

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 619

An Act to amend and reenact §§ 9-6.14:4.1, 11-45, 59.1-364, 59.1-365, 59.1-369, 59.1-370, 59.1-371, 59.1-374, 59.1-389, 59.1-390, 59.1-391, and 59.1-392 of the Code of Virginia, relating to the Virginia Racing Commission; powers; permits.

[H 1276]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.14:4.1, 11-45, 59.1-364, 59.1-365, 59.1-369, 59.1-370, 59.1-371, 59.1-374, 59.1-389, 59.1-390, 59.1-391, and 59.1-392 of the Code of Virginia are amended and reenacted as follows:

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.
11. The Council on Information Management.
12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.
13. [Repealed.]
14. [Repealed.]
15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.
17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.
18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.
19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician Assistant Formulary established pursuant to § 54.1-2952.1.
20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.
21. The Virginia War Memorial Foundation.
22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage

pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

24. The Virginia Student Assistance Authorities.

25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

26. The Virginia Small Business Financing Authority.

27. The Virginia Economic Development Partnership Authority.

28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to ~~subdivision~~ *subsection A* (ii) of § 59.1-156.

29. The Insurance Continuing Education Board pursuant to § 38.2-1867.

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

18. The regulations for the implementation of the Health Practitioners' Intervention Program and the activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. *The Virginia Breeders Fund created pursuant to § 59.1-372.*

22. *The types of pari-mutuel wagering pools available for live or simulcast horse racing.*

23. *The administration of medication or other substances foreign to the natural horse.*

C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

1. Agency orders or regulations fixing rates or prices.

2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations which:

(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above

determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.

5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within sixty days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

13. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

14. Regulations of the Board of the Virginia Higher Education Tuition Trust Fund promulgated pursuant to § 23-38.77.

15. The development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307 if the Commission: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to

reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A B of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subdivision C 5 of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter.

G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § ~~15.1-1374~~ (d) 15.2-4902.

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 1999) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

L. A community development authority formed pursuant to ~~subsection B of § 15.1-1241~~ Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to ~~subdivision 5 of that subsection~~ such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § ~~15.1-1250.03~~ 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § ~~15.1-1250.03~~ 15.2-5158 are used as payment for such contract.

M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the operation of any facilities developed under the provisions of Chapter ~~5-3~~ 58 (§ ~~15.1-227.70~~ 15.2-5800 et seq.) of Title ~~15.1~~ 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without competitive sealed bidding or competitive negotiation.

P. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.

§ 59.1-364. Control of racing with pari-mutuel wagering.

A. Horse racing with pari-mutuel wagering as licensed herein shall be permitted in the Commonwealth for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people. The Virginia Racing Commission is vested with control of all horse racing with pari-mutuel wagering in the Commonwealth, with plenary power to prescribe regulations and conditions under which such racing and wagering shall be conducted, so as to maintain horse racing in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in such racing complete honesty and integrity. The Virginia Racing Commission shall encourage participation by local individuals and businesses in those activities associated with horse racing.

B. The conduct of any horse racing with pari-mutuel wagering participation in such racing or wagering and entrance to any place where such racing or wagering is conducted is a privilege which may be granted or denied by the Commission or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this chapter.

C. The award of any prize money for any pari-mutuel wager placed at a racetrack or satellite facility licensed by the Commission shall not be deemed to be a part of any gaming contract within the purview of § 11-14.

§ 59.1-365. Definitions.

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

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

"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.

"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, 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.

"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" includes a natural person, partnership, joint venture, association, or corporation 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 and Exchanges 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.

"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 ~~corporation~~, and any debt or other obligation of such ~~corporation or stockholder thereof or stock of person or an affiliated corporation person~~ if the Commission finds that the holder of such ~~obligation interest or stock~~ derives therefrom such control of or voice in the operation of the applicant or licensee ~~corporation~~ that he should be deemed a ~~stockholder~~ *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. 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 ~~subsection~~ *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 (§ 9-6.14:1 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 must 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 during the first five years of operation 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 ~~subsection~~ *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 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. 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. 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. 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. The Commission may order such audits, in addition to those required by § 59.1-394, as it deems necessary and desirable.

