

1-1 By: Anchia (Senate Sponsor - Hinojosa) H.B. No. 2271
1-2 (In the Senate - Received from the House April 12, 2011;
1-3 April 14, 2011, read first time and referred to Committee on
1-4 Government Organization; April 29, 2011, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 5,
1-6 Nays 0; April 29, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2271 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas Racing
1-11 Commission, the abolishment of the Equine Research Account Advisory
1-12 Committee, and the authority of Texas AgriLife Research; providing
1-13 an administrative penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 1.03, Texas Racing Act (Article 179e,
1-16 Vernon's Texas Civil Statutes), is amended by amending Subdivision
1-17 (52) and adding Subdivisions (80) and (81) to read as follows:

1-18 (52) "Performance" means the consecutive running of a
1-19 specified number of greyhound races as determined by the commission
1-20 ~~[not more than 13 greyhound races]~~.

1-21 (80) "Active license" means a racetrack license
1-22 designated by the commission as active.

1-23 (81) "Inactive license" means a racetrack license
1-24 designated by the commission as inactive.

1-25 SECTION 2. Section 2.071, Texas Racing Act (Article 179e,
1-26 Vernon's Texas Civil Statutes), is amended to read as follows:

1-27 Sec. 2.071. CONFLICT OF INTEREST. (a) A person may not be
1-28 a member of the commission and may not be a commission employee
1-29 employed in a "bona fide executive, administrative, or professional
1-30 capacity," as that phrase is used for purposes of establishing an
1-31 exemption to the overtime provisions of the federal Fair Labor
1-32 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

1-33 (1) the person is an [An] officer, employee, or paid
1-34 consultant of a Texas trade association in the field of horse or
1-35 greyhound racing or breeding; or

1-36 (2) ~~the person's [may not be a member of the commission~~
1-37 ~~or an employee of the commission who is exempt from the state's~~
1-38 ~~position classification plan or is compensated at or above the~~
1-39 ~~amount prescribed by the General Appropriations Act for step 1,~~
1-40 ~~salary group 17, of the position classification salary schedule.~~

1-41 ~~[(b) A person who is the] spouse is [of] an officer,~~
1-42 ~~manager, or paid consultant of a Texas trade association in the~~
1-43 ~~field of horse or greyhound racing or breeding [may not be a member~~
1-44 ~~of the commission and may not be an employee of the commission who~~
1-45 ~~is exempt from the state's position classification plan or is~~
1-46 ~~compensated at or above the amount prescribed by the General~~
1-47 ~~Appropriations Act for step 1, salary group 17, of the position~~
1-48 ~~classification salary schedule].~~

1-49 (b) A person may not be a member of the commission or act as
1-50 the general counsel to the commission if the person is required to
1-51 register as a lobbyist under Chapter 305, Government Code, because
1-52 of the person's activities for compensation on behalf of a
1-53 profession related to the operation of the commission.

1-54 (c) In [For the purposes of] this section, "Texas trade
1-55 association" means [a Texas trade association is] a cooperative and
1-56 voluntarily joined statewide [nonprofit] association of business
1-57 or professional competitors in this state designed to assist its
1-58 members and its industry or profession in dealing with mutual
1-59 business or professional problems and in promoting their common
1-60 interest.

1-61 SECTION 3. Article 2, Texas Racing Act (Article 179e,
1-62 Vernon's Texas Civil Statutes), is amended by adding Section 2.25
1-63 to read as follows:

2-1 Sec. 2.25. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
 2-2 RESOLUTION PROCEDURES. (a) The commission shall develop and
 2-3 implement a policy to encourage the use of:

2-4 (1) negotiated rulemaking procedures under Chapter
 2-5 2008, Government Code, for the adoption of commission rules; and
 2-6 (2) appropriate alternative dispute resolution
 2-7 procedures under Chapter 2009, Government Code, to assist in the
 2-8 resolution of internal and external disputes under the commission's
 2-9 jurisdiction.

2-10 (b) The commission's procedures relating to alternative
 2-11 dispute resolution shall conform, to the extent possible, to any
 2-12 model guidelines issued by the State Office of Administrative
 2-13 Hearings for the use of alternative dispute resolution by state
 2-14 agencies.

2-15 (c) The commission shall:
 2-16 (1) coordinate the implementation of the policy
 2-17 adopted under Subsection (a) of this section;
 2-18 (2) provide training as needed to implement the
 2-19 procedures for negotiated rulemaking or alternative dispute
 2-20 resolution; and
 2-21 (3) collect data concerning the effectiveness of those
 2-22 procedures.

