House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 152

HOUSE BILL 2591

AN ACT

AMENDING SECTIONS 5-104 AND 5-113, ARIZONA REVISED STATUTES; RELATING TO HORSE RACING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 5-104, Arizona Revised Statutes, is amended to read:

5-104. Racing commission; director; department; powers and duties

A. The commission shall:

1. Issue racing dates.

2. Prepare and adopt such complete rules to govern the racing meetings as may be required to protect and promote the safety and welfare of the animals participating in such racing meetings, to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering and any other matter pertaining to the proper conduct of racing within this state.

3. Conduct hearings on applications for permits and approve permits and shall conduct such rehearings on licensing and regulatory decisions made by the director as required pursuant to rules adopted by the commission.

4. Conduct all reviews of applications to construct capital improvements at racetracks as provided in this chapter.

5. Adopt rules governing the proper and humane methods for the disposition and transportation of dogs by breeders, kennels or others.

B. The director shall license personnel and shall regulate and supervise all racing meetings held and pari-mutuel wagering conducted in this state and cause the various places where racing meetings are held and wagering is conducted to be visited and inspected on a regular basis. The director may delegate to stewards such of the director's powers and duties as are necessary to fully carry out and effectuate the purposes of this chapter. The director shall exercise immediate supervision over the department of racing. The director is subject to ongoing supervision by the commission, and the commission may approve or reject decisions of the director in accordance with rules established by the commission.

C. The commission or the department is authorized to allow stewards, with the written approval of the director, to require a jockey, apprentice jockey, sulky driver, groom, horseshoer, outrider, trainer, assistant trainer, exercise rider, pony rider, starter, assistant starter, jockey's agent, veterinarian, assistant veterinarian, cool-out, lead-out, paddock employee, security or maintenance worker, official or individual licensed in an occupational category whose role requires direct hands-on contact with horses or greyhounds, while on the grounds of a permittee, to submit to a test if the stewards have reason to believe the licensee is under the influence of or unlawfully in possession of any prohibited substance regulated by title 13, chapter 34.

D. The department shall employ the services of the office of administrative hearings to conduct hearings on matters requested to be heard by the director or the commission for the department except for those rehearings that are required by the terms of this chapter to be conducted by

the commission. Any person adversely affected by a decision of a steward or by any other decision of the department may request a hearing on such decision. The decision of the administrative law judge becomes the decision of the director unless rejected or modified by the director within thirty days. The commission may hear any appeal of a decision of the director in accordance with title 41, chapter 6, article 10.

E. The department may visit and investigate the offices, tracks or places of business of any permittee and place in those offices, tracks or places of business expert accountants and such other persons as it deems necessary for the purpose of ascertaining that the permittee or any licensee is in compliance with the rules ~~issued~~ ADOPTED pursuant to this article.

F. The department shall collect the fees payable for a license issued by it, as follows:

1. Occupational licenses, up to fifty dollars.

2. Owner, trainer, veterinarian, authorized agent, officials, assistant trainer, stable name renewal or kennel name renewal, up to seventy-five dollars.

3. Owner-trainer, driver, jockey, jockey agent or apprentice jockey, up to one hundred fifty dollars.

4. New stable name or new kennel name, up to five hundred dollars.

5. Duplicate license, up to five dollars.

6. Temporary license, up to fifty dollars.

7. If not licensed pursuant to paragraph 9 of this subsection with a combination license, greyhound racing kennels, up to one hundred dollars.

8. If not licensed pursuant to paragraph 9 of this subsection with a combination license, farms or other operations where greyhounds are raised for the purpose of dog racing, up to one hundred dollars.

9. Any combination of greyhound racing kennels, farms or other operations where greyhounds are raised for the purpose of dog racing, up to one hundred dollars.

G. The commission shall establish financial assistance procedures for promoting adoption of racing greyhounds as domestic pets AND FOR PROMOTING ADOPTION OF RETIRED RACE HORSES. The provision of financial assistance to nonprofit enterprises for the purpose of promoting adoption of racing greyhounds as domestic pets AND FOR THE PURPOSE OF PROMOTING ADOPTION OF RETIRED RACE HORSES is contingent on a finding by the commission that the program presented by the enterprise is in the best interest of the ~~greyhound~~ racing industry and this state. Upon a finding by the commission, the commission is authorized to make grants to nonprofit enterprises whose programs promote adoption of racing greyhounds OR ADOPTION OF RETIRED RACE HORSES. The commission shall develop an application process. The commission shall require an enterprise to report to the commission on the use of grants under this subsection. Financial assistance FOR NONPROFIT ENTERPRISES FOR THE PURPOSE OF PROMOTING ADOPTION OF RACING GREYHOUNDS AS DOMESTIC PETS under this subsection shall not exceed the amount collected for license fees under

