

TEXAS RACING COMMISSION

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COMMITTEE ON RULES TO IMPLEMENT HB 2271

Tuesday, October 18, 2011
1:30 p.m.

Texas Animal Health Commission
2105 Kramer Lane
Austin, Texas 78758

Agenda

The Committee will meet to continue its effort to develop rule changes to implement the requirements of HB 2271, 82nd Regular Legislative Session.

The Committee will accept comments in response to the publication of the following rule proposals in the Texas Register:

Section 301.1, Definitions

Section 309.8, Racetrack License Fees

Section 309.129, Automatic Banking Machines

Section 311.3, Information for Background Investigation

Section 319.335, Auditing and Approval of Testing Costs

Section 319.336, Payment of Testing Costs

Section 321.36, Remittance of Unclaimed Outs and Vouchers

To implement Sections 4, 15, 17, 18 and 19 of HB 2271, proposals affecting the following rules will be discussed:

Section 307.67, Appeal to the Commission

Section 307.69, Action by Commission

Section 311.5, License Categories and Fees

Section 321.21, Certain Wagers Prohibited

In addition, the Committee will continue to discuss approaches towards implementing the remainder of HB 2271, including Sections 7, 9, 10, 11, 26, and 28.

The public will be given an opportunity to address the Committee and identify any potential subjects that it would like placed on the agenda for discussion at a future committee meeting.

Rules Published for Public Comment

1 **Section 301.1 Definitions.**

2 (a) (No change.)

3 (b) (1)-(50) (No change.)

4 (51) Performance--the schedule of horse or greyhound races run
5 consecutively as one program. A greyhound performance consists
6 of fifteen or fewer races unless approved by the executive
7 secretary.

8 (52)-(89) (No change.)

9 (90) "Active license" means a racetrack license designated by
10 the commission as active.

11 (91) "Inactive license" means a racetrack license designated by
12 the commission as inactive.

Texas Racing Commission
Title 16, Part VIII
Chapter 309. Racetrack Licenses and Operations
Subchapter A. Racetrack Licenses

1 **Sec. 309.8. Racetrack License Fees.**

2 (a) Purpose of Fees. An association shall pay a license fee to
3 the Commission to pay the Commission's costs to administer and
4 enforce the Act, and to regulate, oversee, and license live and
5 simulcast racing at racetracks.

6 (b) Annual License Fee.

7 (1) A licensed racing association shall pay an annual
8 license fee. The annual license fee for each license type
9 is as follows:

10 (A) for a Class 1 racetrack, \$500,000;

11 (B) for a Class 2 racetrack, \$230,000;

12 (C) for a Class 3 or 4 racetrack, \$70,000; and

13 (D) for a Greyhound racetrack, \$360,000.

14 (2) An association that is conducting live racing or
15 simulcasting shall pay its annual license fee by
16 remitting to the Commission 1/12th of the fee on the first
17 business day of each month. For the State Fiscal Year
18 that begins on September 1, 2011, the monthly remittance
19 shall begin in the month of January.

20 (3) An association that is not conducting live racing or
21 simulcasting shall pay its annual license fee on
22 September 1 of each fiscal year. For the State Fiscal
23 Year that begins on September 1, 2011, the annual license
24 fees shall be paid in two separate payments. The first
25 payment will be of \$100,000 and is due on September 1,
26 2011. The second payment will be of the remaining unpaid
27 balance and shall be paid on January 1, 2012.

28 (c) Adjustment of Fees.

Texas Racing Commission
Title 16, Part VIII
Chapter 309. Racetrack Licenses and Operations
Subchapter A. Racetrack Licenses

1 (1) Annual fees are calculated using a projected base of
2 143 days of live horse racing and 270 performances of
3 live greyhound racing per calendar year. To cover the
4 additional regulatory cost in the event additional days
5 or performances are requested by the associations the
6 executive secretary may:

7 (A) recalculate a horse racetrack's annual fee by adding
8 \$3,750 for each live day added beyond the base,

9 (B) recalculate a greyhound racetrack's annual fee by
10 adding \$750 for each live performance added beyond
11 the base, and

12 (C) review the original or amended race date request
13 submitted by each association to establish race date
14 baselines for specific associations if needed.

