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SENATE BILL NO. 1438

Offered January 21, 2011

A BILL to amend and reenact §§ 59.1-365, and 59.1-392 of the Code of Virginia, relating to the Virginia Racing Commission; simulcast horse racing; allocations.

Patron—Herring

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-365 and 59.1-392 of the Code of Virginia are amended and reenacted 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.

"Historical horse racing" means a form of simulcast horse racing that creates pari-mutuel pools from wagers placed on pre-recorded horse races held at a licensed horse racetrack and is offered at a racetrack or satellite wagering facility licensed in Virginia as of January 1, 2011.

"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.

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

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

62 "Principal stockholder" means any person who individually or in concert with his spouse and  
63 immediate family members, beneficially owns or controls, directly or indirectly, five percent or more of  
64 the stock of any person which is a licensee, or who in concert with his spouse and immediate family  
65 members, has the power to vote or cause the vote of five percent or more of any such stock. However,  
66 "principal stockholder" shall not include a broker-dealer registered under the Securities Exchange Act of  
67 1934, as amended, which holds in inventory shares for sale on the financial markets for a publicly  
68 traded corporation holding, directly or indirectly, a license from the Commission.

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

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

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

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

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

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

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

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

92 § 59.1-392. Percentage retained; tax.

93 A. Any person holding an operator's license to operate a horse racetrack or satellite facility in the  
94 Commonwealth pursuant to this chapter shall be authorized to conduct pari-mutuel wagering on horse  
95 racing subject to the provisions of this chapter and the conditions and regulations of the Commission.

96 B. On pari-mutuel pools generated by wagering at the racetrack on live horse racing conducted  
97 within the Commonwealth, involving win, place and show wagering, the licensee shall retain an amount  
98 not to exceed eighteen percent of such pool and the legitimate breakage, out of which shall be paid one  
99 and one-quarter percent to be distributed as follows: one percent to the Commonwealth as a license tax,  
100 and one-quarter *of one* percent to the locality in which the racetrack is located. The remainder of the  
101 eighteen percent retainage shall be paid as provided in subsection D.

102 C. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing  
103 conducted within the Commonwealth, involving win, place and show wagering, the licensee shall retain  
104 an amount not to exceed eighteen percent of such pool and the legitimate breakage, out of which shall  
105 be paid one and one-quarter percent to be distributed as follows: three-quarters *of one* percent to the  
106 Commonwealth as a license tax, one-quarter *of one* percent to the locality in which the satellite facility  
107 is located, and one-quarter *of one* percent to the locality in which the racetrack is located. The remainder  
108 of the eighteen percent retainage shall be paid as provided in subsection D.

109 D. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
110 live horse racing conducted within the Commonwealth, involving win, place and show wagering, the  
111 licensee shall retain an amount not to exceed eighteen percent of such pool and the legitimate breakage,  
112 out of which shall be paid:

113 1. Eight percent as purses or prizes to the participants in such race meeting;

114 2. Seven and one-half percent, and all of the breakage and the proceeds of pari-mutuel tickets  
115 unredeemed 180 days from the date on which the race was conducted, to the operator;

116 3. One percent to the Virginia Breeders Fund;

117 4. Fifteen one-hundredths *of one* percent to the Virginia-Maryland Regional College of Veterinary  
118 Medicine;

119 5. Five one-hundredths *of one* percent to the Virginia Equine Center Foundation;

120 6. Five one-hundredths *of one* percent to the Virginia Horse Industry Board; and

121 7. The remainder of the eighteen percent retainage shall be paid as appropriate under subsection B or  
122 C.

123 E. On pari-mutuel pools generated by wagering at the racetrack on live horse racing conducted  
124 within the Commonwealth involving wagering other than win, place and show wagering, the licensee  
125 shall retain an amount not to exceed twenty-two percent of such pool and the legitimate breakage, out of  
126 which shall be paid two and three-quarters percent to be distributed as follows: two and one-quarter  
127 percent to the Commonwealth as a license tax, and one-half of one percent to the locality in which the  
128 racetrack is located. The remainder of the twenty-two percent retainage shall be paid as provided in  
129 subsection G.