10. 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. 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. *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.*

§ 59.1-370. Commission; Executive Secretary; staff; stewards.

A. The Commission shall appoint an Executive Secretary and such other employees as it deems

essential to perform its duties under this chapter, who shall possess such authority and perform such duties as the Commission shall prescribe or delegate to them. Such employees may include stewards, chemists, veterinarians, inspectors, accountants, guards and such other employees deemed by the Commission to be necessary for the supervision and the proper conduct of the highest standard of horse racing. Such employees shall be compensated as provided by the Commission.

The Executive Secretary, in addition to any other duties prescribed by the Commission, shall keep a true and full record of all proceedings of the Commission and preserve at the Commission's general office all books, documents and papers of the Commission. Neither the Executive Secretary nor the spouse or any member of the immediate family of the Executive Secretary shall make any contributions to a candidate for office or office holder at the local or state level, or cause such a contribution to be made on his behalf.

B. The stewards appointed by the Commission shall act as racing officials to oversee the conduct of (i) horse racing at licensed racetracks and (ii) simulcast horse racing at satellite facilities. The stewards shall possess such authority and perform such duties as the Commission may prescribe or delegate to them.

§ 59.1-371. Fingerprints and background investigations; investigations from other states.

A. The Commission shall fingerprint and require a background investigation to include a criminal history record information check of the following persons to be conducted by a representative of a law-enforcement agency of the Commonwealth or federal government: (i) every person licensed to hold race meetings within the Commonwealth of Virginia; (ii) every person who is an officer or director or principal stockholder of a corporation which holds such a license, and every employee of the holder of any such license whose duties relate to the horse racing business in Virginia; (iii) all security personnel of any license holder; (iv) members and employees of the Virginia Racing Commission; (v) all permit holders, owners, trainers, jockeys, apprentices, stable employees, managers, agents, blacksmiths, veterinarians, employees of any license or permit holder; and (vi) any person who actively participates in the racing activities of any license or permit holder.

B. Notwithstanding the provisions of subsection A, the Commission may, by regulation, establish a procedure to recognize a license or permit issued by another state in which horse racing is authorized when the Commission in its discretion determines that the laws ~~and regulations~~ *or requirements* of the licensing authority for such state governing fingerprinting and background investigations are substantially the same as required under this chapter and Commission regulations, and that the applicant has not been convicted of a misdemeanor or felony *as provided in subdivision B 6 of § 59.1-389.*

§ 59.1-374. Injunction.

Whenever it appears to the Commission that any person has violated or may violate any provision of this chapter or any ~~reasonable~~ regulation or final decision of the Commission, it may apply to the appropriate circuit court for an injunction against such person. The order granting or refusing such injunction shall be subject to appeal as in other cases in equity.

§ 59.1-389. Consideration of application.

A. The Commission shall promptly consider any application for a permit and issue or deny such permit based on the information in the application and all other information before it, including any investigation it deems appropriate. If an application for a permit is approved, the Commission shall issue a permit, which shall contain such information as the Commission deems appropriate. Such permit shall be valid for one year; *however, the permit of a licensee's employee shall expire automatically when such permit holder leaves the employment of the licensee or at the end of one year, whichever occurs first. The licensee shall promptly notify the Commission when a permit holder leaves the employment of the licensee.* The Commission shall establish criteria and procedures for permit renewal.

B. The Commission shall deny the application and refuse to issue the permit, which denial shall be final unless an appeal is taken under § 59.1-373, if it finds that the issuance of such permit to such applicant would not be in the interests of the people of the Commonwealth, or the horse racing industry of the Commonwealth, or would reflect on the honesty and integrity of the horse racing industry in the Commonwealth, or that the applicant:

1. Has knowingly made a false statement of a material fact in the application, or has deliberately failed to disclose any information requested by the Commission;
2. Is or has been *found* guilty of any corrupt or fraudulent practice or conduct in connection with horse racing in this or any other state;
3. Has knowingly failed to comply with the provisions of this chapter or the regulations of the Commission;
4. Has had a permit to engage in activity related to horse racing denied for just cause, suspended or revoked in any other state, and such denial, suspension or revocation is still in effect;
5. Is unqualified to perform the duties required for the permit sought; or
6. Has been convicted of a misdemeanor or felony involving unlawful conduct or wagering, fraudulent use of a credential, unlawful transmission of information, touting, bribery, or administration or possession of drugs or any felony considered by the Commission to be detrimental to horse racing in the Commonwealth.