15 (2) If at any point the executive secretary determines the
16 total revenue from the annual fees is insufficient to pay
17 the Commission's costs during a fiscal year, the
18 executive secretary shall recommend to the Commission a
19 supplemental fee, in addition to the license fee, that
20 each association would be required to pay to generate the
21 necessary revenue to pay the Commission's costs.

22 (3) If the executive secretary determines that the total
23 revenue from the annual fees exceeds the amount needed to
24 pay those costs, the executive secretary may order a
25 moratorium on all or part of the annual license fees
26 remitted monthly by any or all of the associations.
27 Before entering a moratorium order, the executive
28 secretary shall develop a formula for providing the
29 moratorium in an equitable manner among the associations.

Texas Racing Commission
Title 16, Part VIII
Chapter 309. Racetrack Licenses and Operations
Subchapter A. Racetrack Licenses

1 In developing the formula, the executive secretary shall
2 consider the amount of excess revenue received by the
3 Commission, the source of the revenue, the Commission's
4 costs associated with regulating each association, the
5 Commission's projected receipts for the next fiscal year,
6 and the Commission's projected expenses during the next
7 fiscal year.

1 **Section 309.129. Automatic Banking Machines.**

2 (a)-(b) (No Change.)

3 (c) Configuration. An automatic banking machine placed on
4 association grounds must be configured with the following
5 restrictions:

6 (1) A customer using the machine may withdraw funds only
7 from his or her checking account at a bank or other financial
8 institution. A customer may not use the machine to withdraw
9 funds from a savings account.

10 ~~(2) A customer may withdraw no more than \$200 per day per~~
11 ~~account. For purposes of this paragraph, a "day" is the 24-hour~~
12 ~~period beginning at 12:00 midnight.~~

13 ~~(2)~~⁽³⁾ For each transaction at a machine, a statutory fee
14 of \$1.00 must be withdrawn from the customer's account in
15 addition to the amount delivered to the customer and any other
16 fees authorized and imposed by the bank or other financial
17 institution, by the association, or by the vendor.

18 ~~(3)~~⁽⁴⁾ Before the customer authorizes the transaction, the
19 machine must display a screen that notifies the customer of the
20 statutory fee and permits the customer to cancel the
21 transaction. The notice must state the following or its
22 equivalent: UNDER TEXAS RACING ACT, §11.04(E), A \$1 FEE MUST BE
23 COLLECTED ON EACH TRANSACTION AT THIS MACHINE FOR DEPOSIT INTO
24 THE TEXAS STATE TREASURY.

25 (d)-(f) (No change.)

Texas Racing Commission
Title 16, Part VIII,
Chapter 311. Other Licenses
Subchapter A. Licensing Provisions
Division 1. Occupational Licenses

1 **Section 311.3. Information for Background Investigation.**

2 (a) Fingerprint Requirements and Procedure.

3 (1) Except as otherwise provided by this section, an
4 applicant for a license or license renewal must submit with the
5 application documents a set of the applicant's fingerprints in a
6 form prescribed by the Department of Public Safety. If the
7 applicant is not an individual, the applicant must submit a set
8 of fingerprints on the above-referenced forms for each
9 individual who:

10 (A) serves as a director, officer, or partner of the
11 applicant;

12 (B) holds a beneficial ownership interest in the
13 applicant of 5.0% or more; or

14 (C) owns any interest in the applicant, if requested
15 by the Department of Public Safety.

16 (2)-(5) (No change.)

17 (6) If an applicant for a license or license renewal is
18 required to submit fingerprints under this section, the
19 applicant must also submit a fingerprinting fee of \$44.20
20 ~~\$12.00~~.

21 (b) (No change.)

Texas Racing Commission
Title 16, Part VIII
Chapter 319. Veterinary Practices and Drug Testing
Subchapter D. Drug Testing
Division 2. Testing Procedures

1 **Section 319.335. ~~Auditing and~~ Approval of Testing Costs.**

2 ~~(a)~~ All charges for conducting tests under this subchapter must
3 be reconciled with the number of tests actually conducted
4 audited and be approved by the executive secretary before
5 payment. ~~The executive secretary shall audit the charges as to~~
6 ~~the reasonableness of the charges in accordance with industry~~
7 ~~standards for comparable testing procedures.~~

8 (b) - (c) (No change.)