2-23 SECTION 4. Sections 3.07(b) and (e), Texas Racing Act
 2-24 (Article 179e, Vernon's Texas Civil Statutes), are amended to read
 2-25 as follows:

2-26 (b) The commission shall make rules specifying the
 2-27 authority and the duties of each official, including the power of
 2-28 stewards or judges to impose penalties for unethical practices or
 2-29 violations of racing rules. A penalty imposed by the stewards or
 2-30 judges may include a fine of not more than \$5,000, a suspension for
 2-31 not more than one year, or both a fine and suspension. Before
 2-32 imposing a penalty under this subsection, the stewards and judges
 2-33 shall conduct a hearing that is consistent with constitutional due
 2-34 process. A hearing conducted by a steward or judge under this
 2-35 subsection is not subject to Chapter 2001, Government Code. A
 2-36 decision of a steward or judge is subject to review by the executive
 2-37 director, who may modify the penalty. A penalty modified by the
 2-38 executive director under this section may include a fine not to
 2-39 exceed \$10,000, a suspension not to exceed two years, or both a fine
 2-40 and a suspension. A decision of a steward or judge that is not
 2-41 reviewed or modified by the executive director is a final decision.
 2-42 Any decision of a steward or judge may be appealed under Section
 2-43 3.08(a) of this Act regardless of whether the decision is modified
 2-44 by the executive director. ~~[If, in the opinion of the stewards or~~
 2-45 ~~judges, the allowable penalties are not sufficient, the stewards or~~
 2-46 ~~judges may refer the case to the commission for further action.]~~

2-47 (e) To pay the charges associated with the medication or
 2-48 drug testing, an association may use the money held by the
 2-49 association to pay outstanding tickets and pari-mutuel vouchers.
 2-50 If additional amounts are needed to pay the charges, the
 2-51 association shall pay those additional amounts. ~~[If the amount~~
 2-52 ~~held exceeds the amount needed to pay the charges, the association~~
 2-53 ~~shall pay the excess to the commission in accordance with Section~~
 2-54 ~~11.08 of this Act.]~~

2-55 SECTION 5. Section 3.09(b), Texas Racing Act (Article 179e,
 2-56 Vernon's Texas Civil Statutes), is amended to read as follows:

2-57 (b) The commission shall deposit the money it collects under
 2-58 this Act in the State Treasury to the credit of a special fund to be
 2-59 known as the Texas Racing Commission fund. The Texas Racing
 2-60 Commission fund may be appropriated only for the administration and
 2-61 enforcement of this Act. Any unappropriated money exceeding
 2-62 \$750,000 that remains ~~[remaining]~~ in the ~~[that special]~~ fund at the
 2-63 close of each fiscal biennium shall be transferred to the General
 2-64 Revenue Fund and may be appropriated for any legal purpose. The
 2-65 legislature may also appropriate money from the General Revenue
 2-66 Fund for the administration and enforcement of this Act. Any amount
 2-67 of general revenue appropriated for the administration and
 2-68 enforcement of this Act in excess of the cumulative amount
 2-69 deposited in the Texas Racing Commission fund shall be reimbursed

from the Texas Racing Commission fund not later than one year after the date on which the general revenue funds are appropriated, with ~~[12 percent interest per year until August 31, 1993, and]~~ 6-3/4 percent interest ~~[thereafter]~~ with all payments first attributable to interest.

SECTION 6. Sections 5.03(a) and (c), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) An applicant for any license or license renewal under this Act must, except as allowed under Section 7.10 of this Act, submit to the commission a complete set of fingerprints of the individual natural person applying for the license or license renewal or, if the applicant is not an individual natural person, a complete set of fingerprints of each officer or director and of each person owning an interest of at least five percent in the applicant. The Department of Public Safety may request any person owning any interest in an applicant for a racetrack license to submit a complete set of fingerprints.

(c) A peace officer of this or any other state, or any district office of the commission, shall take the fingerprints of an applicant for a license or license renewal on forms approved and furnished by the Department of Public Safety and shall immediately deliver them to the commission.

SECTION 7. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Section 6.032 to read as follows:

Sec. 6.032. BOND. (a) The commission at any time may require a holder of a racetrack license or an applicant for a racetrack license to post security in an amount reasonably necessary, as provided by commission rule, to adequately ensure the license holder's or applicant's compliance with substantive requirements of this Act and commission rules.

