

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 589

An Act to amend and reenact §§ 37.2-304, 58.1-4006, and 59.1-369 of the Code of Virginia, relating to Department of Behavioral Health and Developmental Services; Problem Gambling Treatment and Support Advisory Committee established.

[S 836]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-304, 58.1-4006, and 59.1-369 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-304. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its state facilities.
2. To employ the personnel required to carry out the purposes of this title.
3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.
4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.
5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.
6. To transfer between state hospitals and training centers school-age individuals who have been identified as appropriate to be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.
7. To provide to the Director of the Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, a written report setting forth the known facts of (i) critical incidents, as that term is defined in § 37.2-709.1, or deaths of individuals receiving services in facilities, within 15 working days of such critical incident or death; (ii) serious incidents and deaths that are required to be reported to the Department through its incident reporting system, as required by regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within 15 working days of the date the report is received; and (iii) allegations of abuse or neglect that are required to be reported pursuant to regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within five working days of the date on which the director's final decision on the allegation is reported to the Department.
8. To work with the appropriate state and federal entities to ensure that any individual who has received services in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the individual was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging individuals.
9. To work with the Department of Veterans Services and the Department for Aging and Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.
10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one individual receiving services to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.
11. To establish and maintain the Commonwealth Mental Health First Aid Program pursuant to § 37.2-312.2.

12. To submit a report for the preceding fiscal year by December 1 of each year to the Governor and the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and Appropriations that provides information on the operation of Virginia's publicly funded behavioral health and developmental services system. The report shall include a brief narrative and data on the number of individuals receiving state facility services or community services board services, including purchased inpatient psychiatric services; the types and amounts of services received by these individuals; and state facility and community services board service capacities, staffing, revenues, and expenditures. The annual report shall describe major new initiatives implemented during the past year and shall provide information on the accomplishment of systemic outcome and performance measures during the year.

13. To establish a comprehensive program for the prevention and treatment of problem gambling in the Commonwealth and administer the Problem Gambling Treatment and Support Fund established pursuant to § 37.2-314.2.

14. To establish and maintain the Problem Gambling Treatment and Support Advisory Committee (the Advisory Committee) to enable collaboration among prevention and treatment providers and operators of legal gaming in the Commonwealth on efforts to reduce the negative effects of problem gambling. The Advisory Committee shall be composed of (i) the Problem Gambling Prevention Coordinator from the Department; (ii) a representative from the Virginia Council on Problem Gambling; (iii) one representative from each of the state agencies primarily responsible for regulating the lottery, casino gaming, sports betting, live horse racing with pari-mutuel wagering, historical horse racing, charitable gaming, and any other form of legal gaming permitted under state law; (iv) the executive director of a community services board; (v) a casino gaming operator; (vi) a sports betting permit holder; (vii) a historical horse racing operator; and (viii) a charitable gaming permit holder. The Problem Gambling Prevention Coordinator shall be the chairman of the Advisory Committee, and a vice-chairman shall be elected from among the designated membership.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ 58.1-4006. Powers of the Director.

A. The Director shall supervise and administer:

1. The operation of the lottery in accordance with the provisions of this chapter and with the rules and regulations promulgated hereunder; and

2. The regulation of casino gaming in accordance with Chapter 41 (§ 58.1-4100 et seq.).

B. The Director shall also:

1. Employ such deputy directors, professional, technical and clerical assistants, and other employees as may be required to carry out the functions and duties of the Department.

2. Act as secretary and executive officer of the Board.

3. Require bond or other surety satisfactory to the Director from licensed agents as provided in subsection E of § 58.1-4009 and Department employees with access to Department funds or lottery funds, in such amount as provided in the rules and regulations of the Board. The Director may also require bond from other employees as he deems necessary.

4. Confer regularly, but not less than four times each year, with the Board on the operation and administration of the lottery and the regulation of casino gaming; make available for inspection by the Board, upon request, all books, records, files, and other information and documents of the Department; and advise the Board and recommend such matters as he deems necessary and advisable to improve the operation and administration of the lottery and the regulation of casino gaming.

5. Suspend, revoke, or refuse to renew any license issued pursuant to this chapter or the rules and regulations adopted hereunder.

6. Suspend, revoke, or refuse to renew any license or permit issued pursuant to Chapter 41 (§ 58.1-4100 et seq.).

7. Eject or exclude from a casino gaming establishment 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 Director, reflect negatively on the honesty and integrity of casino gaming or interfere with the orderly gaming operations.

8. Immediately upon the receipt of a credible complaint of an alleged criminal violation of Chapter 41 (§ 58.1-4100 et seq.), report the complaint to the Attorney General and the State Police for appropriate action.

9. Inspect and investigate, and have free access to, the offices, facilities, or other places of business of any licensee or permit holder and may compel the production of any of the books, documents, records, or memoranda of any licensee or permit holder for the purpose of ensuring compliance with Chapter 41 (§ 58.1-4100 et seq.) and Department regulations.

10. Compel any person holding a license or permit pursuant to Chapter 41 (§ 58.1-4100 et seq.) to file with the Department such information as shall appear to the Director to be necessary for the performance of the Department's functions, including financial statements and information relative to principals and all others with any pecuniary interest in such person.