Texas Racing Commission
Title 16, Part VIII
Chapter 319. Veterinary Practices and Drug Testing
Subchapter D. Drug Testing
Division 2. Testing Procedures

1 **Section 319.336. Payment of Testing Costs.**

2 (a) Responsibility for Payment. Immediately on receipt of
3 approved charges for conducting tests under this subchapter, an
4 association shall pay the charges.

5 (b) Authority to Use Outstanding Tickets and Pari-mutuel
6 Vouchers. An association may use money held by the association
7 to pay outstanding tickets and outstanding pari-mutuel vouchers
8 to pay for charges under this section. If the money held is
9 insufficient to pay the charges, the association shall pay the
10 remainder of the charges.

11 ~~(c) Accounting and Payment of Remainder.~~

12 ~~(1) The accounting and payment of remainder of outs and~~
13 ~~vouchers to the Commission shall be done in accordance with~~
14 ~~§321.36.~~

15 ~~(2) The executive secretary will review the accounting~~
16 ~~submitted by the association. If the executive secretary~~
17 ~~determines the accounting is in error, the executive secretary~~
18 ~~may adjust the amount due to the Commission from outstanding~~
19 ~~tickets and either demand payment of the additional amount owed~~
20 ~~or reimburse the association for the excess amount paid to the~~
21 ~~Commission.~~

22 ~~(d) Pooling of Drug Testing Costs. The executive secretary may~~
23 ~~establish a procedure to pay drug testing costs by pooling the~~
24 ~~amounts held by all associations to pay outstanding tickets. If~~
25 ~~the amount held by an association does not cover the full costs~~
26 ~~of drug testing for that association, the executive secretary~~
27 ~~may pay those costs using funds paid to the Commission under~~
28 ~~subsection (c)(1) of this section.~~

Texas Racing Commission
Title 16, Part VIII
Chapter 321. Pari-Mutuel Wagering
Subchapter A. Mutuel Operations
Division 3. Mutuel Tickets and Vouchers

1 **Section 321.36. ~~Remittance of Unclaimed Outs and Vouchers.~~**

2 ~~(a) Pursuant to the Act, §3.07, to pay the charges associated~~
3 ~~with the medication or drug testing, an association may use the~~
4 ~~money held by the association to pay outstanding tickets and~~
5 ~~pari-mutuel vouchers. If additional amounts are needed to pay~~
6 ~~the charges, the association shall pay those additional amounts.~~
7 ~~If the amount of outstanding tickets and pari-mutuel vouchers~~
8 ~~held exceeds the amount needed to pay the charges, the~~
9 ~~association may retain the excess amount as outstanding tickets~~
10 ~~and pari-mutuel vouchers expire. shall pay the excess to the~~
11 ~~commission.~~

12 ~~(b) The association shall file a quarterly report, on a form~~
13 ~~prescribed by the executive director, that reports:~~

14 ~~(1) the amount of outstanding tickets and pari-mutuel~~
15 ~~vouchers that have expired during the quarter as outlined under~~
16 ~~§321.33;~~

17 ~~(2) the amount needed to reimburse the association for~~
18 ~~payments made by the association to cover charges associated~~
19 ~~with the medication or drug testing pursuant to §3.07 of the~~
20 ~~Act; and~~

21 ~~(3) the amount of excess expired tickets and pari-mutuel~~
22 ~~vouchers, if any, due to the commission.~~

23 ~~(c) The association shall file the quarterly reports and make~~
24 ~~payments when applicable on the following schedule:~~

25 ~~(1) September, October and November will constitute the~~
26 ~~first quarter and shall be filed with the commission no later~~
27 ~~than December 15;~~

Texas Racing Commission
Title 16, Part VIII
Chapter 321. Pari-Mutuel Wagering
Subchapter A. Mutuel Operations
Division 3. Mutuel Tickets and Vouchers

1 ~~(2) December, January and February will constitute the~~
2 ~~second quarter and shall be filed with the commission no later~~
3 ~~than March 15.~~

4 ~~(3) March, April and May will constitute the third quarter~~
5 ~~and shall be filed with the commission no later than June 15;~~
6 ~~and~~

7 ~~(4) June, July and August shall constitute the fourth~~
8 ~~quarter and shall be filed with the commission no later than~~
9 ~~September 15.~~

10 ~~(d) The reports and payments submitted by the association are~~
11 ~~subject to audit by the Commission.~~

12

HB 2271

Section 4

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

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

(e) To pay the charges associated with the medication or drug testing, an association may use the money held by the association to pay outstanding tickets and

pari-mutuel vouchers. If additional amounts are needed to pay the charges, the association shall pay those additional amounts. [~~If the amount held exceeds the amount needed to pay the charges, the association shall pay the excess to the commission in accordance with Section 11.08 of this Act.~~]

1 **307.67. Appeal to the Commission**

2 (a) (No change.)