(b) Cash, cashier's checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, or irrevocable assignments of federally insured deposits in banks, savings and loan institutions, and credit unions are acceptable as security for purposes of this section. The security must be:

(1) conditioned on compliance with this Act and commission rules adopted under this Act; and

(2) returned after the conditions of the security are met.

SECTION 8. The heading to Section 6.04, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.04. ISSUANCE OF LICENSE~~[, BOND]~~.

SECTION 9. Section 6.04, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) When all of the requirements of licensure for the applicant described in this article have been satisfied, the commission shall notify the applicant that the application is complete.

(a-2) The commission shall make a determination with respect to a pending application not later than the 120th day after the date on which the commission provided to the applicant the notice required under Subsection (a-1) of this section.

SECTION 10. Section 6.06(k), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(k) The commission shall review the ownership and management of an active ~~[a]~~ license issued under this article every five years beginning on the fifth anniversary of the issuance of the license. In performing the review, the commission may require the license holder to provide any information that would be required to be provided in connection with an original license application under Article 5 of this Act or this article. The commission shall charge fees for the review in amounts sufficient to implement this subsection.

SECTION 11. Article 6, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by adding Sections 6.0601, 6.0602, and 6.0603 to read as follows:

Sec. 6.0601. DESIGNATION OF ACTIVE AND INACTIVE RACETRACK LICENSES. (a) The commission shall designate each racetrack license as an active license or an inactive license. The commission may change the designation of a racetrack license as appropriate.

(b) The commission shall designate a racetrack license as an active license if the license holder:

(1) holds live racing events at the racetrack; or

(2) makes good faith efforts to conduct live racing.

(c) The commission by rule shall provide guidance on what actions constitute, for purposes of this Act, good faith efforts to conduct live racing.

(d) Before the first anniversary of the date a new racetrack license is issued, the commission shall conduct an evaluation of the license to determine whether the license is an active or inactive license.

(e) An active license is effective until the license is designated as an inactive license or is surrendered, suspended, or revoked under this Act.

Sec. 6.0602. RENEWAL OF INACTIVE RACETRACK LICENSE; FEES.

(a) The commission by rule shall establish an annual renewal process for inactive licenses and may require the license holder to provide any information required for an original license application under this Act. An inactive license holder must complete the annual renewal process established under this section until the commission:

(1) designates the license as an active license; or

(2) refuses to renew the license.

(b) In determining whether to renew an inactive license, the commission shall consider:

(1) the inactive license holder's:

(A) financial stability;

(B) ability to conduct live racing;

(C) ability to construct and maintain a racetrack facility; and

(D) other good faith efforts to conduct live racing; and

(2) other necessary factors considered in the issuance of the original license.

(c) The commission may refuse to renew an inactive license if, after notice and a hearing, the commission determines that:

(1) renewal of the license is not in the best interests of the racing industry or the public; or

(2) the license holder has failed to make a good faith effort to conduct live racing.

(d) The commission shall consult with members of the racing industry and other key stakeholders in developing the license renewal process under this section.

(e) The commission shall set and collect renewal fees in amounts reasonable and necessary to cover the costs of administering and enforcing this section.

(f) The commission by rule shall establish criteria to make the determinations under Subsections (c)(1) and (2).

Sec. 6.0603. DISCIPLINARY ACTION. (a) The commission by rule shall establish procedures for disciplinary action against a racetrack license holder.

(b) If, after notice and hearing, the commission finds that a racetrack license holder or a person employed by the racetrack has violated this Act or a commission rule or if the commission finds during a review or renewal that the racetrack is ineligible for a license under this article, the commission may:

(1) revoke, suspend, or refuse to renew the racetrack license;

(2) impose an administrative penalty as provided under Section 15.03 of this Act; or

(3) take any other action as provided by commission rule.

(c) The commission may not revoke an active license unless the commission reasonably determines that other disciplinary actions are inadequate to remedy the violation.

SECTION 12. Section 6.08(h), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Two percent of the breakage shall be allocated to the equine research account under Subchapter F, Chapter 88 [51], Education Code. The remaining 98 percent of the breakage shall constitute "total breakage" and shall be allocated pursuant to Subsections (i) and (j) of this section.

SECTION 13. The heading to Section 6.18, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.18. ANNUAL FEE FOR RACETRACK [~~TERM OF~~] LICENSE[~~+~~ ~~RESTRICTIONS ON RACETRACKS~~].

