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OFFICE OF THE CLERK OF THE WEST VIRGINIA LEGISLATURE

**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: Pari-Mutuel Wagering, 178CSRS5

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 Recommends that the rule be withdrawn; a statement of  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:** Pari-Mutuel Wagering, 178CSR5

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

RECEIVED DIRECTOR'S OFFICE  
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68-111-99-171-789

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of 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: "Betting Interest", "Breakage", "Contest", "Expired Ticket", "Guest Association", "Handle", "Host Association", "Meet", "Meeting", "Minus Pool", "Outstanding Ticket", "Pari-Mutuel System", "Pari-Mutuel Wagering", "Patron", "Payout", "Profit", "Profit Split", "Result", "Simulcast", "Single Price Pool", "Takeout" and "Totalisator".

Section 3 relates to information of a general nature and contains provisions regarding maintenance of records, pari-mutuel tickets and their sale, advance performance wagering, claims for payment, payment for errors, betting explanations and display of betting information, canceled contests, refunds, coupled entries in mutuel fields, pools dependent on betting interests, prior approval for betting pools and complaints pertaining to pari-mutuel operations. The only substantive change to this section is in subdivision 3.4.3. Language has been added prohibiting the

cancellation or exchange of issued tickets after a patron has left the sellers window except in accordance with written policy established with the association and approved by the Commission.

Section 4 relates to the Totalisator system. There are no amendments to the provisions of this section.

Section 5 relates to account wagering and permits an association to offer a system of account wagering to its patrons whereby wagers are debited and payouts are credited to a sum of money, deposited in an account by the patron that is held by the association. The provisions of this section have not been amended.

Section 6 which relates to simulcast wagering, has not been amended.

Section 7 which relates to interstate common pool wagering has not been amended.

Section 8 relates to the calculation of payoffs and the distribution of pools. Language has been deleted from subsection 8.1 which provided that (1) if a profit split results in only one covered winning betting interest or combination, it is calculated the same as a single price pool; (2) minimum payoffs used for calculating breakage are established by the commission; and (3) each association could give alternative names to individual pools outlined in the rule with prior approval by the Commission.

Subsections 8.11, 8.12, 8.14 and 8.15 relating to trifecta, superfecta, twin trifecta and tri-superfecta pools have been amended to provide additional alternatives for distribution of the pools based on the official order of finish.

Subdivision 8.14.17 has also been amended to provide that in the event there is no carryover pool on a force out performance and there are no winners in the first half, there shall be a complete refund.

**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: **Provided**, That in accordance with article three, chapter twenty-nine-a, the racing commission shall promulgate separate rules pertaining to the kinds of legal combination wagers which may be placed in connection with the pari-mutuel system of wagering authorized by this article;...

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**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 other modifications to suggest.