

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1013
By: Hinojosa
Government Organization
4/30/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Racing Commission (TRC) has experienced problems in enforcing the Racing Act during recent years as certain license holders hold licenses without making efforts to operate. Also, with the continued decline in the horseracing industry, TRC experiences issues with funding. As a self-leveling agency, TRC depends on the fees collected from license holders and track operators—as well as other licensed professionals operating in the horseracing industry—to pay for its operations. This year, TRC is preparing to experience significant cash flow problems rendering it incapable of meeting payroll. This bill implements some of the recommendations made by the Sunset Advisory Commission based on its review of TRC.

C.S.S.B. 1013 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 in SECTION 10 (Section 6.0601, V.T.C.S.), SECTION 11 (Section 6.0602, V.T.C.S.), SECTION 12 (Section 6.0605, V.T.C.S.), SECTION 14 (Section 7.01, V.T.C.S.), and SECTION 17 (Section 11.04, 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 Subdivisions (37) and (52) and adding Subdivision (80), to redefine "handicapper" and "performance," and to define "handicapper tournament."

(37) Redefines "handicapper."

(52) Redefines "performance."

(80) Defines "handicapper tournament."

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 text of existing Subsection (b) 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 being a member of TRC or 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.

(b) Prohibits a person from being 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 (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 "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. USE OF TECHNOLOGY. Requires TRC to implement a policy requiring TRC to use appropriate technological solutions to improve TRC's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TRC on the Internet.

SECTION 4. Amends Article 2, Texas Racing Act (Article 179e, V.T.C.S.), by adding Section 2.26, as follows:

Sec. 2.26. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires TRC to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TRC rules, and 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 TRC's jurisdiction.

(b) Requires TRC's procedures relating to alternative dispute resolution to 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 designate a trained person to coordinate the implementation of the policy adopted under Subsection (a) of this section, serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by TRC.

SECTION 5. 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. Provides that any decision of a steward or judge may be appealed under Section 3.08(a) (relating to the authorization of a final decision of the steward or judge to be appealed in a certain manner) 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 an 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 (Repealed) of this Act.

SECTION 6. Amends Section 3.09, Texas Racing Act (Article 179e, V.T.C.S.), by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Makes no changes to this subsection.

(c) Requires the legislature, on the first business day of each state fiscal year, to appropriate from the General Revenue Fund into the TRC fund one-quarter of the money appropriated to TRC for the state fiscal biennium for the administration and enforcement of this Act. Requires TRC, not later than the last day of the state fiscal year in which the general revenue funds are appropriated, to reimburse the General Revenue Fund from the TRC fund or from other funds available to TRC for the amount deposited in the TRC fund, including 2.75 percent interest per year on the amount, with all payments first attributable to the accrued interest.

(d) Creates this subsection from text from existing Subsection (b). Authorizes the legislature to also appropriate additional money from the General Revenue Fund for the administration and enforcement of this Act. 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 2.75 percent interest per year, 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. Authorizes the legislature, in times of fiscal emergency, to make a specific appropriation from general revenue that is not subject to the reimbursement requirements in this section.

SECTION 7. 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 (Reciprocal licenses; out-of-state applicants) 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.

(c) Makes a conforming change.

SECTION 8. Amends Article 5, Texas Racing Act (Article 179e, V.T.C.S.), by adding Section 5.011, as follows:

Sec. 5.011. INACTIVE FEES. (a) Authorizes TRC to charge an annual fee for licensing and regulating a racetrack designated by TRC as inactive.

(b) Requires that the amount of the annual license fee for a racetrack designated by TRC as inactive be at least 50 percent greater than the amount of the annual license fee for a racetrack holding a similar class of license designated by TRC as active. Requires TRC to set the amount of the annual inactive license fees on a sliding scale that increase the amount based on the consecutive number of years the license has been designated by TRC as inactive.

(c) Authorizes TRC, if TRC charges an annual license fee for a racetrack designated by TRC as inactive, to use all or a portion of the money collected

under this section to reduce the fees attributable to live racing that are paid by racetracks designated by TRC as active.

SECTION 9. 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 10. Amends Article 6, Texas Racing Act (Article 179e, V.T.C.S.), by adding Section 6.0601, as follows:

Sec. 6.0601. LICENSE REVIEW AND RENEWAL; FEES. (a) Requires TRC to designate each racetrack license as either active or inactive. Requires TRC to designate a racetrack license as an active license if the license holder holds live racing events at the racetrack or makes significant efforts to engage in the construction of a racetrack or other good faith efforts preparatory to conducting live racing.

