House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 247

HOUSE BILL 2387

AN ACT

AMENDING SECTIONS 5-104 AND 5-111, ARIZONA REVISED STATUTES; RELATING TO HORSE AND DOG 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 complete rules to govern the racing meetings as may be required to protect and promote the safety and welfare of the animals participating in 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 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 any 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 the 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 other persons as it deems necessary for the purpose of ascertaining that the permittee or any licensee is in compliance with the rules adopted pursuant to this article.

F. The department shall establish and collect the following licensing fees and regulatory assessments, which shall not be reduced ~~for hardship tax credits pursuant to section 5-111, subsection I or~~ for capital improvements pursuant to section 5-111.02 or 5-111.03:

1. For each racing license issued, a license fee.

2. From the purse accounts provided for in section 5-111, a regulatory assessment to pay for racing animal medication testing, animal safety and welfare.

3. From each permittee, a regulatory assessment for each day of dark day simulcasting conducted in excess of the number of live racing days conducted by the permittee.

4. From each commercial racing permittee, a regulatory assessment payable from amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct pursuant to section 5-111, subsection C from amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee.

G. The commission shall establish financial assistance procedures for promoting adoption of racing greyhounds as domestic pets and for promoting adoption of retired racehorses. 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 racehorses is contingent on a finding by the commission that the program presented by the enterprise is in the best interest of the racing industry and this state. On 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 racehorses. 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 of this section for greyhound racing kennels, farms or other operations where greyhounds are raised for the purpose of dog racing. Financial assistance for nonprofit enterprises that promote adoption of retired racehorses under this subsection shall not exceed the amount of

retired racehorse adoption surcharges collected pursuant to this subsection. The commission shall collect a retired racehorse 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 racehorse adoption surcharge shall be five ~~per cent~~ PERCENT 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. On 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, the suspension shall run for a period of not more than six months. 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 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 and the 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 the 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 that require permittees to retain for three months all official race photographs and videotapes. The department shall retain all photographs and videotapes that 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~~ ON 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 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, 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 shall contain performance information as follows:

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 that 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 and mixed martial arts 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, except that licensing fees required by section 5-230 shall be deposited in the racing regulation fund established by section 5-113.01. 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 that the commission is empowered to hear.

T. Notwithstanding any other rule or law, ~~upon~~ ON application by a dog racing permittee, the director may reduce the number of kennels required for any race to not less than five kennels.

U. 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 5-111, Arizona Revised Statutes, is amended to read:

5-111. <u>Wagering percentage to permittee and state; exemptions</u>

A. The commission shall prescribe rules governing wagering on races under the system known as pari-mutuel wagering. Wagering shall be conducted by a permittee only by pari-mutuel wagering and only on the dates for which racing or dark day simulcasting has been authorized by the commission. Wagering for a licensed racing meeting shall be conducted by a commercial live-racing permittee only within an enclosure in which authorized racing takes place and, in counties having a population of less than five hundred thousand persons or at least one million five hundred thousand persons, at those additional facilities that are owned or leased by a permittee, that are approved by the commission and that are used by a permittee for handling wagering as part of the pari-mutuel system of the commercial live-racing permittee. In all other counties, wagering may also be conducted at additional facilities that are owned or leased by a commercial live-racing permittee who is licensed to conduct live racing in those counties or who has the consent of all commercial permittees currently licensed to conduct live

racing in those counties and that are used by a permittee for handling wagering and as part of the pari-mutuel system of the commercial live-racing permittee. If the additional facilities have not been used for authorized racing before their use for handling wagering, a permittee shall not use the facilities for handling wagering before receiving approval for use by the governing body of the city or town, if located within the corporate limits, or by the board of supervisors, if located in an unincorporated area of the county. A permittee may televise any live or simulcast races received at the permittee's racing enclosure to the additional facilities at the times the races are conducted or received at the permittee's enclosure. For the purpose of section 5-110, subsection C only, a race on which wagering is permitted under this subsection shall be deemed to also occur at the additional facility in the county in which the additional facility is located, and shall be limited in the same manner as actual live racing in that county. For the purpose of subsections B and C of this section, the wagering at the additional facility shall be deemed to occur in the county in which the additional facility is located.

