

PREAMBLE

The Texas Racing Commission proposes an amendment to § 309.6, Security for Compliance. The section proposed for amendment relates to the security or security bond that racetrack associations must post under § 6.04(b) of the Act. The purpose of the security is to ensure that associations complete their racetrack facilities and start racing on the date approved by the Commission.

The change will clarify that §6.04(b) of the Texas Racing Act allows the Commission to require security from both new and existing racetrack associations. The change will enable the Commission to require security from an existing association that does not have a racetrack facility and who does not have security currently posted. The change will also enable the Commission to require security from an existing licensee that does have a racetrack facility, but that did not conduct live racing in the previous calendar year and does not have security currently posted.

The change will not require security from an association that does have a racetrack facility and that did conduct live racing in the previous calendar year.

The change will also define the types of revenue that the agency will consider in determining the amount of the required security. The amount of required security must be reasonable in relation to the amounts of revenue that will be lost to the state's general revenue fund and to the Texas Bred Incentive Programs if simulcast and live racing do not begin on the dates approved by the Commission.

The change clarifies that any interest earned on security posted as United States Treasury Bonds or through irrevocable assignments of federally insured deposits will remain the property of the association.

The change clarifies that any portion of the security may be forfeited to the Commission for any accrued fees, penalties or interest owed by the association.

The change clarifies that any remaining security will be returned to the association after the association completes its first live race meet.

The amendments are proposed under the Texas Civil Statutes, Article 179e, § 3.02 and § 3.021, which authorizes the Commission to make rules relating to all aspects of greyhound and horse racing, and § 6.04(b), which requires applicants to post security to ensure compliance with the Act and the Rules of the Commission.

PROPOSED RULE

Rule 309.6 - Security for Compliance

- (a) Not later than 10 business days after the Commission's order issuing a racetrack license to an applicant under this chapter becomes final and unappealable, the association must post security in an amount determined by the Commission to adequately ensure:
- (1) _____ -the association's compliance with the Act and the Rules;
 - (2) _____ ~~and~~ the association's completion of the racetrack facilities on or before the date approved by the Commission;
 - (3) _____ the start of simulcast racing on or before the date approved by the Commission; and
 - (4) _____ the start of live racing on or before the date approved by the Commission. The amount of the security must be reasonable in relation to the amount of revenue that will be lost if the association fails to start racing on the date approved by the Commission.
- (b) If an association has no posted security, either because the Commission did not originally require the association to post security or because the association has already forfeited its security, and the association has not completed its racetrack facilities or has failed to conduct live racing in the previous calendar year, the Commission may:
- (1) _____ approve a new date by which the association must complete its racetrack facilities;
 - (2) _____ approve a date by which the association must begin simulcast racing;
 - (3) _____ approve a date by which the association must begin live racing; and
 - (4) _____ require the association to post security in an amount determined by the Commission.
- (c) The amount of the security must be reasonable in relation to the total amount of revenue that the state's general revenue fund and the Texas Bred Incentive

- Programs will lose if the association fails to conduct racing on the dates approved by the Commission.
- (d) ~~(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. Interest earned on a United States Treasury bond or on an irrevocable assignment of a federally insured deposit is not subject to the assignment and remains the property of the association.
- (e) ~~(e)~~ If an association fails to ~~start~~ conduct simulcast or live racing ~~by~~ on the dates approved by the Commission, the Commission may forfeit to the state's general revenue fund and to the Texas Bred Incentive Programs any portion of the security that is appropriate for the amount of revenue lost to those funds ~~due to the failure to start racing.~~
- (f) If an association is liable to the Commission for any accrued fees, penalties or interest, the Commission may forfeit any portion of the security that is appropriate for those fees, penalties or interest.
- (g) ~~(d)~~ After the association completes its first live race meet after posting security under this section, ~~begins racing,~~ the Commission shall return ~~the~~ any remaining security to the association.