SECTION 14. Section 6.18(b), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission may prescribe a reasonable annual fee to be paid by each racetrack licensee. The fee must be in an amount sufficient to provide that the total amount of fees imposed under this section, together with the license fees prescribed under Section 5.01(b) of this Act and the renewal fees prescribed under Section 6.0602(e) of this Act, is sufficient to pay the costs of administering and enforcing this Act.

SECTION 15. Section 7.01, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7.01. LICENSE REQUIRED. (a) Except as provided by this section, a [A] person may not participate in racing with pari-mutuel wagering other than as a spectator or as a person placing a wager without first obtaining a license from the commission. A person may not engage in any occupation for which commission rules require a license under this Act without first obtaining a license from the commission.

(b) The commission by rule shall categorize the occupations of racetrack employees and determine the occupations that afford the employee an opportunity to influence racing with pari-mutuel wagering. The rules must require the following employees to be licensed under this Act:

(1) an employee who works in an occupation determined by the commission to afford the employee an opportunity to influence racing with pari-mutuel wagering; or

(2) an employee who will likely have significant access to the backside of a racetrack or to restricted areas of the frontside of a racetrack.

(c) A racetrack licensed under this Act is responsible for ensuring that its employees comply with this Act and commission rules. The commission may impose disciplinary action against a licensed racetrack for violations of this Act and commission rules by its employees as provided by Section 6.0603 of this Act.

SECTION 16. Section 7.07, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A license issued under this article is valid for a period set by the commission not to exceed 36 months following the date of its issuance. It is renewable on application, satisfactory results of a criminal history information record check, and payment of the fee in accordance with the rules of the commission.

(a-1) The commission shall obtain criminal history record information on each applicant renewing an occupational license under this article. The commission shall ensure that criminal history record information is obtained on each license holder at least once every 36 months.

SECTION 17. Section 11.01, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission shall adopt rules to regulate wagering on greyhound races and horse races under the system known as

6-1 pari-mutuel wagering. Wagering may be conducted only by an
 6-2 association within its enclosure. A person may not accept, in
 6-3 person, by telephone, or over the Internet, a wager for a horse race
 6-4 or greyhound race conducted inside or outside this state from a
 6-5 person in this state unless the wager is authorized under this Act.

6-6 (a-1) The commission may commission as many investigators
 6-7 as the commission determines necessary to enforce this Act and the
 6-8 rules of the commission. Each investigator shall take the
 6-9 constitutional oath of office and file it with the commission. Each
 6-10 commissioned investigator has the powers of a peace officer.

6-11 SECTION 18. Sections 11.04(a) and (c), Texas Racing Act
 6-12 (Article 179e, Vernon's Texas Civil Statutes), are amended to read
 6-13 as follows:

6-14 (a) Only a person inside the enclosure where both live and
 6-15 simulcast race meetings are authorized may wager on the result of a
 6-16 live or simulcast race presented by the association in accordance
 6-17 with commission rules. Except as provided by this section, a person
 6-18 may not place, in person, by telephone, or over the Internet, a
 6-19 wager for a horse race or greyhound race conducted inside or outside
 6-20 this state. The commission shall adopt rules to prohibit wagering
 6-21 by employees of the commission and to regulate wagering by persons
 6-22 licensed under this Act.

6-23 (c) The commission shall adopt rules prohibiting an
 6-24 association from accepting a wager made on credit and shall adopt
 6-25 rules providing for the use of automatic banking machines within
 6-26 the enclosure. The commission shall limit the use of an automatic
 6-27 banking machine to [+]

6-28 [~~(1)~~] allow a person to have access to only the
 6-29 person's checking account at a bank or other financial
 6-30 institution[~~, and~~

6-31 [~~(2) deliver no more than \$200~~].

6-32 SECTION 19. Section 11.05, Texas Racing Act (Article 179e,
 6-33 Vernon's Texas Civil Statutes), is amended to read as follows:

6-34 Sec. 11.05. UNLAWFUL WAGERING. A person shall not wager on
 6-35 the result of a greyhound race or horse race in this state except as
 6-36 permitted by this Act. A person who is not an association under
 6-37 this Act may not accept from a Texas resident while the resident is
 6-38 in this state a wager on the result of a greyhound race or horse race
 6-39 conducted inside or outside this state.