3 (b) Filing Procedure.

4 (1) An appeal must be in writing in a form prescribed by
5 the executive secretary. An ~~The~~ appeal from a ruling of the
6 stewards or racing judges must be filed not later than 5:00 p.m.
7 of the third calendar day after the day the person is informed
8 of the ruling by the stewards or racing judges. An appeal from
9 the modification of a penalty by the executive secretary must be
10 filed not later than 5:00 p.m. of the fifth calendar day after
11 the day the person is informed of the penalty modification. The
12 appeal must be filed at the main Commission offices in Austin or
13 with the stewards or racing judges at a Texas pari-mutuel
14 racetrack where a live race meet is being conducted. The appeal
15 must be accompanied by a cash bond in the amount of \$150, to
16 defray the costs of the court reporter and transcripts required
17 for the appeal. The bond must be in the form of a cashier's
18 check or money order.

19 (2) (No change.)

20 (c)-(f) (No change.)

1 **Section 307.69. Review by Executive Secretary Action by**
2 **Commission**

3 ~~On its own motion or on request by the executive secretary, the~~
4 ~~Commission may reverse a decision of the stewards or racing~~
5 ~~judges, modify a penalty imposed by the stewards or racing~~
6 ~~judges, or reinstate a person's license and rescind the penalty.~~

7 (a) Within fourteen days after a board of stewards or judges
8 issues a written ruling under Section 307.63 of this title
9 (relating to Rulings), the executive secretary may review the
10 ruling and modify the penalty. A penalty modified by the
11 executive secretary may include a fine not to exceed \$10,000, a
12 suspension not to exceed two years, or both a fine and a
13 suspension.

14 (b) The decision to modify a penalty must be on a form that
15 includes:

16 (1) the full name, license type, and license number of the
17 person who is the subject of the penalty modification;

18 (2) the original ruling number and the date the ruling was
19 issued by the stewards or judges;

20 (3) the date the modified penalty was issued by the
21 executive secretary;

22 (4) the modified penalty imposed;

23 (5) a statement of the reasons for modifying the penalty;

24 and

25 (6) a statement informing the person of the person's right
26 to appeal the ruling, with the modified penalty, to the
27 Commission.

28 (c) The decision to modify a penalty must be signed by the
29 executive secretary.

1 (d) The executive secretary shall provide written notice to each
2 person who is subject to a penalty modification decision under
3 this section by:

4 (1) sending by certified mail, return receipt requested, a
5 copy of the decision to the person's last known address, as
6 found in the Commission's licensing files; or

7 (2) personal service by any Commission employee.

8 (e) An appeal of a ruling whose penalty has been modified under
9 this section must be filed in accordance with Section 307.67 of
10 this title (relating to Appeals to the Commission.)

HB 2271 Section 15

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.

Title 16, Part VIII
Chapter 311. Other Licenses
Subchapter A. Licensing Provisions
Division 1. Occupational Licenses

1 **Section 311.5. License Categories and Fees**

2 (a) An applicant for a license must submit with the application
3 documents the license fee in the amount set by the Commission in
4 subsection (d) of this section.

5 (b) A license fee paid at a racetrack or at the Commission's
6 headquarters must be paid by a money order, a certified check, a
7 cashier's check, a credit card, or a personal check. The
8 executive secretary may approve payment in cash at a racetrack
9 if the association submits a plan that is approved by the
10 executive secretary. The plan shall provide for the safety and
11 security of the licensing office where the cash will be received
12 and stored and licensing employees who will be responsible for
13 handling and depositing the cash received. A license fee paid
14 through the Texas OnLine portal may be paid by any method
15 approved by the Texas OnLine Authority.

