

BILL ANALYSIS

Senate Research Center

H.B. 2271
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Government Organization
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1986, the legislature passed the Texas Racing Act, allowing pari-mutuel wagering on horse and greyhound races and creating the Texas Racing Commission (TRC) to oversee the racing industry. TRC's authority spans from licensing racetracks and their employees, to overseeing live racing events, and monitoring and certifying wagering transactions.

Last fiscal year, TRC spent about \$4.3 million for its operations, paid from wagers, fees, and fines. The state also received about \$3.6 million in pari-mutuel taxes. TRC is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found that TRC needs stronger regulatory tools to help oversee today's declining racing industry.

Created by the 72nd Legislature in 1991, the 11-member Equine Research Account Advisory Committee (committee) recommends funding for equine research projects, initially using a portion of the wagers placed on Texas horse races. The director of Texas AgriLife Research makes the final grant awards. For the past three sessions, the legislature has not appropriated account funds and instead, Texas AgriLife funded grants recommended by the committee. The Sunset Advisory Commission found that the committee has not provided clear outcomes for its funding decisions and that a statutorily mandated committee is no longer needed.

H.B. 2271 requires TRC to designate racetrack licenses as either active or inactive and develop, in rule, renewal criteria for licenses designated as inactive; requires TRC to develop an annual process for inactive racetrack licenses; authorizes TRC to refuse to renew an inactive license; amends the Act to clarify that racetrack licenses are not issued in perpetuity; requires TRC to complete a review of active racetrack licenses every five years; clarifies TRC's revocation authority; authorizes TRC to require racetrack licensees to post security at any time; eliminates uncashed winning tickets as a source of TRC revenue; authorizes TRC to adjust license fees to compensate for lost revenue as a result of this change in funding; subjects TRC to Sunset review in six years, giving it a Sunset date of September 1, 2017, and abolishes the Equine Research Committee and continues Texas AgriLife Research's authority to expend appropriated Equine Research Account funds.

H.B. 2271 amends current law relating to the continuation and functions of the Texas Racing Commission, the abolishment of the Equine Research Account Advisory Committee, and the authority of Texas AgriLife Research, and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Racing Commission (TRC) in SECTION 7 (Section 6.032, Texas Racing Act (Article 179e, V.T.C.S.)), SECTION 11 (Sections 6.0602 and 6.0603, Texas Racing Act (Article 179e, V.T.C.S.)), SECTION 15 (Section 7.01, Texas Racing Act (Article 179e, V.T.C.S.)), and SECTION 28 of this bill.

Rulemaking authority previously granted to TRC is modified in SECTION 17 (Section 11.01, Texas Racing Act (Article 179e, V.T.C.S.)) and SECTION 18 (Section 11.04, Texas Racing Act (Article 179e, V.T.C.S.)) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.03, Texas Racing Act (Article 179e, V.T.C.S.), by amending Subdivision (52) and adding Subdivisions (80) and (81), to redefine "performance" and to define "active license" and "inactive license."

SECTION 2. Amends Section 2.071, Texas Racing Act (Article 179e, V.T.C.S.), as follows:

Sec. 2.071. CONFLICT OF INTEREST. (a) Prohibits a person from being a member of the Texas Racing Commission (TRC) and from being a TRC employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding.

Deletes existing text prohibiting an officer, employee or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding from being a member of TRC or an employee of TRC who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

Deletes existing text prohibiting a person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding from becoming a member of TRC and from being an employee of TRC who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

Deletes existing Subsection (b) designation. Makes nonsubstantive changes.

(b) Prohibits a person from being a member of TRC or acting as general counsel to TRC if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TRC.

(c) Redefines, in this section, "Texas trade association."

SECTION 3. Amends Article 2, Texas Racing Act (Article 179e, V.T.C.S.), by adding Section 2.25, as follows:

Sec. 2.25. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires TRC to develop and implement a policy to encourage the use of:

- (1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TRC rules; and
- (2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the TRC's jurisdiction.

(b) Requires that TRC's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires TRC to:

(1) coordinate the implementation of the policy adopted under Subsection (a) of this section;

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

SECTION 4. Amends Sections 3.07(b) and (e), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

(b) Provides that a decision of a steward or judge is subject to review by the executive secretary of TRC (executive director), who is authorized to modify the penalty. Authorizes a penalty modified by the executive director under this section to include a fine not to exceed \$10,000, a suspension not to exceed two years, or both a fine and a suspension. Provides that a decision of a steward or judge that is not reviewed or modified by the executive director is a final decision. Authorizes any decision of a steward or judge to be appealed under Section 3.08(a) (relating to an appeal from a decision of a steward or judge) of this Act regardless of whether the decision is modified by the executive director. Deletes existing text authorizing the stewards or judges, if, in the opinion of the stewards or judges, the allowable penalties are not sufficient, to refer the case to TRC for further action.

