeting licensed by the Commission to testing for substances foreign to the natural horse within the racetrack enclosure or other place where such horse is kept. Any item, document or record indicative of a violation of any provision of this chapter or Commission regulations may be seized as evidence of such violation. All permit holders consent to the searches and seizures authorized by this subdivision, including breath, blood and urine sampling for alcohol and illegal drugs, by accepting the permit issued by the Commission. The Commission may revoke or suspend the permit of any person who fails or refuses to comply with this subdivision or any rules of the Commission. Commission regulations in effect on July 1, 1998, shall continue in full force and effect until modified by the Commission in accordance with law.

~~13.~~ 14. The Commission shall require the existence of a contract between the licensee and the recognized majority horseman's group providing for purses and prizes. Such contract shall be subject to the approval of the Commission, which shall have the power to approve or disapprove any of its items, including but not limited to the provisions regarding purses and prizes. Such contracts shall provide that on pools generated by wagering on simulcast horse racing from outside the Commonwealth, (i) for the first \$75 million of the total pari-mutuel handle for each breed, the licensee shall deposit funds at the minimum rate of five percent in the horsemen's purse account, (ii) for any amount in excess of \$75 million but less than \$150 million of the total pari-mutuel handle for each breed, the licensee shall deposit funds at the minimum rate of six percent in the horsemen's purse account, (iii) for amounts in excess of \$150 million for each breed, the licensee shall deposit funds at the minimum rate of seven percent in the horsemen's purse account. Such deposits shall be made in the horsemen's purse accounts of the breed that generated the pools and such deposits shall be made within five days from the date on which the licensee receives wagers.

15. *Notwithstanding the provisions of § 59.1-391, the Commission may grant provisional limited licenses or provisional unlimited licenses to own or operate racetracks or satellite facilities to an applicant prior to the applicant securing the approval through the local referendum required by § 59.1-391. The provisional licenses issued by the Commission shall only become effective upon the approval of the racetrack or satellite wagering facilities in a referendum conducted pursuant to*

§ 59.1-391 in the jurisdiction in which the racetrack or satellite wagering facility is to be located.

§ 59.1-391. Local referendum required.

The Commission shall not grant any initial license to construct, establish, operate or own a racetrack or satellite facility until a referendum approving the question is held in each county ~~or~~, city, or town in which such track or satellite facility is to be located, in the following manner:

1. A petition, signed by five percent of the qualified voters of such county ~~or~~, city, or town shall be filed with the circuit court of such county ~~or~~, city, or town asking that a referendum be held on the question, "Shall pari-mutuel wagering be permitted at a licensed racetrack in (name of such county ~~or~~, city, or town) on live horse racing at, and on simulcast horse racing transmitted from another jurisdiction to, the licensed racetrack on such days as may be approved by the Virginia Racing Commission in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?" In addition, or in the alternative, such petition may ask that a referendum be held on the question, "Shall pari-mutuel wagering be permitted in (the name of such county ~~or~~, city, or town) at satellite facilities in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?"

2. Following the filing of such petition, the court shall, by order of record entered in accordance with § 24.2-684.1, require the regular election officers of such city ~~or~~, county, or town to cause a special election to be held to take the sense of the qualified voters on the question. Such election shall be on a day designated by order of such court, but shall not be later than the next general election unless such general election is within ~~sixty~~ 60 days of the date of the entry of such order, nor shall it be held on a date designated as a primary election.

3. The clerk of such court of record of such city ~~or~~, county, or town shall publish notice of such election in a newspaper of general circulation in such city ~~or~~, county, or town once a week for three consecutive weeks prior to such election.

4. The regular election officers of such city or county shall open the polls at the various voting places in such city or county on the date specified in such order and conduct such election in the manner provided by law. The election shall be by ballot which shall be prepared by the electoral board of the city ~~or~~, county, or town and on which shall be printed either or both of the following questions:

"Shall pari-mutuel wagering be permitted at a licensed racetrack in on live horse racing at, and on simulcast horse racing transmitted from another jurisdiction to, the licensed racetrack on such days as may be approved by the Virginia Racing Commission in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?

[] Yes

[] No "

"Shall pari-mutuel wagering be permitted in at satellite facilities in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?

[] Yes

[] No "

In the blank shall be inserted the name of the city ~~or~~, county, or town in which such election is held. Any voter desiring to vote "Yes" shall mark a check () mark or a cross (x or +) mark or a line (-) in the square provided for such purpose immediately preceding the word "Yes," leaving the square immediately preceding the word "No" unmarked. Any voter desiring to vote "No" shall mark a check () mark or a cross (x or +) mark or a line (-) in the square provided for such purpose immediately preceding the word "No," leaving the square immediately preceding the word "Yes" unmarked.

The ballots shall be counted, returns made and canvassed as in other elections, and the results certified by the electoral board to the court ordering such election. Thereupon, such court shall enter an order proclaiming the results of such election and a duly certified copy of such order shall be transmitted to the Commission and to the governing body of such city ~~or~~, county, or town.

No such referendum as described above shall be held more often than every three years in the same county ~~or~~, city, or town.

A subsequent local referendum shall be required if a license has not been granted by the Commission within five years of the court order proclaiming the results of the election. *Town, for purposes of this section, means any town with a population of 5,000 or more.*

§ 59.1-395. Unlawful conduct of wagering.

Any person not licensed ~~hereunder~~ under subdivision 5 of § 59.1-369 or under Article 2 (§ 59.1-375 et seq.) of this chapter who conducts pari-mutuel wagering, or horse racing on which wagering is conducted with his knowledge or consent, shall be guilty of a Class 4 felony.