subsection F, paragraphs 7, 8 and 9 of this section. FINANCIAL ASSISTANCE FOR NONPROFIT ENTERPRISES THAT PROMOTE ADOPTION OF RETIRED RACE HORSES UNDER THIS SUBSECTION SHALL NOT EXCEED THE AMOUNT OF RETIRED RACE HORSE ADOPTION SURCHARGES COLLECTED PURSUANT TO THIS SUBSECTION. THE COMMISSION SHALL COLLECT A RETIRED RACE HORSE ADOPTION SURCHARGE IN ADDITION TO EACH CIVIL PENALTY ASSESSED IN CONNECTION WITH HORSE OR HARNESS RACING PURSUANT TO THIS ARTICLE. THE AMOUNT OF THE RETIRED RACE HORSE ADOPTION SURCHARGE SHALL BE FIVE PER CENT OF THE AMOUNT COLLECTED FOR EACH APPLICABLE CIVIL PENALTY.

H. A license is valid for the period established by the commission, but not to exceed three years, except for a temporary license issued pursuant to section 5-107.01, subsection F. The licensing period for horse racing shall begin July 1. The licensing period for greyhound racing shall begin February 1.

I. Upon application in writing by an objector to any decision of track stewards, made within three days after the official notification to the objector of the decision complained of, the department or administrative law judge shall review the objection. In the case of a suspension of a license by the track stewards, such suspension shall commence at once and run for a period of not more than sixty days. Before the end of this suspension period, filing an application for review is not cause for reinstatement. If at the end of this suspension period the department or administrative law judge has not held a hearing to review the decision of the stewards, the suspended license shall be reinstated until such time as the department or administrative law judge holds a hearing to review the objection. Except as provided in section 41-1092.08, subsection H, a final decision of the commission is subject to judicial review pursuant to title 12, chapter 7, article 6.

J. The commission or the director may issue subpoenas for the attendance of witnesses and the production of books, records and documents relevant and material to a particular matter before the commission or department. Such subpoenas shall be served and enforced in accordance with title 41, chapter 6, article 10.

K. Any member of the commission, the administrative law judge or the director or the director's designee may administer oaths, and such oaths shall be administered to any person who appears before the commission to give testimony or information pertaining to matters before the commission.

L. The commission shall adopt rules which require permittees to retain for three months all official race photographs and videotapes. The department shall retain all such photographs and videotapes which are used as evidence in an administrative proceeding until the conclusion of the proceeding and any subsequent judicial proceeding. All photographs and videotapes must be available to the public on request, including photographs and videotapes of races concerning which an objection is made, regardless of whether the objection is allowed or disallowed.

M. The director may establish a management review section for the development, implementation and operation of a system of management reports and controls in major areas of department operations, including licensing, work load management and staffing, and enforcement of the provisions of this article and the rules of the commission.

N. In cooperation with the department of public safety, the director shall establish a cooperative fingerprint registration system. Each applicant for a license or permit under this article or any other person who has a financial interest in the business or corporation making the application shall submit to fingerprint registration as part of the background investigation conducted pursuant to section 5-108. The cooperative fingerprint registration system shall be maintained in an updated form using information from available law enforcement sources and shall provide current information to the director upon request as to the fitness of each racing permittee and each racing licensee to engage in the racing industry in this state.

O. The director shall develop and require department staff to use uniform procedural manuals in the issuance of any license or permit under this article and in the enforcement of this article and the rules adopted under this article.

P. The director shall submit an annual report containing such operational and economic performance information as is necessary to evaluate the department's budget request for the forthcoming fiscal year to the governor, the speaker of the house of representatives, ~~and~~ the president of the senate AND THE ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS no later than September 30 each year. The annual report shall be for the preceding fiscal year and contain such performance information as:

1. The total state revenues for the previous fiscal year from the overall pari-mutuel handle with an itemization for each dog racing meeting, each horse racing meeting, each harness racing meeting and each additional wagering facility.

2. The total state revenues for the previous fiscal year from the regulation of racing, including licensing fees assessed pursuant to subsection F of this section and monetary penalties assessed pursuant to section 5-108.02.

3. The amount and use of capital improvement funds pursuant to sections 5-111.02 and 5-111.03 which would otherwise be state revenues.

4. The number of licenses and permits issued, renewed, pending and revoked during the previous fiscal year.

5. The investigations conducted during the previous fiscal year and any action taken as a result of the investigations.

6. The department budget for the immediately preceding three fiscal years, including the number of full-time, part-time, temporary and contract employees, a statement of budget needs for the forthcoming fiscal year and a statement of the minimum staff necessary to accomplish these objectives.

7. Revenues generated for this state for the preceding fiscal year by persons holding horse, harness and dog racing permits.