(e) Deletes existing text requiring the person licensed under this Act to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering (association), if the amount held exceeds the amount needed to pay the charges, to pay the excess to TRC in accordance with Section 11.08 of this Act.

SECTION 5. Amends Section 3.09(b), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

(b) Requires that any unappropriated money exceeding \$750,000 that remains in the TRC fund at the close of each fiscal biennium be transferred to the General Revenue Fund and authorizes the money to be appropriated for any legal purpose. Requires that any amount of general revenue appropriated for the administration and enforcement of this Act in excess of the cumulative amount deposited in the TRC fund be reimbursed from the TRC fund not later than one year after the date on which the general revenue funds are appropriated, with 6-3/4 percent interest with all payments first attributable to interest, rather than with 12 percent interest per year until August 31, 1993, and 6-3/4 percent interest thereafter with all payments first attributable to interest. Makes nonsubstantive changes.

SECTION 6. Amends Sections 5.03(a) and (c), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

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

(c) Requires a peace officer of this or any other state, or any district office of TRC, to take the fingerprints of an applicant for a license or license renewal on forms approved and furnished by DPS and to immediately deliver them to TRC.

SECTION 7. Amends Article 6, Texas Racing Act (Article 179e, V.T.C.S.), by adding Section 6.032, as follows:

Sec. 6.032. BOND. (a) Authorizes TRC at any time to 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 TRC rule, to adequately ensure the license holder's or applicant's compliance with substantive requirements of this Act and TRC rules.

(b) Provides that 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. Requires that the security be:

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

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

SECTION 8. Amends the heading to Section 6.04, Texas Racing Act (Article 179e, V.T.C.S.), to read as follows:

Sec. 6.04. ISSUANCE OF LICENSE.

SECTION 9. Amends Section 6.04, Texas Racing Act (Article 179e, V.T.C.S.), by adding Subsection (a-1), to require TRC to make a determination with respect to a pending application not later than the 120th day after the date on which all of the requirements of licensure for the applicant described in this article have been satisfied.

SECTION 10. Amends Section 6.06, Texas Racing Act (Article 179e, V.T.C.S.), by amending Subsection (k) and adding Subsections (l) and (m), as follows:

(k) Requires TRC to review the ownership and management of an active license, rather than a license, issued under this article every five years beginning on the fifth anniversary of the issuance of the license. Authorizes TRC, in performing the review, to 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. Requires TRC to charge fees for the review in amounts sufficient to implement this subsection.

(l) Requires TRC to revoke or suspend an inactive license if, after notice and hearing, it has reasonable grounds to believe and finds that the license holder has not conducted any live greyhound or horse racing during the three years preceding the consideration by TRC to revoke or suspend the license.

(m) Provides that the three-year period under Subsection (l) of this section begins on the later of September 1, 2011, or the date a new racetrack license is issued under this Act.

SECTION 11. Amends Article 6, Texas Racing Act (Article 179e, V.T.C.S.), by adding Sections 6.0601, 6.0602, and 6.0603, as follows:

Sec. 6.0601. DESIGNATION OF ACTIVE AND INACTIVE RACETRACK LICENSES. (a) Requires TRC to designate each racetrack license as an active license or an inactive license. Authorizes TRC to change the designation of a racetrack license as appropriate.

(b) Requires TRC to 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) Requires TRC, before the first anniversary of the date a new racetrack license is issued, to conduct an evaluation of the license to determine whether the license is an active or inactive license.

(d) Provides that 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) Requires TRC by rule to establish an annual renewal process for inactive licenses and authorizes TRC to require the license holder to provide any information required for an original license application under this Act. Requires an inactive license holder to complete the annual renewal process established under this section until TRC:

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

(2) refuses to renew the license.

(b) Requires TRC, in determining whether to renew an inactive license, to 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) Authorizes TRC to refuse to renew an inactive license if, after notice and a hearing, TRC 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) Requires TRC to consult with members of the racing industry and other key stakeholders in developing the license renewal process under this section.

