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OCT 16 8 44 AM '00

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: Linda Lacy  
Racing Commission  
106 Dee Drive  
Charleston, WV 25311  
FROM: Legislative Rule-Making Review Committee  
Proposed Rule: Thoroughbred Racing, 178CSR1

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Racing Commission

Subject: Thoroughbred Racing, 178CSR1

OFFICE OF THE CLERK  
SECRETARY OF STATE

AUG 25 2 28 PM '00

FILED

PERTINENT DATES

Filed for public comment: July 21, 2000

Public comment period ended: August 21, 2000

Filed following public comment period: August 22, 2000

Filed LRMRC: August 22, 2000

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 10 relates to track stewards. The current rule permits the stewards to cancel a race if management, jockeys or horsemen believe conditions to be unsafe. The proposed rule has been amended to allow the steward, after conferring with management, jockeys or horsemen plus the track superintendent, to cancel races if, in the opinion of the steward, they cannot be run.

Section 26 relates to split samples. It has been amended to provide that if there is not enough urine collected for a split sample, then the results of the test performed by the primary testing laboratory are to be considered prima facie evidence of the condition of the horse.

Section 27 relates to administration procedures prior to split sample testing. The rule currently provides that the owner or trainer of a horse who submits a specimen for drug testing may be present or have a representative present at the time the retained part of the specimen is obtained for storage. The proposed rule would make their presence mandatory.

Section 28 relates to administrative procedures subsequent to a split sample test. It has been amended to also relate to the

instances where quantitative levels of permitted medications are found in the urine and the confirmed levels are within the permitted levels.

Section 30 relates to the storage and shipment of split samples. The rule currently requires a split sample testing laboratory to be accredited by the Association of Racing Commissioner's International. The proposed rule would instead require that it be a member of good standing of the Association of Official Racing Chemists. It has also been amended to require a Racing Commission representative to remove a split sample from the split sample freezer in the presence of the owner or trainer or his or her designee instead of a representative of the Horsemen's Association. Language has also been added prohibiting the owner, trainer or their designee from corresponding with the split sample testing laboratory once the sample has been shipped to the laboratory.

Section 31 relates to training responsibility. It provides that any monies that have been won by a horse who has been administered an illegal drug or unauthorized medication, are to be forfeited and redistributed.

Table 45.25 relates to approved jockey fees. It currently provides for purses \$10,000 and up for a fee of 10% for a win. The proposed rule would allow a 5% fee for second place, a 5% fee for third place and a fee of \$100 for unplaced.

#### AUTHORITY

Statutory authority: W.Va. Code, §19-23-6, which provides, in part, as follows:

... (3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code...

## ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.