8. Recommendations for increasing state revenues from the regulation of the racing industry while maintaining the financial health of the industry and protecting the public interest.

Q. The commission may certify animals as Arizona bred or as Arizona stallions. The commission may delegate this authority to a breeders' association it contracts with for these purposes. The commission may authorize the association, racing organization or department to charge and collect a reasonable fee to cover the cost of breeding or ownership certification or transfer of ownership for racing purposes.

R. The department has responsibility for the collection and accounting of revenues for the state boxing commission including, but not limited to, licensing fees required by section 5-230, the levy of the tax on gross receipts imposed by section 5-104.02 and cash deposited pursuant to section 5-229. All revenues collected pursuant to this subsection, from whatever source, shall be reported and deposited pursuant to section 5-104.02, subsection C. The director shall adopt rules as necessary to accomplish the purposes of this subsection and chapter 2, article 2 of this title.

S. The commission may obtain the services of the office of administrative hearings on any matter which the commission is empowered to hear.

T. The department may adopt rules pursuant to title 41, chapter 6 to carry out the purposes of this article, ensure the safety and integrity of racing in this state and protect the public interest.

Sec. 2. Section 5-113, Arizona Revised Statutes, is amended to read:

5-113. <u>Disposition of revenues and monies; funds; committee</u>

A. All revenues derived from permittees, permits and licenses, as provided by this article, and all monies transferred pursuant to section 44-313, subsection A shall be deposited, pursuant to sections 35-146 and 35-147, or distributed as follows:

1. Eight hundred thousand dollars or twenty-two per cent, whichever is less, shall be deposited in the Arizona county fairs racing betterment fund established by subsection B of this section.

2. One million two hundred thousand dollars or thirty-three per cent, whichever is less, shall be deposited in the county fairs livestock and agriculture promotion fund established by subsection C of this section.

3. Eight hundred thousand dollars or twenty-two per cent, whichever is less, shall be deposited in the Arizona breeders' award fund established by subsection F of this section.

4. Forty thousand dollars or one per cent, whichever is less, shall be deposited in the Arizona stallion award fund established by subsection G of this section.

5. Three hundred thousand dollars or nine per cent, whichever is less, shall be deposited in the county fair racing fund established by subsection I of this section.

6. One per cent of the revenues and monies shall be deposited in the agricultural consulting and training fund established by subsection J of this section.

7. Forty-five thousand dollars or one per cent, whichever is less, shall be subject to legislative appropriation to the department for administration of the Arizona county fairs racing betterment fund, the Arizona breeders' award fund, the Arizona stallion award fund and the greyhound adoption fund. Monies that are distributed pursuant to this paragraph and that remain unspent at the end of a fiscal year do not revert to the state general fund.

8. Four hundred thousand dollars or eleven per cent, whichever is less, shall be deposited in the Arizona exposition and state fair fund established by section 3-1005 for the purpose of capital outlay.

9. Any revenues and monies that are not distributed pursuant to paragraphs 1 through 8 of this subsection at the end of a fiscal year shall be deposited in the state general fund.

B. The Arizona county fairs racing betterment fund is established under the jurisdiction of the department. The department shall distribute monies from the fund to the county fair association or county fair racing association of each county conducting a county fair racing meeting in such proportion as the department deems necessary for the promotion and betterment of county fair racing meetings. All expenditures from the fund shall be made upon claims approved by the department. In order to be eligible for distributions from the fund, a county fair association must provide the department with an annual certification in the form required by the department supporting expenditures made from the fund. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund.

C. The county fairs livestock and agriculture promotion fund is established under the control of the governor and shall be used for the purpose of promoting the livestock and agricultural resources of the state and for the purpose of conducting an annual Arizona national livestock fair by the Arizona exposition and state fair board to further promote livestock resources. The direct expenses less receipts of the livestock fair shall be paid from this fund, but such payment shall not exceed thirty per cent of the receipts of the fund for the preceding fiscal year. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund. All expenditures from the fund shall be made upon claims approved by the governor, as recommended by the livestock and agriculture committee, for the promotion and betterment of the livestock and agricultural resources of this state. The livestock and agriculture committee is established and shall be composed of the following members, at least three of whom are from