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

(f) Requires TRC by rule to establish criteria to make the determinations under Subsections (c)(1) and (2).

Sec. 6.0603. DISCIPLINARY ACTION. (a) Requires TRC by rule to establish procedures for disciplinary action against a racetrack license holder.

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

- (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 TRC rule.

(c) Prohibits TRC from revoking an active license unless TRC reasonably determines that other disciplinary actions are inadequate to remedy the violation.

SECTION 12. Amends Section 6.08(h), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

(h) Requires that two percent of the breakage be allocated to the equine research account under Subchapter F, Chapter 88, rather than Subchapter F, Chapter 51, Education Code. Requires that the remaining 98 percent of the breakage constitute "total breakage" and be allocated pursuant to Subsections (i) (providing that ten percent of the total breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool is to be paid to TRC for use by the appropriate state horse breed registry, subject to rules promulgated by TRC) and (j) (providing that ten percent of the total breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool is to be retained by the association to be used in stakes races restricted to accredited Texas-bred horses) of this section.

SECTION 13. Amends the heading to Section 6.18, Texas Racing Act (Article 179e, V.T.C.S.), to read as follows:

Sec. 6.18. ANNUAL FEE FOR RACETRACK LICENSE.

SECTION 14. Amends Section 6.18(b), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

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

SECTION 15. Amends Section 7.01, Texas Racing Act (Article 179e, V.T.C.S.), as follows:

Sec. 7.01. LICENSE REQUIRED. (a) Prohibits a person, except as provided by this section, from participating in racing with pari-mutuel wagering other than as a spectator or as a person placing a wager without first obtaining a license from TRC. Prohibits a person from engaging in any occupation for which TRC rules require a license under this Act without first obtaining a license from TRC.

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

- (1) an employee who works in an occupation determined by TRC 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) Provides that a racetrack licensed under this Act is responsible for ensuring that its employees comply with this Act and TRC rules. Authorizes TRC to impose disciplinary action against a licensed racetrack for violations of this Act and TRC rules by its employees as provided by Section 6.0603 of this Act.

SECTION 16. Amends Section 7.07, Texas Racing Act (Article 179e, V.T.C.S.), by amending Subsection (a) and adding Subsection (a-1), as follows:

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

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

SECTION 17. Amends Section 11.01, Texas Racing Act (Article 179e, V.T.C.S.), by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires TRC to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. Authorizes wagering to be conducted only by an association within its enclosure. Prohibits a person from accepting, 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) Creates this subsection from existing text. Authorizes TRC to commission as many investigators as TRC determines necessary to enforce this Act and the rules of TRC. Requires each investigator to take the constitutional oath of office and file it with TRC. Provides that each commissioned investigator has the powers of a peace officer.

SECTION 18. Amends Section 11.04(a) and (c), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

(a) Provides that 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 TRC rules. Prohibits a person, except as provided by this section, from placing, in person, by telephone, or over the Internet, a wager for a horse race or greyhound race conducted inside or outside this state. Requires TRC to adopt rules to prohibit wagering by employees of TRC and to regulate wagering by persons licensed under this Act.

(c) Deletes existing text requiring TRC to limit the use of an automatic banking machine to deliver no more than \$200. Makes nonsubstantive changes.

SECTION 19. Amends Section 11.05, Texas Racing Act (Article 179e, V.T.C.S.) , as follows:

Sec. 11.05. UNLAWFUL WAGERING. Prohibits a person from wagering on the result of a greyhound race or horse race in this state except as permitted by this Act. Prohibits a person who is not an association under this Act from accepting 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.

SECTION 20. Amends Section 18.01(a), Texas Racing Act, (Article 179e, V.T.C.S.), as follows:

(a) Provides that TRC is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, and except as provided by Subsections (b) (relating to if, at the time that TRC would be abolished under Subsection (a) of this section, an association created under this Act has outstanding long-term liabilities) and (c) (relating to if TRC and this Act are continued in effect under Subsection (b) of this section, TRC is abolished and this Act expires on the first day of the fiscal year following the fiscal year in which TRC certifies to the secretary of state that no associations are operating under the terms of Subsection (b) of this section) of this section, TRC is abolished and this Act expires September 1, 2017, rather than September 1, 2011.

SECTION 21. Amends Section 88.521(2), Education Code, to redefine "director."