C. The Commission may refuse to issue the permit if for any reason it feels the granting of such permit is not consistent with the provisions of this chapter or its responsibilities hereunder.

§ 59.1-390. Suspension or revocation of permit; fine.

A. The Commission may suspend or revoke a permit issued under this chapter or fine the holder of such permit a sum not to exceed \$10,000, after a hearing for which proper notice has been given to the permittee, in any case where it has reason to believe that any provision of this chapter, or any regulation or condition of the Commission, has not been complied with, or has been violated. The Commission may revoke such permit, after such hearing, if it finds that facts not known by it at the time it was considering the application indicate that such permit should not have been issued. Deliberations of the Commission under this section shall be conducted pursuant to the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). If any permit is suspended or revoked, the Commission shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless an appeal is taken in accordance with § 59.1-373. Suspension or revocation of a permit by the Commission for any violation shall not preclude criminal liability for such violation.

B. The Commission, acting by and through its stewards, or at a meeting at which a quorum is present, may summarily suspend the permit of a person for a period of not more than ninety days pending a hearing and final determination by the Commission or its stewards, if the Commission or its stewards determine the protection of the integrity of horse racing requires emergency action. The Commission or its stewards shall (i) schedule a hearing within fourteen business days after the permit is summarily suspended and (ii) notify the permit holder, not less than five business days before the hearing, of the date, time and place of the hearing.

§ 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 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, shall be filed with the circuit court of such county or city, asking that a referendum be held on the question, "Shall pari-mutuel wagering be permitted in name of such county or city, at a licensed racetrack 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) 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 ~~§ 24.1-165~~ 24.2-684.1, require the regular election officers of such city or county 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 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 shall publish notice of such election in a newspaper of general circulation in such city or county 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 and on which shall be printed either or both of the following questions:

"Shall pari-mutuel wagering be permitted in at a licensed racetrack 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 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.

No such referendum as described above shall be held more often than every three years in the same

county or city.

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.

§ 59.1-392. Percentage retained; tax.

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

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

~~1. a. If there are no satellite facilities, one and one-half percent of the pool to be distributed as follows: one and one-quarter percent to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth and one-quarter percent to the locality in which the racetrack is located;~~

~~b. If there are satellite facilities, one percent of the pool~~ The remainder of the eighteen percent retainage shall be paid as provided in subsection D.

C. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing conducted within the Commonwealth, involving win, place and show wagering, the licensee shall retain an amount not to exceed eighteen percent of such pool and the legitimate breakage, out of which shall be paid one and one-half percent to be distributed as follows: one percent to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth, and, one-quarter percent of the pool shall be paid to the locality in which the satellite facility is located, and one-quarter percent to the locality in which the track racetrack is located which shall be paid within five days to the locality. If any satellite facility is located in more than one locality, the license tax shall be prorated in equal shares among those localities; The remainder of the eighteen percent retainage shall be paid as provided in subsection D.

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

~~2. 1. Eight percent of the pool as purses or prizes to the participants in such the race meeting;~~

~~3. 2. Seven and one-half percent of the pool, and all of the breakage and the proceeds of pari-mutuel tickets unredeemed 180 days from the date on which the race was conducted, to the operator; and~~

~~4. 3. One percent of the pool to the Virginia Breeders Fund which shall be paid to the Commission within five days and shall be used in support of the policy of the Commonwealth to sustain and promote the growth of a native industry; and~~

~~4. The remainder of the eighteen percent retainage shall be paid as appropriate under subsection B or C.~~

