

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 732

*An Act to amend and reenact §§ 18.2-326, 59.1-369, and 59.1-392 of the Code of Virginia, relating to the Virginia Racing Commission; powers and duties; retainage; illegal wagering on horse racing; penalty.*

[H 1832]

Approved March 28, 2011

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-326, 59.1-369, and 59.1-392 are amended and reenacted as follows:**

§ 18.2-326. Penalty for illegal gambling.

Except as otherwise provided in this article, any person who illegally gambles or engages in interstate gambling as defined in § 18.2-325 shall be guilty of a Class 3 misdemeanor. If an association or pool of persons illegally gamble, each person therein shall be guilty of illegal gambling.

*However, if any person makes, places, or receives any bet or wager of money or other thing of value on a horse race in the Commonwealth, whether the race is inside or outside the limits of the Commonwealth at any place or through any means other than (i) at a racetrack licensed by the Virginia Racing Commission pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 or (ii) at a satellite facility or through advance deposit account wagering, as those terms are defined in § 59.1-365, licensed by the Virginia Racing Commission pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1, such person shall be guilty of a Class 1 misdemeanor. For the purposes of this paragraph, venue shall be in any county or city in which any act was performed in furtherance of any course of conduct constituting illegal gambling.*

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

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

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

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

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

4. The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter. Such regulations shall include provisions that all simulcast horse racing shall comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days based on what the Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to 10 satellite facilities and restrict majority ownership of satellite facilities to an entity

licensed by the Commission which owns a horse racetrack in the Commonwealth. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. 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 ~~any such an entity or entities pursuant to § 59.1-375 to operate 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 an unlimited 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 of this section; and (iii) provisions regarding the collection of all revenues due to the Commonwealth from the placing of such wagers. No pari-mutuel wager may be made on or with any computer owned or leased by the Commonwealth, or any of its subdivisions, or at any public elementary or secondary school, or any public college or university. The Commission also shall ensure that, except for this method of pari-mutuel wagering, all wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

Notwithstanding the provisions of § 59.1-392, the allocation of revenue from advance deposit account wagering shall include (i) a licensee fee paid to the Commission; (ii) an additional fee equal to 10 percent of all wagers made within the Commonwealth placed through an advance deposit account wagering licensee, out of which shall be paid: (a) one-half to all unlimited licensees and (b) one-half to representatives of the recognized majority horsemen groups; and (iii) an additional fee equal to one percent of all wagers made within the Commonwealth placed through an advance deposit account wagering licensee, which shall be paid to the Virginia Breeders Fund.

Nothing in this subdivision shall be construed to limit the Commission's authority as set forth elsewhere in this section.

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

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

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

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

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

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

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

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

14. The Commission shall require the existence of a contract between the licensee and the recognized

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

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

§ 59.1-392. Percentage retained; tax.

A. Any person holding an operator's 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 such pool~~ *a percentage amount approved by the Commission as jointly requested by a recognized majority horseman's group and an unlimited licensee* and the legitimate breakage, out of which shall be paid one and one-quarter percent to be distributed as follows: one percent to the Commonwealth as a license tax, and one-quarter percent to the locality in which the racetrack is located. The remainder of the ~~eighteen percent~~ retainage shall be paid as provided in subsection D; *provided, however, that if the percentage amount approved by the Commission is other than 18 percent, the amounts provided in subdivisions D 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 18 percent.*

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~~ *a percentage amount approved by the Commission as jointly requested by a recognized majority horseman's group and an unlimited licensee* and the legitimate breakage, out of which shall be paid one and one-quarter percent to be distributed as follows: three-quarters percent to the Commonwealth as a license tax, one-quarter percent to the locality in which the satellite facility is located, and one-quarter percent to the locality in which the racetrack is located. The remainder of the ~~eighteen percent~~ retainage shall be paid as provided in subsection D; *provided, however, that if the percentage amount approved by the Commission is other than 18 percent, the amounts provided in subdivisions D 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 18 percent.*

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~~ *a percentage amount approved by the Commission as jointly requested by a recognized majority horseman's group and an unlimited licensee* and the legitimate breakage, out of which shall be paid:

1. Eight percent as purses or prizes to the participants in such race meeting;
2. Seven and one-half percent, 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;
3. One percent to the Virginia Breeders Fund;
4. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
5. Five one-hundredths percent to the Virginia Horse Center Foundation;
6. Five one-hundredths percent to the Virginia Horse Industry Board; and
7. The remainder of the ~~eighteen percent~~ retainage shall be paid as appropriate under subsection B or C.

E. On pari-mutuel pools generated by wagering at the racetrack 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~~ *a percentage amount approved by the Commission as jointly requested by a recognized majority horseman's group and an unlimited licensee* and the legitimate breakage, out of which shall be paid two and three-quarters percent to be distributed as follows: two and one-quarter percent to the Commonwealth as a license tax, 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; *provided, however, that if the percentage amount approved by the Commission is other than 22 percent, the amounts provided in subdivisions G 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 22 percent.*

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~~ *a percentage amount approved by the Commission as jointly requested by a recognized majority horseman's group and an unlimited licensee* and the legitimate breakage, out of which shall be paid two and three-quarters percent to be distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, one-half percent to the locality in which the satellite facility is located, 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; *provided, however, that if the percentage amount approved by the Commission is other than 22 percent, the amounts provided in subdivisions G 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 22 percent.*

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~~ *a percentage amount approved by the Commission as jointly requested by a recognized majority horseman's group and an unlimited licensee* and the legitimate breakage, out of which shall be paid:

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

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, 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.).

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-quarter percent of such pool to be distributed as follows: three-quarters percent to the Commonwealth as a license tax, and one-half percent to the Virginia 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-quarter percent of such pool to be distributed as follows: three-quarters percent to the Commonwealth as a license tax, one-quarter percent to the locality in which the satellite facility is located, and one-quarter percent to the Virginia locality in which the racetrack is located.

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 and ~~one-quarter~~ *thirty one-hundredths* percent of such pool to be distributed as follows:

1. One percent of the pool to the Virginia Breeders Fund;
2. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
3. Five one-hundredths percent to the Virginia Horse Center Foundation; ~~and~~
4. Five one-hundredths percent to the Virginia Horse Industry Board; *and*
5. *Five one-hundredths percent to the Virginia Thoroughbred Association for the promotion of breeding in the Commonwealth.*

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 win, place and show wagering, the licensee shall retain two and three-quarters percent of such pool to be distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, and one percent to the Virginia 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 two and three-quarters percent of such pool to be distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, one-half percent to the locality in which the satellite facility is located, and one-half percent to the Virginia

locality in which the racetrack is located.

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 and ~~one-quarter~~ *thirty one-hundredths* percent of such pool to be distributed as follows:

1. One percent of the pool to the Virginia Breeders Fund;
2. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;
3. Five one-hundredths percent to the Virginia Horse Center Foundation; ~~and~~
4. Five one-hundredths percent to the Virginia Horse Industry Board; *and*
5. *Five one-hundredths percent to the Virginia Thoroughbred Association for the promotion of breeding in the Commonwealth.*

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. All payments by the licensee to the Virginia-Maryland Regional College of Veterinary Medicine, the Virginia Horse Center Foundation, ~~and~~ the Virginia Horse Industry Board, *and the Virginia Thoroughbred Association* shall be made by the first day of each quarter of the calendar year. All payments made under this section 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 the 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.

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

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

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

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