SECTION 22. Amends Sections 88.522(b), (c), (f), and (g), Education Code, as follows:

(b) Requires the executive director of Texas AgriLife Research (director) to administer the equine research (account) through established procedures of Texas AgriLife Research, formerly known as the Texas Agricultural Experiment Station.

(c) Requires the comptroller of public accounts to periodically transfer the amounts specified by Sections 6.08(f) and (h), rather than Section 6.08(f), Texas Racing Act (Article 179e, V.T.C.S.), to the account.

(f) Authorizes not more than 10 percent of the account to be spent each year on the cost incurred in the operation or administration of the account, rather than the advisory committee or account.

(g) Provides that all money received by the account, rather than the advisory committee or the account, under this chapter is subject to Subchapter F (State Funds Reform Act), Chapter 404 (State Treasury Operations of Comptroller), Government Code.

SECTION 23. Amends Section 88.525, Education Code, by adding Subsections (a-1) and (b-1) and amending Subsection (b), as follows:

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

(b) Requires the director, rather than the director with the advice of the advisory committee, to develop annually a request for proposals for equine research grants. Authorizes each proposal received to be evaluated, rather than requires that each proposal be evaluated, by a peer review committee appointed by the director and subject matter experts as necessary to evaluate the proposal. Requires the peer review committee to consider the applicant's research capacity and the relevance and scientific merit of the proposal and make recommendations to the director.

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

SECTION 24. Amends Section 88.256(a), Education Code, as follows:

(a) Requires the director to prepare an annual report on equine research funded under this subchapter. Requires the director to distribute the report to TRC and members of the Texas horse racing industry, rather than members of the advisory committee. Requires the director to make copies of the report available to interested parties.

SECTION 25. Amends Section 88.527, Education Code, as follows:

Sec. 88.527. CONFERENCE. Requires Texas AgriLife Research, rather than the Texas Agricultural Extension Service, to conduct an annual conference on equine research.

Requires that money from the account be used to defray the costs of the conference. Requires that the conference be designed to bring to the attention of the Texas horse racing industry the latest research results and technological developments in equine research. Requires the director to make the report created under Section 88.256 available at the conference.

SECTION 26. (1) Repealer: Section 2.072 (prohibiting a person from serving as a member of TRC or acting as the general counsel to TRC if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of TRC), Texas Racing Act (Article 179e, V.T.C.S.).

(2) Repealer: Section 6.04(b) (requiring an applicant for a racetrack license, before issuance of a license under this article, to post security in an amount determined by TRC to adequately ensure the association's compliance with this Act and the rules of the TRC), Texas Racing Act (Article 179e, V.T.C.S.).

(3) Repealer: Section 6.18(a) (providing that a racetrack license issued under this article is perpetual and TRC is authorized to suspend or revoke a license as provided by this Act), Texas Racing Act (Article 179e, V.T.C.S.).

(4) Repealer: Section 7.02(a) (requiring each person, other than a spectator or person placing a wager, involved in any capacity with racing with pari-mutuel wagering under this Act to obtain a license under this article), Texas Racing Act (Article 179e, V.T.C.S.).

SECTION 27. (1) Repealer: Section 88.521(1) (defining "advisory committee"), Education Code.

(2) Repealer: Section 88.523 (Advisory Committee), Education Code.

(3) Repealer: Section 88.5321 (Standards of Conduct; Prohibited Conduct), Education Code.

(4) Repealer: Section 88.5232 (Removal from Committee), Education Code.

(5) Repealer: Section 88.524 (Open Meetings Law; Administrative Procedure Law; Sunset Act), Education Code.

(6) Repealer: Section 88.5245 (Public Access), Education Code.

(7) Repealer: Section 88.525(c) (requiring the director, before awarding any grants, to consult with the advisory committee), Education Code.

SECTION 28. (a) Requires TRC, not later than September 1, 2012, to designate each racetrack license as active or inactive as required by Section 6.0601, Texas Racing Act (Article 179e, V.T.C.S.), as added by this Act.

(b) Requires TRC by rule to 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) Authorizes TRC to adjust license renewal and review fees pursuant to TRC's authority to adjust fees under Section 5.01, Texas Racing Act (Article 179e, V.T.C.S.), and Section 6.0602, Texas Racing Act (Article 179e, V.T.C.S.), 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, V.T.C.S.).

(d) Requires the director of Texas AgriLife Research, as soon as practicable, to submit a report to TRC as required by Section 88.526, Education Code, as amended by this Act.

SECTION 29. Effective date: September 1, 2011.