1 counties that have a population of less than five hundred thousand persons,
2 appointed by the governor:
3 1. Three members representing county fairs.
4 2. One member representing Arizona livestock fairs.
5 3. One member representing the university of Arizona college of
6 agriculture.
7 4. One member representing the livestock industry.
8 5. One member representing the farming industry.
9 6. One member representing the governor's office.
10 7. One member representing the Arizona state fair conducted by the
11 Arizona exposition and state fair board.
12 8. One member representing the general public.
13 D. The governor shall appoint a chairman from the members. Terms of
14 members shall be four years.
15 E. Members of the committee are not eligible to receive compensation
16 but are eligible to receive reimbursement for expenses pursuant to title 38,
17 chapter 4, article 2.
18 F. The Arizona breeders' award fund is established under the
19 jurisdiction of the department. The department shall distribute monies from
20 the fund to the breeder, or the breeder's heirs, devisees or successors, of
21 every winning horse or greyhound foaled or whelped in this state, as defined
22 by section 5-114, in a manner and in an amount established by rules of the
23 commission to protect the integrity of the racing industry and promote,
24 improve and advance the quality of race horse and greyhound breeding within
25 this state. The department may contract with a breeders' association to
26 provide data, statistics and other information necessary to enable the
27 department to carry out the purposes of this subsection. Persons who are not
28 eligible to be licensed under section 5-107.01 or persons who have been
29 refused licenses under section 5-108 are not eligible to participate in the
30 Arizona greyhound breeders' award fund. Balances remaining in the fund at
31 the end of a fiscal year do not revert to the state general fund. For the
32 purposes of this subsection, "breeder" means the owner or lessee of the dam
33 of the animal at the time the animal was foaled or whelped.
34 G. The Arizona stallion award fund is established under the
35 jurisdiction of the department to promote, improve and advance the quality
36 of stallions in this state. The department shall distribute monies from the
37 fund to the owner or lessee, or the owner's or lessee's heirs, devisees or
38 successors, of every Arizona stallion whose certified Arizona bred offspring,
39 as prescribed in section 5-114, finishes first, second or third in an
40 eligible race in this state. The department may contract with a breeders'
41 association to provide data, statistics and other information necessary to
42 enable the department to carry out the purposes of this subsection. Balances
43 remaining in the fund at the end of a fiscal year do not revert to the state
44 general fund. The commission shall adopt rules pursuant to title 41, chapter

6 to carry out the purposes of this subsection. The rules shall prescribe at a minimum:

1. The manner and procedure for distribution from the fund, including eligibility requirements for owners and lessees.

2. Subject to availability of monies in the fund, the amount to be awarded.

3. The requirements for a stallion registered with the jockey club, Lexington, Kentucky or with the American quarter horse association, Amarillo, Texas to be certified as an Arizona stallion.

4. The types and requirements of races for which an award may be made.

H. The greyhound AND RETIRED RACE HORSE adoption fund is established. The department shall administer the fund AND MAINTAIN SEPARATE ACCOUNTS FOR GREYHOUND ADOPTIONS AND RETIRED RACE HORSE ADOPTIONS. All revenues derived from license fees collected from dog breeders, racing kennels and other operations pursuant to section 5-104, subsection F, paragraphs 7, 8 and 9 shall be deposited, pursuant to sections 35-146 and 35-147, in THE GREYHOUND ADOPTION ACCOUNT OF the fund. ALL REVENUES DERIVED FROM RETIRED RACE HORSE ADOPTION SURCHARGES COLLECTED PURSUANT TO SECTION 5-104, SUBSECTION G SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE RETIRED RACE HORSE ADOPTION ACCOUNT OF THE FUND. The department shall distribute monies from the fund to provide financial assistance to nonprofit enterprises approved by the commission to promote the adoption of former racing greyhounds as domestic pets AND TO PROMOTE THE ADOPTION OF RETIRED RACE HORSES pursuant to section 5-104, subsection G in a manner and in an amount established by rules of the commission. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund.

I. The county fair racing fund is established. The department shall administer the fund. Subject to legislative appropriation, the department shall use fund monies for the administration of county fair racing. Any monies remaining unexpended in the fund at the end of the fiscal year in excess of seventy-five thousand dollars shall revert to the state general fund.

J. The agricultural consulting and training fund is established. The Arizona department of agriculture shall administer the fund. Subject to legislative appropriation, the Arizona department of agriculture shall use monies in the fund for the agricultural consulting and training program established by section 3-109.01. Balances remaining in the fund at the end of a fiscal year do not revert to the state general fund.

APPROVED BY THE GOVERNOR APRIL 23, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2004.

Passed the House March 15, 2004, by the following vote: 49 Ayes, 6 Nays, 5 Not Voting

Speaker of the House

Pro Tempore

Norman L. Moore

Chief Clerk of the House

Passed the Senate April 15, 2004, by the following vote: 28 Ayes, 1 Nays, 1 Not Voting

President of the Senate

Charmin Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this 19th day of April, 2004, at 2:30 o'clock P. M.

Jennifer Ybarra

Secretary to the Governor

Approved this 23 day of April, 2004, at 2" o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State this 23 day of April, 2004, at 3:05 o'clock P. M.

Janice K. Brewer

Secretary of State

H.B. 2591