130 F. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing  
131 conducted within the Commonwealth involving wagering other than win, place and show wagering, the  
132 licensee shall retain an amount not to exceed twenty-two percent of such pool and the legitimate  
133 breakage, out of which shall be paid two and three-quarters percent to be distributed as follows: one and  
134 three-quarters percent to the Commonwealth as a license tax, one-half of one percent to the locality in  
135 which the satellite facility is located, and one-half of one percent to the locality in which the racetrack is  
136 located. The remainder of the twenty-two percent retainage shall be paid as provided in subsection G.

137 G. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
138 live horse racing conducted within the Commonwealth involving wagering other than win, place and  
139 show wagering, the licensee shall retain an amount not to exceed twenty-two percent of such pool and  
140 the legitimate breakage, out of which shall be paid:

- 141 1. Nine percent as purses or prizes to the participants in such race meeting;
- 142 2. Nine percent, and the proceeds of the pari-mutuel tickets unredeemed 180 days from the date on  
143 which the race was conducted, to the operator;
- 144 3. One percent to the Virginia Breeders Fund;
- 145 4. Fifteen one-hundredths of one percent to the Virginia-Maryland Regional College of Veterinary  
146 Medicine;
- 147 5. Five one-hundredths of one percent to the Virginia Equine Center Foundation;
- 148 6. Five one-hundredths of one percent to the Virginia Horse Industry Board; and
- 149 7. The remainder of the twenty-two percent retainage shall be paid as appropriate under subsection E  
150 or F.

151 H. On pari-mutuel wagering generated by simulcast horse racing transmitted from jurisdictions  
152 outside the Commonwealth, the licensee may, with the approval of the Commission, commingle pools  
153 with the racetrack where the transmission emanates or establish separate pools for wagering within the  
154 Commonwealth. All simulcast horse racing in this subsection ~~must~~ shall comply with the Interstate  
155 Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.).

156 I. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted  
157 from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee  
158 shall retain one and one-quarter percent of such pool to be distributed as follows: three-quarters of one  
159 percent to the Commonwealth as a license tax, and one-half of one percent to the Virginia locality in  
160 which the racetrack is located.

161 J. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse  
162 racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show  
163 wagering, the licensee shall retain one and one-quarter percent of such pool to be distributed as follows:  
164 three-quarters of one percent to the Commonwealth as a license tax, one-quarter of one percent to the  
165 locality in which the satellite facility is located, and one-quarter of one percent to the Virginia locality in  
166 which the racetrack is located.

167 K. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
168 simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place  
169 and show wagering, the licensee shall retain one and one-quarter percent of such pool to be distributed  
170 as follows:

- 171 1. One percent of the pool to the Virginia Breeders Fund;
- 172 2. Fifteen one-hundredths of one percent to the Virginia-Maryland Regional College of Veterinary  
173 Medicine;
- 174 3. Five one-hundredths of one percent to the Virginia Equine Center Foundation; and
- 175 4. Five one-hundredths of one percent to the Virginia Horse Industry Board.

176 L. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted  
177 from jurisdictions outside the Commonwealth, involving wagering other than win, place and show  
178 wagering, the licensee shall retain two and three-quarters percent of such pool to be distributed as  
179 follows: one and three-quarters percent to the Commonwealth as a license tax, and one percent to the  
180 Virginia locality in which the racetrack is located.

181 M. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse

182 racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win,  
183 place and show wagering, the licensee shall retain two and three-quarters percent of such pool to be  
184 distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, one-half of  
185 one percent to the locality in which the satellite facility is located, and one-half of one percent to the  
186 Virginia locality in which the racetrack is located.

187 N. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on  
188 simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering  
189 other than win, place and show wagering, the licensee shall retain one and one-quarter percent of such  
190 pool to be distributed as follows:

- 191 1. One percent of the pool to the Virginia Breeders Fund;
- 192 2. Fifteen one-hundredths of one percent to the Virginia-Maryland Regional College of Veterinary  
193 Medicine;
- 194 3. Five one-hundredths percent of one to the Virginia Equine Center Foundation; and
- 195 4. Five one-hundredths of one percent to the Virginia Horse Industry Board.

196 O. Moneys payable to the Commonwealth shall be deposited in the general fund. Gross receipts for  
197 license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 shall not include pari-mutuel  
198 wagering pools and license taxes authorized by this section.