B. During the period of any permit for dog racing in any county, the state shall receive five and one-half ~~per cent~~ PERCENT of all monies handled in the pari-mutuel pool operated by the permittee, to be paid daily during the racing meeting. In all counties having a population of one million five hundred thousand persons or more, four and three-quarters ~~per cent~~ PERCENT of the gross amount of monies handled in a pari-mutuel pool shall be deducted from the pari-mutuel pool and shall be deposited daily into a trust account for the payment of purse amounts. In counties having a population of less than one million five hundred thousand persons, four ~~per cent~~ PERCENT of the gross amount of monies handled in a pari-mutuel pool shall be deducted from the pari-mutuel pool and shall be deposited daily in a trust account for the payment of purse amounts. ~~In addition, twenty-five per cent of any reduction in pari-mutuel taxes each year resulting from the application of the hardship tax reduction credit determined pursuant to subsection I of this section shall be deposited in the trust account for supplementing purse amounts in an equitable manner over the racing meeting as determined by the commission.~~ Notwithstanding any other provision of this subsection, the percentage paid by a permittee to the state does not apply to monies handled in a pari-mutuel pool for wagering on simulcasts of out-of-state races. During a week in which a permittee conducts live racing at the permittee's racetrack enclosure, the permittee shall deduct from monies handled in a pari-mutuel pool for wagering on simulcasts of out-of-state races and deposit daily in a trust account for the payment of purse amounts the same percentage of the pari-mutuel pool as is deducted for purses for live races unless otherwise agreed by written contract. Unless otherwise agreed by written contract, if the commission reasonably determines that live racing will not be conducted within one calendar year at a racetrack enclosure, the permittee shall deduct from monies handled in a pari-mutuel pool for wagering on simulcasts of

out-of-state races and deposit daily in a trust account to supplement purses of any dog track where live racing is conducted within a one hundred mile radius. The supplementing provided by this subsection shall be in the most equitable manner possible as determined by the commission. The permittee shall allocate the funds in the trust account and pay purse amounts at least biweekly. The permittee, at the permittee's discretion, may pay additional amounts to augment purses from the amounts received by the permittee under this subsection.

C. During the period of a permit for horse, harness or dog racing, the permittee that conducts the meeting may deduct up to and including twenty-five ~~per cent~~ PERCENT of the total amount handled in the regular pari-mutuel pools and, at the permittee's option, may deduct up to and including thirty ~~per cent~~ PERCENT of the total amount handled in the exacta, daily double, quinella and other wagering pools involving two horses or dogs, and up to and including thirty-five ~~per cent~~ PERCENT of the total amount handled in the trifecta or other wagering pools involving more than two horses or dogs in one or more races. The amounts if deducted shall be distributed as prescribed in subsection D of this section and section 5-111.02 for horse or harness racing permittees. For dog racing permittees, unless otherwise agreed by written contract, the permittee shall allocate to purses from amounts wagered on live racing conducted in this state an amount equal to fifty ~~per cent~~ PERCENT of any amounts that are deducted pursuant to this subsection in excess of twenty ~~per cent~~ PERCENT of the total amount handled in the regular pari-mutuel pools, twenty-one ~~per cent~~ PERCENT of the total amount handled in the exacta, daily double, quinella and other wagering pools involving two dogs or twenty-five ~~per cent~~ PERCENT of the total amount handled in the trifecta or other wagering pools involving more than two dogs in one or more races. For dog racing permittees the percentages prescribed in subsection B of this section shall be distributed to the state and to the trust account for payment of purse amounts and the permittee shall receive the balance. If the dog racing permittee has made capital improvements, the distribution to the state shall be adjusted as provided in section 5-111.03. Monies deposited in the trust account for payment of purses pursuant to this subsection shall be in addition to amounts deposited pursuant to subsection B of this section.