16 (c) Association Employees. Association employees in the
17 following occupations must hold valid licenses issued by the
18 Commission to work on association grounds:

- 19 (1) Adoption Program Personnel - A person employed by a
20 greyhound association to work with an adoption
21 program.
- 22 (2) Announcer - A person employed to announce races.
- 23 (3) Assistant Starter - A person employed to perform
24 duties required by the Starter at the starting gate of
25 a horse racetrack.
- 26 (4) Association Management Staff - A person employed to
27 manage a department and who has the authority to hire
28 or fire other employees or whose recommendations as to

Title 16, Part VIII
Chapter 311. Other Licenses
Subchapter A. Licensing Provisions
Division 1. Occupational Licenses

- 1 hiring and firing decisions are given particular
2 weight.
- 3 (5) Association Officer/Director - A person employed as an
4 officer of an association or who serves on an
5 association's board of directors or management
6 committee.
- 7 (6) Association Staff (with Access to Backside or Secured
8 Areas) - A person employed to provide various services
9 on the backside or in areas of a racetrack that are
10 required by the Commission to be secured. These
11 services may include, but are not limited to,
12 clerical, accounting, admissions, food service,
13 housekeeping, and general maintenance.
- 14 (7) Association Veterinarian - A person employed to
15 provide veterinary services for greyhounds.
- 16 (8) Law Enforcement - A person employed as a security
17 officer who is commissioned as a Texas peace officer.
- 18 (9) Lead Out - A person employed to lead greyhounds in the
19 post parade to the starting box.
- 20 (10) Maintenance - A person employed to work or maintain
21 the racetrack.
- 22 (11) Medical Staff - A person employed directly by the
23 association to provide medical assistance.
- 24 (12) Mutuel Clerk - A person employed to work at the
25 betting windows.
- 26 (13) Mutuel Other - A person employed in the mutual
27 department in a capacity other than mutual clerk.

Title 16, Part VIII
Chapter 311. Other Licenses
Subchapter A. Licensing Provisions
Division 1. Occupational Licenses

- 1 (14) Racing Official - A person employed to act as an
2 official under Chapter 313 of this Title (relating to
3 Officials and Rules of Horse Racing) or Chapter 315 of
4 this Title (relating to Officials and Rules for
5 Greyhound Racing).
- 6 (15) Security Officer - A person employed to provide
7 security for the racetrack grounds.
- 8 (16) Test Technician - A person employed to collect blood
9 and urine samples and provide other services in the
10 test barn or testing area.
- 11 (17) Test Barn Escort - A person employed to lead horses
12 from the finish line to the test barn for post race
13 testing.
- 14 (18) Valet - A person employed to assist jockeys with their
15 tack and silks in the jockeys' rooms.
- 16 (d)~~(e)~~ The fee for an occupational license is as follows:
17 (No change to fee schedule.)

HB 2271 Sections 17-19

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

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

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

(a) Only a person inside the enclosure where both live and simulcast race meetings are authorized may wager on the result of a live or simulcast race presented by the association in accordance with commission rules. Except as provided by this section, a person may not place, in person, by telephone, or over the Internet, a wager

for a horse race or greyhound race conducted inside or outside this state. The commission shall adopt rules to prohibit wagering by employees of the commission and to regulate wagering by persons licensed under this Act.

(c) The commission shall adopt rules prohibiting an association from accepting a wager made on credit and shall adopt rules providing for the use of automatic banking machines within the enclosure. The commission shall limit the use of an automatic banking machine to [;

~~[(4)]~~ allow a person to have access to only the person's checking account at a bank or other financial institution[; ~~and~~

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

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

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

1 **Section 321.21. Certain Wagers Prohibited**

2 (a) An association may not accept a wager made by mail, by
3 telephone, or by internet. A data communications link for common
4 pooling purposes is not considered a wager for purposes of this
5 section.

6 (b) An association may not accept a wager made on credit.

7 (c) A person who is not an association may not accept from a
8 Texas resident while the resident is in this state a wager on
9 the result of a greyhound race or horse race conducted inside or
10 outside this state.

HB 2271
Sections 7, 9, 10, 11, 26 and 28

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 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 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 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.

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August 17, 2011

Mr. Mark Fenner
General Counsel
Texas Racing Commission
8505 Cross Park Drive, Suite 110
Austin, Texas 78754

Via Telecopy

Re: Comments to Rulemaking: "Good Faith Efforts"

Dear Mark:

We appreciated the opportunity to participate in the meeting of the Ad Hoc Committee on Rules to Implement HB 2271, held on July 19, 2011. During that meeting, the attendees discussed various approaches the Commission might take in implementing those provisions in HB 2271 requiring the Commission to designate a track as either "active" or "inactive." You invited the attendees to provide you with examples of association actions that constitute "good faith efforts to conduct live racing," which should be include in the Commission's proposed rule.