199 P. All payments by the licensee to the Commonwealth or any locality shall be made within five days  
200 from the date on which such wagers are received by the licensee. All payments by the licensee to the  
201 Virginia Breeders Fund shall be made to the Commission within five days from the date on which such  
202 wagers are received by the licensee. All payments by the licensee to the Virginia-Maryland Regional  
203 College of Veterinary Medicine, the Virginia Equine Center Foundation, and the Virginia Horse Industry  
204 Board shall be made by the first day of each quarter of the calendar year. All payments made under this  
205 section shall be used in support of the policy of the Commonwealth to sustain and promote the growth  
206 of a native industry.

207 Q. If a satellite facility is located in more than one locality, any amount a licensee is required to pay  
208 under this section to the locality in which the satellite facility is located shall be prorated in equal shares  
209 among those localities.

210 R. Any contractual agreement between a licensee and other entities concerning the distribution of the  
211 remaining portion of the retainage under subsections I through N shall be subject to the approval of the  
212 Commission.

213 S. The horsemen's organizations representing a majority of the horsemen racing at a licensed  
214 unlimited race meeting may, subject to the approval of the Commission, withdraw for administrative  
215 costs associated with serving the interests of the horsemen an amount not to exceed two percent of the  
216 amount in the horsemen's account.

217 T. The legitimate breakage from each pari-mutuel pool for both live racing and simulcast horse  
218 racing shall be distributed as follows:

- 219 1. Seventy percent to be retained by the licensee to be used for capital improvements that are subject  
220 to approval of the Commission; and
- 221 2. Thirty percent to be deposited in the Racing Benevolence Fund, administered jointly by the  
222 licensee and the horsemen's organization representing a majority of the horsemen racing at a licensed  
223 unlimited race meeting, to be disbursed with the approval of the Commission for gambling addiction and  
224 substance abuse counseling, recreational, educational or other related programs.

225 U. *Notwithstanding the provisions of subsections H through N or § 59.1-369, pari-mutuel pools*  
226 *generated by wagering on historical horse racing at each Virginia satellite facility and racetrack, after*  
227 *payment of all prizes for winning wagers, shall be distributed as follows:*

- 228 1. *Forty-two percent to the Commonwealth Transportation Trust Fund to be used for highway*  
229 *construction and any other purposes provided by law;*
- 230 2. *One and one-half percent to be divided equally among the Virginia localities where the racetrack*  
231 *or satellite facility is located;*
- 232 3. *Two percent to the Virginia Tourism Corporation to be used for the marketing of tourism in*  
233 *Virginia;*
- 234 4. *Forty-five percent to the licensee;*
- 235 5. *Six percent aggregate to the thoroughbred horsemen's purse account and standardbred horsemen's*  
236 *purse account. The specific amount allocated to each purse account shall be determined by the*  
237 *Commission on an annual basis as it furthers the promotion, sustenance and growth of a native*  
238 *industry;*
- 239 6. *Two percent to the Virginia Breeder's Fund;*
- 240 7. *One-half of one percent to the Virginia-Maryland Regional College of Veterinary Medicine;*
- 241 8. *One-half of one percent to the Virginia Racing Commission;*
- 242 9. *One-quarter of one percent to the Virginia Horse Industry Board; and*
- 243 10. *One-quarter of one percent to the Virginia Equine Center Foundation.*

244 *However, to the extent that the aggregate contribution to the horsemen's purse accounts and the*  
245 *Virginia Breeders Fund exceeds \$30 million in any calendar year, such amount to be adjusted for*  
246 *changes from July 1, 2011 , in the United States Average Consumer Price Index for all items, all urban*  
247 *consumers (CPI-U), as published by the Bureau of Labor Statistics of the U. S. Department of Labor, as*  
248 *of July 1 of each year, the amount of such excess shall be paid into the Commonwealth Transportation*  
249 *Trust Fund.*

250 *Proceeds of pari-mutuel tickets unredeemed 180 days from the date on which the wager was made*  
251 *and the legitimate breakage from historical horse racing shall be retained by the licensee, subject to*  
252 *subsection T.*

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

255 **3. That the entity licensed by the Virginia Racing Commission that owns a horse racetrack in the**  
256 **Commonwealth shall (i) contract with a person providing gambling educational programs, which**  
257 **program shall include information on the availability of gambling addiction counseling and other**  
258 **related services and (ii) publicize the availability of such programs. The Virginia Racing**  
259 **Commission shall approve both the educational program and the provider of such program.**  
260