11. Impose a fine or penalty not to exceed \$1 million upon any person determined, in proceedings

commenced pursuant to § 58.1-4105, to have violated any of the provisions of Chapter 41 (§ 58.1-4100 et seq.) or regulations promulgated by the Board.

12. Enter into arrangements with any foreign or domestic governmental agency for the purposes of exchanging information or performing any other act to better ensure the proper conduct of casino gaming operations or the efficient conduct of the Director's duties.

13. Enter into contracts for the operation of the lottery, or any part thereof, for the promotion of the lottery and into interstate lottery contracts with other states. A contract awarded or entered into by the Director shall not be assigned by the holder thereof except by specific approval of the Director.

14. Certify monthly to the State Comptroller and the Board a full and complete statement of lottery revenues, prize disbursements and other expenses for the preceding month.

15. Report monthly to the Governor, the Secretary of Finance, and the Chairmen of the Senate Committee on Finance and Appropriations, House Committee on Finance, and House Committee on Appropriations the total lottery revenues, prize disbursements, and other expenses for the preceding month and make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements, and other expenses, as well as a separate financial statement of the expenses incurred in the regulation of casino gaming operations as defined in § 58.1-4100, to the Governor and the General Assembly. Such annual report shall also include such recommendations for changes in this chapter and Chapter 41 (§ 58.1-4100 et seq.) as the Director and Board deem necessary or desirable.

16. Report immediately to the Governor and the General Assembly any matters that require immediate changes in the laws of the Commonwealth in order to prevent abuses and evasions of this chapter and Chapter 41 (§ 58.1-4100 et seq.) or the rules and regulations adopted hereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery.

17. Notify prize winners and appropriate state and federal agencies of the payment of prizes in excess of \$600 in the manner required by the lottery rules and regulations.

18. Provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize for a winning ticket in excess of \$5,001.

19. *Participate in the Problem Gambling Treatment and Support Advisory Committee established pursuant to § 37.2-304 by the Department of Behavioral Health and Developmental Services to enable collaboration among prevention and treatment providers and operators of legal gaming in the Commonwealth on efforts to reduce the negative effects of problem gambling.*

C. The Director and the director of security or investigators appointed by the Director shall be vested with the powers of sheriff and sworn to enforce the statutes and regulations pertaining to the Department and to investigate violations of the statutes and regulations that the Director is required to enforce.

D. The Director may authorize temporary bonus or incentive programs for payments to licensed sales agents that he determines will be cost effective and support increased sales of lottery products.

§ 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 any person granted a permit by the Commission and shall require any person licensed by the Commission, the recognized majority horsemen's group, and the nonprofit industry stakeholder organization recognized by the Commission under this chapter to produce an annual balance sheet and operating statement prepared by a certified public accountant approved by the Commission. The Commission 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 a license to schedule no more than 125 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 that is a significant infrastructure limited licensee, or if by August 1, 2015, there is no such licensee or a pending application for such license, then the nonprofit industry stakeholder organization recognized by the Commission may be granted licenses to own or operate satellite facilities. If, however, after the issuance of a license to own or operate a satellite facility to such nonprofit industry stakeholder organization, the Commission grants a license to a significant infrastructure limited licensee pursuant to § 59.1-376, then such limited licensee may own or operate the remaining available satellite facilities authorized in accordance with this subdivision. In no event shall the Commission authorize any such entities to own or operate more than a combined total of 10 satellite facilities. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. 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 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 an entity for the operation of pari-mutuel wagering in the Commonwealth; except that the Commission shall not issue a license to, and shall revoke the license of, an entity that, either directly or through an entity under common control with it, withholds the sale at fair market value to a licensee of simulcast horse racing signals that such entity or an entity under common control with it sells to other racetracks, satellite facilities, or advance deposit account wagering providers located in or outside of the Commonwealth; (ii) provisions regarding access to books, records, and memoranda, and submission to investigations and audits, as authorized by subdivisions 2 and 10; 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 institution of higher education. 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.

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 each licensee and the recognized majority horsemen's group for that licensee. 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. In the absence of the required contract between the licensee and the recognized majority horsemen's group, the Commission may permit wagering to proceed on simulcast horse racing from outside of the Commonwealth, provided that the licensee deposits into the State Racing Operations Fund created pursuant to § 59.1-370.1 an amount equal to the minimum percentage of the total pari-mutuel handles as required in clauses (i), (ii), and (iii) or such lesser amount as the Commission may approve. The deposits shall be made within five days from the date on which the licensee receives wagers. Once a contract between the licensee and the recognized majority horsemen's group is executed and approved by the Commission, the Commission shall transfer these funds to the licensee and the horsemen's purse accounts.

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.

16. The Commission or its representatives shall participate in the Problem Gambling Treatment and Support Advisory Committee established pursuant to § 37.2-304 by the Department of Behavioral Health and Developmental Services to enable collaboration among prevention and treatment providers and operators of legal gaming in the Commonwealth on efforts to reduce the negative effects of problem gambling.