(b) Requires TRC by rule to establish a renewal and review process for racetrack licenses issued under this article.

(c) Requires TRC to review each racetrack license designated by TRC as active not less than once every 10 years, except as otherwise provided by this section.

(d) Requires TRC to annually review a racetrack license designated by TRC as inactive.

(e) Authorizes TRC by rule to adopt a system under which active racetrack licenses are renewed on various dates in a year or in various years. Requires that license fees, for the year in which the license renewal date is changed, be prorated on a monthly basis so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. Provides that on renewal, the total license renewal fee is payable.

(f) Authorizes TRC to require a license holder who is renewing a racetrack license or who is subject to TRC review of the racetrack license to provide any information that would be required to be provided in connection with an original license application under this Act.

(g) Requires TRC, in reviewing a racetrack license or in determining whether to renew a racetrack license, to consider the license holder's financial stability and ability to conduct live racing events, the license holder's ability to construct and maintain a racetrack facility and to conduct live racing, and other necessary factors considered in the issuance of the original license.

(h) Authorizes TRC to refuse to renew an inactive racetrack license if, after notice and a hearing, TRC determines under Subsection (g) of this section that allowing the license holder to hold the racetrack license is not in the best interests of the racing industry or the public.

(i) Requires TRC to renew an active racetrack license after TRC completes the review of that license. Authorizes TRC to revoke an active racetrack license under Section 6.0602 of this Act if, after notice and hearing, TRC finds that the applicant has violated this Act or a TRC rule.

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

(k) Requires TRC to consult with members of the racing industry and other key stakeholders in developing the racetrack license renewal and review process under this section.

(l) Authorizes TRC to change the designation of a racetrack license as appropriate.

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

Sec. 6.0602. DISCIPLINARY ACTION. (a) Requires TRC by rule to establish procedures for disciplinary action against a racetrack license holder.

(b) Authorizes TRC if, after noticing 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 revoke, suspend, or refuse to renew the racetrack license, impose an administrative penalty as provided under Section 15.03 (Administrative penalty) of this Act, or take any other action as provided by TRC rule.

SECTION 12. Amends Article 6, Texas Racing Act (Article 179e, V.T.C.S.), by adding Section 6.0605, as follows:

Sec. 6.0605. OWNERSHIP TRANSFER. (a) Requires TRC by rule to develop a process for expeditiously processing requests to transfer ownership of a racetrack license to a racetrack owner who holds an active racetrack license under this Act at the time a request is submitted and is in compliance with TRC's rules and regulations.

(b) Provides that a transfer under this section requires a background check under Section 6.031 of this Act. Authorizes TRC, if TRC has required and approved a completed personal, financial, and business background check of the applicant within 12 months of the application date, to approve the transfer after requiring an update of the previously completed background check.

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

Sec. 6.18. ANNUAL FEE FOR RACETRACK LICENSE. (a) Redesignates Subsection (b) as Subsection (a). Authorizes TRC to prescribe a reasonable annual fee to be paid by each active racetrack license holder, rather than licensee. Deletes existing text providing that a racetrack license issued under this article is perpetual; authorizing TRC to suspend or revoke a license as provided by this Act.

(b) Authorizes TRC to prescribe an annual fee for each inactive racetrack license holder in an amount greater than the annual fee paid by an active racetrack license holder.

(c) Creates this subsection from existing text. Requires that the total amount of fees imposed under this section, together with the license fees prescribed under Section 5.01(b) (relating to TRC prescribing license fees for each category of license) of this Act, the inactive fees described under Section 5.011 of this Act, and the renewal and review fees prescribed under Section 6.0601(j) of this Act, be sufficient to pay the costs of administering and enforcing this Act. Deletes existing text requiring 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, is sufficient to pay the costs of administering and enforcing this Act.

SECTION 14. 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 the rules to 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 6.0602 of this article.

SECTION 15. 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 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 a 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 16. 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) 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.

SECTION 17. Amends Sections 11.04(a) and (c), Texas Racing Act (Article 179e, V.T.C.S.), as follows:

(a) 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.