D. During the period of a permit for horse or harness racing, the state shall receive two ~~per cent~~ PERCENT of the gross amount of the first one million dollars of the daily pari-mutuel pools and five ~~per cent~~ PERCENT of the gross amount exceeding one million dollars of the daily pari-mutuel pools. Notwithstanding any other provision of this subsection, the percentage paid by a permittee to the state does not apply to monies handled in a pari-mutuel pool for wagering on simulcasts of out-of-state races. The permittee shall retain the balance of the total amounts deducted pursuant to subsection C of this section. Of the amount retained by the permittee, minus the amount payable to the permittee for capital improvements pursuant to

section 5-111.02, breakage distributed to the permittee pursuant to section 5-111.01 and other applicable state, county and city transaction privilege or other taxes, unless otherwise agreed by written contract, fifty ~~per cent~~ PERCENT shall be used for purses. Unless otherwise agreed by written contract, fifty ~~per cent~~ PERCENT of the revenues received by the permittee from simulcasting races as provided in section 5-112, net of costs of advertising, shall be utilized as a supplement to the general purse structure. All amounts that are deducted from the pari-mutuel pool for purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 and revenues that are received from simulcasting and that are to be used as a supplement to the general purse structure pursuant to this subsection shall be deposited daily into a trust account for the payment of purse amounts.

E. Any county fair racing association may apply to the commission for one racing meeting each year and the commission shall set the number of days and the dates of the meetings. A racing meeting conducted under this subsection shall be operated in such manner so that all profits accrue to the county fair racing association, and the county fair racing association may deduct from the pari-mutuel pool the same amount as prescribed in subsection C of this section. All county fair racing meetings, whether conducted by county fair racing associations under this subsection or by an individual, corporation or association other than a county fair racing association, are exempt from the payment to the state of the percentage of the pari-mutuel pool prescribed by subsection D of this section and are also exempt from the provisions of section 5-111.01.

F. Monies from charity racing days are exempt from the state percentage of the pari-mutuel pool prescribed in this section.

G. Sums held by a permittee for payment of unclaimed pari-mutuel tickets are exempt from the revised Arizona unclaimed property act, title 44, chapter 3.

H. All of the amounts received by a permittee from the gross amount of monies handled in a pari-mutuel pool and all amounts held by a permittee for payment of purses pursuant to this section and sections 5-111.01, 5-112 and 5-114 are exempt from the provisions of title 42, chapter 5.

~~I. On August 1 of each year, a permittee is eligible for a hardship tax credit pursuant to this subsection. For purposes of this subsection, "permittee" shall include any person who has succeeded to the interest of a permittee and who is authorized to conduct racing at the facility for which the permit was issued. The department shall determine the amount of any hardship tax credit as follows:~~

~~1. Determine the percentage decrease in pari-mutuel wagering by determining the percentage decrease in pari-mutuel wagering between the base period amount and the amount of pari-mutuel wagering in the previous fiscal year at the racetrack and the additional wagering facilities operated by the permittee. The base period amount is the highest total annual pari-mutuel wagering at the racetrack and all additional wagering facilities as reported~~

~~to the department for fiscal year 1989-1990, 1990-1991, 1991-1992, 1992-1993 or 1993-1994.~~

~~2. Determine the permittee's hardship tax credit by multiplying the total pari-mutuel tax due as a result of wagering at the racetrack and all additional wagering facilities for the previous fiscal year before applying any hardship tax credit amount by the percentage decrease in pari-mutuel wagering determined pursuant to paragraph 1 of this subsection and multiplying the result by three.~~

~~3. The permittee's pari-mutuel tax due as otherwise determined under subsections B and D of this section shall be reduced for the current period and any future periods by an amount equal to the amount of the hardship tax credit determined pursuant to this subsection. The hardship tax credit is in addition to any other tax exemptions, rebates and credits.~~

Sec. 3. Application of previously earned hardship tax credits

This act does not prevent a permittee from using hardship tax credits that were lawfully earned before the effective date of this act to reduce pari-mutuel taxes after the effective date of this act.

Sec. 4. Requirements for enactment; two-thirds vote

Pursuant to article IX, section 22, Constitution of Arizona, this act is effective only on the affirmative vote of at least two-thirds of the members of each house of the legislature and is effective immediately on the signature of the governor or, if the governor vetoes this act, on the subsequent affirmative vote of at least three-fourths of the members of each house of the legislature.

APPROVED BY THE GOVERNOR MAY 13, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2016.

Passed the House February 29, 2016

by the following vote: ~~58~~ 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Pursuant to Art. IV, § 22

Pro Tempore

Chief Clerk of the House

Passed the Senate May 5, 2016

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Pursuant to Art. IV, Section 22

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

10th day of May, 2016

at 10:21 o'clock A. M.

Secretary to the Governor

Approved this 13th day of

May

at 10:21 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13th day of May, 2016

at 3:31 o'clock P M.

Secretary of State

H.B. 2387