In response to your request, we are providing you with a non-exhaustive list of examples of "good faith efforts," some of which were discussed during the Rule Committee meeting.

1. Application for Change of Location

Actively pursuing a change of racetrack location for an existing license (particularly submitting an Application for approval of a location change) shows a good faith effort towards conducting live racing. An Application to Change Location requires very detailed information, including land ownership, design of the racetrack, proposed racing meets, and financial projections. To even submit a complete Application, the applicant must have engaged in expensive and time-consuming efforts to find a suitable location and conduct a thorough analysis of that location for suitability to operate a successful racetrack offering live racing. The ownership of the license would not expend such significant capital without the ultimate goal constructing a racetrack.

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2. Application for Temporary Facility

Seeking approval to begin simulcast operations at a temporary facility in the county of the license shows a good faith effort toward live racing. Temporary facilities are designed to create purse money that can be saved and then used for initial purses once the permanent facilities are operational. Temporary facilities should be viewed as the first phase in the overall racetrack project. Laying the proper groundwork to give a racetrack the best possible chance of success should certainly be considered a good faith effort toward live racing.

3. Conducting Simulcasting

Conducting simulcasting at a facility can also be in indication of a good faith effort toward live racing. As the Commission is well aware, conducting live racing requires a significant amount of capital. By conducting simulcasting operations initially, the association may build purses for the live racing to follow. The commitment of the association to the facility in general can be evaluated through its expenditures such as payroll, property taxes, advertising, event hosting, and purse money. Because an active commitment to the facility lays the groundwork for live racing, the association's commitment shows a good faith effort to conduct live racing.

4. Purchase of Land

Outlays of significant capital to purchase property are an indicator of intent to conduct live racing. Investors would not agree to such capital expenditures if there is no intent to construct and operate a racetrack

5. Live Race Dates

In some circumstances, having allocated race dates shows a good faith effort toward live racing. That being said, it is certainly possible to be making good faith efforts toward live racing without race dates. The Commission grants race dates for a period of 18 months at a given time. In the case of racetrack that has not been constructed, it may be unrealistic to assume a fully operational track will be built during that time frame. An association can be making good faith efforts toward live racing while still maintaining realistic expectations as to when that live racing will occur, and thus whether or not to seek race dates during a specific 18 month period.

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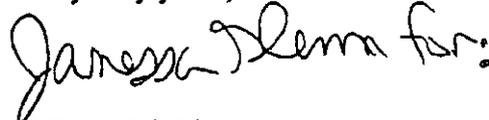
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6. Pre-construction Negotiations

Active negotiations with regulatory authorities concerning pre-construction matters such as zoning, utilities, and road improvements show good faith efforts toward live racing. These site preparation activities are the first phase of construction of the racetrack.

We look forward to discussing the proposed rule on "good faith efforts" at the next meeting of the Rules Committee.

Very truly yours,



William J. Moltz
Counsel for Valle de los Tesoros, Ltd.,
LRP Group, Ltd, and Gulf Coast Racing, LLC



P.O. Box 141309

Austin, Texas 78714

512/272-5581

October 13, 2011

Mark Fenner
Legal Counsel
Texas Racing Commission
PO Box 12080
Austin, Texas 78711

Dear Mr. Fenner:

I have expressed my strong feelings on Inactive Licenses and some steps I think need to be taken to progress towards Live Racing.

While I am not in favor of forcing anyone to run Live Racing now, I think a lack of genuine progress toward that goal has hurt the entire industry through the lack of support from our elected officials.

At a minimum I think a path toward Live Racing should be established:

1. Licenses are granted to applicants with specific locations. Find one.
2. Legitimate ownership of said site or at a minimum a long-term lease.
3. Analysis of availability of utilities and ingress – egress.
(Traffic study if necessary.)
4. Site work engineering plans for approval by the Texas Racing Commission.
5. Architectural drawings submitted to the Commission for approval.

These steps would occur before any construction began but would signal the industries intent to precisely locate these licensees.

While I have no particular grievance with any of the License holders, the disingenuous behavior they have exhibited is affecting all of us at the Capitol.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard Phillips".

Howard Phillips
Managing Partner