(c) Requires TRC to limit the use of an automatic banking machine to allow a person to have access to only the person's checking account at a bank or other financial institution. Deletes existing text of Subdivision (2).

SECTION 18. Amends Section 11.05, Texas Racing Act (Article 179e, V.T.C.S.), as follows:

Sec. 11.05. UNLAWFUL WAGERING. 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 19. Amends Section 18.01(a), Texas Racing Act (Article 179e, V.T.C.S.), to provide that TRC is abolished and this Act expires September 1, 2015, rather than 2009, unless continued in existence as provided by Chapter 325 (Texas Sunset Act), Government Code, and except as

provided by Subsections (b) (relating to outstanding long-term liabilities of an association created under this Act, if TRC would be abolished) and (c) (relating to the expiration of this Act and the abolishment of the commission upon certification to the secretary of state) of this section.

SECTION 20. Amends Section 88.521(2), Education Code, to redefine "director."

SECTION 21. Amends Sections 88.522(b), (f), and (g), Education Code, as follows:

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

(f) Prohibits more than 10 percent of the account from being 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 account, is subject to Subchapter F (State Funds Reform Act), Chapter 404 (State Treasury Operations of Comptroller), Government Code.

SECTION 22. 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, rather than requires, each proposal received to 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 23. Amends Section 88.526(a), Education Code, to require the director to distribute the report to TRC and members of the Texas horse racing industry, rather than the advisory committee.

SECTION 24. Amends Section 88.527, Education Code, as follows:

Sec. 88.527. CONFERENCE. Authorizes Texas AgriLife Research, rather than requires the Texas Agricultural Extension Service, to conduct an annual conference on equine research. Requires the director to make the report created under Section 88.526 (Reporting) available at the conference.

SECTION 25. (1) Repealer: Section 2.072 (Lobbyist restriction), V.T.C.S.

(2) Repealer: Section 6.04(b) (relating to an applicant posting security before issuance of a license), V.T.C.S.

(3) Repealer: Section 6.06(k) (relating to TRC review of the ownership and management of a license every five years beginning on the fifth anniversary of the issuance of the license), V.T.C.S.; and

(4) Repealer: Section 7.02(a) (relating to license requirements for a person involved in any capacity with pari-mutuel wagering, other than a spectator or a person placing a wager), V.T.C.S.

SECTION 26. Repealer: Section 88.521(1) (relating to the definition of "advisory committee"), Education Code.

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

Repealer: Section 88.5231 (Standards of Conduct; Prohibited Conduct), Education Code.

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

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

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

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

SECTION 27. (a) Requires TRC, not later than January 1, 2010, to determine the expiration date of each license issued under the Texas Racing Act (Article 179e, V.T.C.S.).

(b) Requires TRC, not later than September 1, 2010, to complete a review of each inactive racetrack license as required by Section 6.0601, Texas Racing Act (Article 179e, V.T.C.S.), as added 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 6.0601, 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 Subsection (e), Section 3.07, Texas Racing Act (Article 179e, V.T.C.S.).

(d) Requires the executive 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 28. (a) Defines "active racetrack license" and "commission."

(b) Requires TRC, notwithstanding Section 6.0601, Texas Racing Act (Article 179e, V.T.C.S.) as added by this Act, to conduct an initial review of each active racetrack license not later than September 1, 2011, according to a schedule developed by TRC based on categories defined by the level of activity of the license holder.

(c) Requires TRC to first review each active racetrack license in the following order: each active racetrack license held by a person that owns or operates a racetrack but that does not conduct live races; each active racetrack license held by a person that owns or operates a racetrack and conducts live races; and each active racetrack license held by a person that does not conduct live racing but is making good faith efforts preparatory to conducting live racing.

SECTION 29. Requires the Sunset Advisory Commission, notwithstanding Section 18.01(a), Texas Racing Act (Article 179e, V.T.C.S.), as amended by this Act, to conduct a special-purpose review of TRC as part of the Sunset Advisory Commission's review of agencies for the 82nd Legislature. Requires the Sunset Advisory Commission's report to the 82nd Legislature regarding the review of TRC to include an evaluation of TRC's efforts to implement the changes to the Texas Racing Act (Article 179e, V.T.C.S.) enacted by this Act. Authorizes the report to include any recommendations the Sunset Advisory Commission considers appropriate based on the review of TRC.

SECTION 30. Effective date: September 1, 2009.