~~G. E. On pari-mutuel pools generated by wagering at the racetrack~~ on live horse racing conducted within the Commonwealth involving wagering other than that set forth in subsection B of this section win, place and show wagering, the licensee shall retain an amount not to exceed twenty-two percent of the such pool and the legitimate breakage, out of which shall be paid:

~~1. a. If there are no satellite facilities, of the pool three percent to be distributed as follows: two and one-half percent to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth and one-half percent to the locality in which the racetrack is located; The remainder of the twenty-two percent retainage shall be paid as provided in subsection G.~~

~~b. If there are satellite facilities, two percent of the pool~~

F. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing conducted within the Commonwealth involving wagering other than win, place and show wagering, the licensee shall retain an amount not to exceed twenty-two percent of such pool and the legitimate breakage, out of which shall be paid three percent to be distributed as follows: two percent to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth, and, one-half percent of the pool shall be paid to the locality in which the satellite facility is located, and one-half percent to the locality in which the track racetrack is located which shall be paid within five days to the locality. If any satellite facility is located in more than one locality, the license tax shall be prorated in equal shares among those localities; The remainder of the twenty-two percent retainage shall be paid as provided in subsection G.

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

~~2. 1. Nine percent of the pool as purses or prizes to the participants in such the race meeting;~~

~~3. 2. Nine percent of the pool, and all of the breakage and the proceeds of the pari-mutuel tickets unredeemed 180 days from the date on which the race was conducted, to the operator; and~~

4. 3. One percent of the pool to the Virginia Breeders Fund which shall be paid to the Commission within five days and shall be used in support of the policy of the Commonwealth to sustain and promote the growth of a native industry.; and

4. The remainder of the twenty-two percent retainage shall be paid as appropriate under subsection E or F.

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

E. I. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee shall retain one and one-half percent to be distributed as follows:

1. a. If there are no satellite facilities, one and one-half percent of the pool to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth;

b. If there are satellite facilities, of the pool one percent to the Commonwealth as a license tax and one-half percent to the locality in which the racetrack is located.

J. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee shall retain one and one-half percent of such pool to be distributed as follows: one percent to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth, and, one-quarter percent of the pool to the locality in which the satellite facility is located, and one-quarter percent to the Virginia locality in which the track racetrack is located which shall be paid within five days to the locality. If the satellite facility is located in more than one locality, the license tax shall be prorated in equal shares among those localities; and

2. K. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee shall retain one percent of the such pool to be distributed to the Virginia Breeders Fund which shall be paid to the Commission within five days and shall be used in support of the policy of the Commonwealth to sustain and promote the growth of a native industry.

Any contractual agreement between a licensee and other entities concerning the distribution of the remaining portion of the retainage is subject to the approval of the Commission.

F. L. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than that set forth in subsection E win, place and show wagering, the licensee shall retain:

1. a. If there are no satellite facilities, three percent of the pool to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth;

b. If there are satellite facilities, two three percent of the such pool to be distributed as follows: two percent to the Commonwealth as a license tax and one percent to the locality in which the racetrack is located.

M. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win, place and show wagering, the licensee shall retain three percent of such pool to be distributed as follows: two percent to the Commonwealth as a license tax which shall be paid within five days to the Commonwealth, and, one-half percent of the pool to the locality in which the satellite facility is located, and one-half percent to the Virginia locality in which the track racetrack is located which shall be paid within five days to the locality. If the satellite facility is located in more than one locality, the license tax shall be prorated in equal shares among the localities; and

2. N. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win, place and show wagering, the licensee shall retain one percent of the such pool to be distributed to the Virginia Breeders Fund which shall be paid to the Commission within five days and shall be used in support of the policy of the Commonwealth to sustain and promote the growth of a native industry.

Any contractual agreement between a licensee and other entities concerning the distribution of the remaining portion of the retainage is subject to the approval of the Commission.

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

P. All payments by the licensee to the Commonwealth or any locality shall be made within five days from the date on which such wagers are received by the licensee. All payments by the licensee to the Virginia Breeders Fund shall be made to the Commission within five days from the date on which such wagers are received by the licensee and shall be used in support of the policy of the Commonwealth to sustain and promote the growth of a native industry.

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

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