

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 757

An Act to amend and reenact §§ 59.1-365 and 59.1-369 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-376.1, relating to the Virginia Racing Commission; advance deposit account wagering; temporary licenses.

[H 2626]

Approved March 23, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-365 and 59.1-369 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 59.1-376.1 as follows:

§ 59.1-365. Definitions.

Unless another meaning is required by the context, the following words shall have the meanings prescribed by this section:

"Advance deposit account wagering" means 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, licensed by the Commission, to place pari-mutuel wagers in person or electronically.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of \$0.10.

"Commission" means the Virginia Racing Commission.

"Dependent" means a son, daughter, father, mother, brother, sister, or other person, whether or not related by blood or marriage, if such person receives from an officer or employee more than one-half of his financial support.

"Drug" shall have the meaning prescribed by § 54.1-3401. The Commission shall by regulation define and designate those drugs the use of which is prohibited or restricted.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the Commission.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Horse racing" means a competition on a set course involving a race between horses on which pari-mutuel wagering is permitted.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as an officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Licensee" includes any person holding an owner's, operator's or limited license under §§ 59.1-375 through 59.1-386 of this chapter. The licensee under a limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility.

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Pari-mutuel wagering" means the system of wagering on horse races in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, plus any amounts provided by an unlimited licensee, less deductions required or permitted by law and includes pari-mutuel wagering on simulcast horse racing originating within the Commonwealth or from any other jurisdiction.

"Participant" means any person who (i) has an ownership interest in any horse entered to race in the Commonwealth or who acts as the trainer, jockey, or driver of any horse entered to race in the Commonwealth or (ii) takes part in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering there, including but not limited to a horse owner, trainer, jockey/driver, groom, stable foreman, valet, veterinarian, agent, pari-mutuel employee, concessionaire or employee thereof, track employee, or other position the Commission deems necessary to regulate to ensure the integrity of horse racing in Virginia.

"Permit holder" includes any person holding a permit to participate in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering thereon as provided in § 59.1-387.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Pool" means the amount wagered during a race meeting or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and

immediate family members, beneficially owns or controls, directly or indirectly, five percent or more of the stock of any person which is a licensee, or who in concert with his spouse and immediate family members, has the power to vote or cause the vote of five percent or more of any such stock. However, "principal stockholder" shall not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, which holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Commission.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Racetrack" means an outdoor course located in Virginia which is laid out for horse racing and is licensed by the Commission.

"Retainage" means the total amount deducted from the pari-mutuel wagering pool for (i) a license fee to the Commission and localities, (ii) the unlimited license, (iii) purse money for the participants, (iv) the Virginia Breeders Fund, and (v) certain enumerated organizations as required or permitted by law, regulation or contract approved by the Commission.

"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the Commission.

"Simulcast horse racing" means the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.

"Steward" means a racing official, duly appointed by the Commission, with powers and duties prescribed by Commission regulations.

"Stock" includes all classes of stock, partnership interest, membership interest, or similar ownership interest of an applicant or licensee, and any debt or other obligation of such person or an affiliated person if the Commission finds that the holder of such interest or stock derives therefrom such control of or voice in the operation of the applicant or licensee that he should be deemed an owner of stock.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding race horses in the Commonwealth of Virginia.

§ 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 based on what the

Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to 10 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~~ *Except as authorized pursuant to subdivision 5, 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 advance deposit account wagering.~~ 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 advance deposit account wagering~~ 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. *If the license applicant has not been able to reach such an agreement with an unlimited licensee and representatives of the recognized majority horsemen's organizations after good faith negotiations, the license applicant may apply for a temporary license to operate advance deposit account wagering pursuant to § 59.1-376.1.*

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.

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.

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.

9. The Commission shall report annually on or before March 1 to the Governor and the General Assembly, which report shall include a financial statement of the operation of the Commission.

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

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.

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.

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.

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.

§ 59.1-376.1. Temporary licenses to operate advance deposit account wagering.

A. If an applicant for a license to operate advance deposit account wagering has not been able to reach an agreement with an unlimited licensee and representatives of the recognized majority horsemen's organizations concerning the distribution of the retainage after good faith negotiations, the license applicant may submit its application together with an affidavit specifying and certifying its offer to an unlimited licensee and the recognized horsemen's groups, attesting that it has entered into good faith negotiations with both, that it has offered the terms specified and certified in its affidavit, and that its offer has been rejected, stating with particularity the basis given to it for rejection of its offer and by whom it was rejected. In such event, the Commission shall (i) consider the applicant's request for a temporary license as provided in subsection B and (ii) be authorized to appoint an impartial third party to mediate the negotiations regarding the contractual agreement between the applicant and an unlimited licensee and representatives of the recognized majority horsemen's groups concerning the distribution of the remaining portion of the retainage. If during the term of the temporary license, the parties are unable to reach agreement through mediation, the Commission shall specify the percentage of the total gross handle of wagers placed with the advance deposit account wagering applicant from within the Commonwealth to be paid by the applicant to an unlimited licensee and representatives of the recognized majority horsemen's groups. In doing so, the Commission shall consider among other factors, the contractual agreements that other advance deposit account wagering licensees have with an unlimited licensee and representatives of the recognized majority horsemen's groups. The percentage specified by the Commission shall be the best offer made by either (a) the advance deposit account wagering applicant or (b) the unlimited licensee and the representatives of the recognized majority horsemen's groups. The percentage specified by the Commission shall be effective for one year from the one-year term of the applicant's temporary license.

B. Notwithstanding subdivision 5 of § 59.1-369, upon receipt of the application and affidavit described in subsection A of this section, the Commission may grant a temporary license to operate advance deposit account wagering to any applicant for a license to conduct advance deposit account wagering whose application is complete except for a contractual agreement, approved by the Commission, between such entity and an unlimited licensee and representatives of the recognized majority horsemen's groups concerning the distribution of the portion of the retainage remaining after the license fee has been paid to the Commission and that is otherwise deemed by the Commission to be fully qualified to conduct account advance deposit wagering in the Commonwealth. Such license shall expire at the end of six months and shall be subject to one renewal. If a temporary license is not granted, the applicant is entitled to a hearing on the issue of qualifications.

C. If a temporary license is granted, the temporary licensee shall pay to the Commission one-half percent of the gross total handle of wagers placed with the temporary licensee from within the Commonwealth on the tenth day of the month following the month in which the temporary licensee receives wagers from within the Commonwealth. Each month the temporary licensee shall also pay an amount equal to the average of all advance deposit wagering licensees in the Commonwealth, as calculated by the Commission, into an escrow account in the name of the Commission no later than the tenth of the month following the month in which such wagers are placed. Such escrow account shall be in a financial institution approved by the Commission and shall be distributed within three business days by the Commission in equal amounts to any unlimited licensee and representatives of the recognized majority horsemen's groups, until such time as the unlimited licensee, representatives of the

recognized horsemen's groups, and the temporary advance deposit account wagering licensee reach an agreement regarding the retainage that is acceptable to the Commission and the Commission has granted a license to operate advance deposit account wagering replacing the temporary license.

D. A temporary license may be revoked summarily by the Commission for any cause set forth in § 59.1-385 without complying with subsection A of § 59.1-385. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.

2. That an emergency exists and this act is in force from its passage.

3. That the Virginia Racing Commission shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.