



OFFICE OF THE SECRETARY OF STATE

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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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July 11, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Lois Graham
Racing Commission
106 Dee Drive
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Greyhound Racing, 178CSR2

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 Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Racing Commission

Subject: Greyhound Racing, 178CSR2

PERTINENT DATES

Filed for public comment: April 23, 1999
Public comment period ended: June 1, 1999
Filed following public comment period: June 4, 1999
Filed LRMRC: June 4, 1999
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms. Definitions have been added for the following terms: "Act", "Appeal", "Applicant", "Association grounds", "Bertillon", "Betting interest", "Blanket", "Bolt", "Breakage", "Chairman of the racing commission", "Code", "Racing Commissioner", "Complaint", "Construction permit", "Construction permit holder", "Course", "Day", "Dark day", "Race day", "Simulcast race day", "Dead heat", "Dog racing", "Double entry", "Draw", "Ejection", "Entry", "Executive secretary", "False start", "Finish", "Fund", "Handle", "Judge", "Kennel compound", "Kennel helper", "Legitimate breakage", "Lease agreement", "License", "Lock out kennel", "Meet", "Month", "Nomination", "No race", "Official race", "Official time", "Official schooling races", "Paddock", "Pari-mutuel", "Pari-mutuel clerk", "Patron", "Performance", "Permit", "Permit holder", "Person", "Pool", "Position", "Purse", "Racing association", "Racing commission", "Random testing", "Reasonable cause/reasonable suspicion testing", "Restricted area",

"Result", "Secretary", "Simulcast", "To the dime", "Win" and "Year".

Section 3 relating to the calculation of time has not been amended.

Section 4 contains administrative provisions and has not been amended.

Section 5 relates to financial responsibilities. This section has been amended to provide that there must be a court judgment issued as to the amount of the debt prior to suspension by the judges.

Section 6 relating to checks is new. It prohibits a licensee or occupational permit holder from writing bad checks. It states that a returned check is grounds for suspension.

Section 7 relates to minors. It has been amended to prohibit minors from cashing pari-mutuel tickets. The current rule provides that no minor under the age of 8 years may be permitted in a restricted area prior to 12 noon on any race day except in the case of an emergency. It also permits minors 8 years of age or older to be admitted to a restricted area with the permission of the judges. This section has been amended to provide that no minor under the age of 16 years may be admitted in a restricted area without the written permission of the judges except in the case of an emergency.

Section 8 relates to telephone, telegraph, radio and television. Language has been deleted requiring that this type of equipment be approved by the Racing Commission. Language regarding the transmission of the results of races has been deleted. Language has also been deleted which prohibits calls 30 minutes before post time.

Section 9 relates to associations. The current rule requires each licensee to file a balance sheet and a profit and loss statement each year. The proposed rule requires audited financial statements.

The current rule allows the shareholders of an association to transfer the association's license through the sale of association stock. The proposed rule requires the buyer of the assets to apply for a racing license.

This section has also been amended to require an association to provide sufficient office space for the racing commission license clerk and security officer.

Section 10 relates to officials. Language has been added which prohibits racing officials, track employees, occupational permit holders or licensees from using or being under the influence of any controlled substance.

Section 11 relating to judges has not been amended.

Section 12 relating to association's racing secretary has been amended to require greyhounds coming into West Virginia tracks to be accompanied by a current health certificate documenting certain current vaccinations.

Section 13 relating to the paddock judge has not been amended.

Section 14 relating to the timer has not been amended.

Section 15 relating to the starter has not been amended.

Section 16 relating to the clerk of scales has not been amended.

Section 17 relating to the chart writer has not been amended.

Section 18 relating to lead-outs has not been amended.

Section 19 relating to Racing Commission veterinarians has not been amended.

Section 20 relating to the test area has not been amended.

Section 21 relating to the chemist has not been amended.

Section 22 relating to split sample testing is new. It requires that a Racing Commission veterinarian split a blood or urine sample from a greyhound into two parts prior to sending a sample to the primary testing laboratory. The Racing Commission veterinarian is to retain and store the part of the specimen that is not sent to the primary testing laboratory. If the results on the initial test of the specimen is negative, the Racing Commission veterinarian may discard the retained part of the specimen. If the results are positive, the Racing Commission veterinarian may discard the retained part of the specimen after the expiration of the period during which an owner or trainer may request that the retained part be sent for split testing.