6-40 SECTION 20. Section 18.01(a), Texas Racing Act (Article
 6-41 179e, Vernon's Texas Civil Statutes), is amended to read as
 6-42 follows:

6-43 (a) The Texas Racing Commission is subject to Chapter 325,
 6-44 Government Code (Texas Sunset Act). Unless continued in existence
 6-45 as provided by that chapter, and except as provided by Subsections
 6-46 (b) and (c) of this section, the commission is abolished and this
 6-47 Act expires September 1, 2017 [~~2011~~].

6-48 SECTION 21. Section 88.521(2), Education Code, is amended
 6-49 to read as follows:

6-50 (2) "Director" means the executive director of Texas
 6-51 AgriLife Research, formerly known as the Texas Agricultural
 6-52 Experiment Station.

6-53 SECTION 22. Sections 88.522(b), (c), (f), and (g),
 6-54 Education Code, are amended to read as follows:

6-55 (b) The director shall administer the account through
 6-56 established procedures of Texas AgriLife Research, formerly known
 6-57 as the Texas Agricultural Experiment Station.

6-58 (c) The comptroller shall periodically transfer the amounts
 6-59 specified by Sections [~~Section~~] 6.08(f) and (h), Texas Racing Act
 6-60 (Article 179e, Vernon's Texas Civil Statutes), to the account.

6-61 (f) Not more than 10 percent of the account may be spent each
 6-62 year on the cost incurred in the operation or administration of the
 6-63 [~~advisory committee or~~] account.

6-64 (g) All money received by [~~the advisory committee or~~] the
 6-65 account under this chapter is subject to Subchapter F, Chapter 404,
 6-66 Government Code.

6-67 SECTION 23. Section 88.525, Education Code, is amended by
 6-68 adding Subsections (a-1) and (b-1) and amending Subsection (b) to
 6-69 read as follows:

(a-1) In awarding grants under this section, the director shall comply with the conflict of interest provisions of The Texas A&M University System.

(b) ~~The [With the advice of the advisory committee, the]~~ director shall develop annually a request for proposals for equine research grants. Each proposal received may ~~[must]~~ be evaluated by a peer review committee appointed by the director and subject matter experts as necessary to evaluate the proposal. The peer review committee shall consider the applicant's research capacity and the relevance and scientific merit of the proposal and make recommendations to the director.

(b-1) The director may award a grant to an applicant who proposes to commingle grant money awarded under this section with other sources of funding or proposes to conduct research that includes equine research.

SECTION 24. Section 88.526(a), Education Code, is amended to read as follows:

(a) The director shall prepare an annual report on equine research funded under this subchapter. The director shall distribute the report to the Texas Racing Commission and ~~[the]~~ members of the Texas horse racing industry ~~[advisory committee]~~. The director shall make copies of the report available to interested parties.

SECTION 25. Section 88.527, Education Code, is amended to read as follows:

Sec. 88.527. CONFERENCE. Texas AgriLife Research ~~[The Texas Agricultural Extension Service]~~ shall conduct an annual conference on equine research. Money from the equine research account shall be used to defray the costs of the conference. The conference must be designed to bring to the attention of the Texas horse racing industry the latest research results and technological developments in equine research. The director shall make the report created under Section 88.526 available at the conference.

SECTION 26. The following sections of the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes) are repealed:

- (1) Section 2.072;
- (2) Section 6.04(b);
- (3) Section 6.18(a); and
- (4) Section 7.02(a).

SECTION 27. The following sections of the Education Code are repealed:

- (1) Section 88.521(1);
- (2) Section 88.523;
- (3) Section 88.5231;
- (4) Section 88.5232;
- (5) Section 88.524;
- (6) Section 88.5245; and
- (7) Section 88.525(c).

SECTION 28. (a) Not later than September 1, 2012, the Texas Racing Commission shall designate each racetrack license as active or inactive as required by Section 6.0601, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as added by this Act.

(b) The Texas Racing Commission by rule shall establish a staggered schedule and the procedure for the review of licenses required under Section 6.06(k), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as amended by this Act.

(c) The Texas Racing Commission may adjust license renewal and review fees pursuant to the commission's authority to adjust fees under Section 5.01, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), and Section 6.0602, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), as added by this Act, to recover any money lost by the change in law made by this Act to Section 3.07(e), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(d) As soon as practicable, the executive director of Texas AgriLife Research shall submit a report to the Texas Racing Commission as required by Section 88.526, Education Code, as amended by this Act.

8-1 C.S.H.B. No. 2271
SECTION 29. This Act takes effect September 1, 2011.
8-2 * * * * *