Section 23 relating to administrative procedures prior to split sample testing is new. It provides that the results of the laboratory tests performed by the primary testing laboratory are confidential and may only be communicated to the Racing Commission, judges, the owner and the trainer. It allows the trainer or owner of a greyhound, upon receiving a positive result, to request that the judges submit the retained part of the specimen for testing to a laboratory approved by the Racing Commission.

Section 24 relates to administration procedures to a subsequent sample. It requires that the split sample laboratory to send a confidential written report of the results to a Racing Commission judge. The owner or trainer is to be notified of the results of the test by both laboratories in the case of confirmed positives and of the time and place of any administrative hearings resulting from the findings.

Section 25 relating to the cost of split sample testing is new. It requires laboratories which wish to be on the approved list to establish reasonable fees for split sample testing based upon the actual cost of testing. It requires the trainer or owner requesting the testing to pay the cost of transportation and of the tests.

Section 26 relating to the storage and shipment of split samples is new. It requires that split samples be secured in a freezer in the testing area. A split sample must be requested within 48 hours of receipt of the findings of the primary laboratory and the split sample must be shipped within an additional 48 hours. Prior to opening the split sample freezer, a split sample chain of custody verification form must be completed. This section specifies what must be included in that form. This section also contains requirements for packing and shipping the samples.

Section 27 relating to camera and film patrol has not been amended.

Section 28 relates to policing. Language has been deleted which states that special investigators are not to be considered as employees of the association.

Section 29 relating to kennel names has not been amended.

Section 30 relating to registration has not been amended.

Section 31 relating to owners has not been amended.

Section 32 relating to partnerships has been amended to allow the Racing Commission the authority to sign declarations of partnerships by fax in the case of an emergency.

Section 33 relating to corporations has not been amended.

Section 34 relating to authorized agents has not been amended.

Section 35 relating to schooling has not been amended.

Section 36 relating to entries has been amended to provide that in purse races, two double entries may be used in all grades and distances provided rules of the draw are observed. It has also been amended to allow entries and declarations to be faxed and Federal Expressed. Finally, this section has been amended to provide that upper grade distance races, AA and A, shall consist of no more than two owners that have a double entry.

Section 37 relating to post position has not been amended.

Section 38 relating to declarations has not been amended.

Section 39 relating to scratches has not been amended.

Section 40 relating to the race has not been amended.

Section 41 relating to weights and weighing has not been amended.

Section 42 relating to grading has not been amended.

Section 43 relating to dead heats has not been amended.

Section 44 relating to objections has not been amended.

Section 45 relating to disciplinary action provides that it is a misdemeanor/felony for any person to use any animal or fowl in the training or racing of greyhounds. Greyhounds trained in this manner are banned from participating in pari-mutuel racing for life.

Section 46 relating to licenses and licensees has been amended to specify that West Virginia procedural regulation, Dispute Resolution Procedures, 178CSR4, governs all hearings. New language has been added stating that all applicants for a new or renewal occupational permit may be required to furnish fingerprints for examination by the West Virginia Criminal Investigation Division

and the FBI. The fees for the various occupational permits have been increased.

Section 47 relating to tip sheet vendors has not been amended.

Section 48 relating to trainers has not been amended.

Section 49 relating to postponement and cancellation of races has not been amended.

Section 50 relating to illegal and corrupt practices has been amended to expand the acts for which a person may be removed from all racing grounds or ruled-off all racing grounds under the jurisdiction of the Commission.

Section 51 relating to medication has been amended by deleting language relating to vendors of greyhound feed or medicine. These provisions are contained in the next section of the proposed rule.

Section 52 relating to vendors of greyhound feed or medicine has not been amended.

Section 53 relating to appeal and review has been completely rewritten. The current rule references a procedural rule on the appeals process. The proposed rule sets forth a sketchy appeals procedure.

Section 54 relating to the auditor of pari-mutuel has not been amended.

Section 55 relating to the state security officer has not been amended.

Section 56 relating to the greyhound breeding development fund has not been amended.

Section 57 relating to alcohol and drug testing has not been amended.

AUTHORITY

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

§19-23-6.

The racing commission has full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings and, in this regard, it has plenary power and authority:

...(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 PROVISION OF THE CODE?

No. It did not contain a summary of the proposed rule or a statement of the circumstances requiring the proposed rule as required by statute, nor did it contain strike-throughs and underscoring.

VIII. OTHER.

Counsel has technical modifications to suggest.