

TEXAS RACING COMMISSION

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COMMITTEE ON RULES

Tuesday, September 13, 2011
10:30 a.m.
Animal Health Commission
2105 Kramer Lane
Austin, Texas 78758

Agenda

The Committee will discuss the following items.

Requests for Rule Changes

- Discussion of potential changes to Chapter 315 to:
 - prohibit the use of live lures in the training of greyhounds;
 - provide for inspections of greyhound breeding farms; and
 - provide for inspections of greyhound training facilities(Requested by Staff)
- Proposal to Amend Rule 319.3, Medication Restricted (Requested by Committee on Safety and Medication)
- Proposal to Amend Rule 321.407, Approval of Wagering on Simulcast Import Races (Requested by Staff)
- The Committee will review and discuss any rule changes requested by the Committee on Finance at its meeting on September 7, 2011. These may include, but are not limited to, proposals to amend Rule 309.8, Racetrack License Fees, and Rule 311.5, License Fees.

The Committee will discuss the following rule proposals to implement the requirements of HB 2271, 82nd Regular Legislative Session.

- Proposal to Amend Rule 301.1, Definitions
- Proposal to Amend Rule 309.129, Automatic Banking Machines
- Proposal to Amend Rule 311.3, Information for Background Investigation

- Proposal to Amend Rule 319.335, Auditing and Approval of Testing Costs
- Proposal to Amend Rule 319.336, Payment of Testing Costs
- Proposal to Amend Rule 321.36, Remittance of Unclaimed Outs and Vouchers

Discussion of Rules Eligible for Adoption

The following rule proposals were published in the July 8, 2011, edition of the *Texas Register* and are eligible for adoption at the next regular meeting of the Commission.

- Proposed Amendment to Rule 321.1, Definitions and General Provisions
- Proposed Amendment to Rule 321.35, Claim for Payment
- Proposed Amendment to Rule 321.41, Cashing Outstanding Tickets
- Proposed Amendment to Rule 321.42, Cashing Outstanding Vouchers

The public will be given an opportunity to address the Committee and identify any potential subjects that it would like placed on the agenda for discussion at a future committee meeting.

**Discussion on Potential Changes
to Chapter 315**

TEXAS RACING COMMISSION

COMMITTEE ON RULES

Date of Request: August 1, 2011

Request for Proposed Change to an Existing Rule or Addition of a New Rule to the Rules of Racing

Please submit this information to the attention of the Executive Director *at least 21 days* in advance of the next scheduled Committee on Rules meeting. An electronic form is available to assist in your submission or feel free to add additional pages as necessary in order to provide as much detail as possible. Filing this request does not guarantee that your proposal will be considered by the Committee on Rules.

Texas Racing Commission
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- Personal Submission *OR*
- Submission on behalf of TxRC Staff
(Name of Organization)
- Proposed Addition to Chapter 315. Rule 315.112, Ineligibility due to Improper Lure Training
- Proposed Additions/Modification to Chapters: 309 and 311
- If known, Other Rules Affected by Proposal: none

A. Brief Description of the Issue

The Commission has learned of a licensee who trains greyhounds using live animals as a lure. This practice, once thought to be obsolete, is not only against greyhound racing rules, it is also a felony for animal cruelty under Chapter 42 of the Texas Penal Code. Following a hearing before a panel of three Commission judges, the individual agreed to surrender his Owner/Trainer license for revocation and waived all appeal rights.

The practice of using live lures in greyhound training and racing is outlawed by every jurisdiction and is banned by the American Greyhound Council and the Greyhound Racing Association of America. Both of these organizations have the following statement under the Frequently Asked Questions on their websites:

FAQ's

Does the industry use live lures?

No, the industry has banned the use of live lures in training and racing. In all states, state laws and/or racing rules prohibit the use of live lures in training or racing. Industry members who violate this practice may be expelled from the sport for life.

Most states, like Texas, also ban this practice under their state's animal cruelty laws.

TEXAS PENAL CODE

CHAPTER 42

§ 42.092. Cruelty to Nonlivestock Animals

(a) In this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

(6) "Livestock animal" has the meaning assigned by Section 42.09.

(7) "Necessary food, water, care, or shelter" includes food, water, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(8) "Torture" includes any act that causes unjustifiable pain or suffering.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;

(2) without the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal;

(3) fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;

(4) abandons unreasonably an animal in the person's custody;

(5) transports or confines an animal in a cruel manner;

(6) without the owner's effective consent, causes bodily injury to an animal;

(7) causes one animal to fight with another animal, if either animal is not a dog;

(8) uses a live animal as a lure in dog race training or in dog coursing on a racetrack; or

(9) seriously overworks an animal.

(c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted

two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. An offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

(d) It is a defense to prosecution under this section that:

(1) the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101, Health and Safety Code; or

(2) the actor was engaged in bona fide experimentation for scientific research.

(e) It is a defense to prosecution under Subsection (b)(2) or (6) that:

(1) the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery; or

(2) the person killed or injured the animal within the scope of the person's employment as a public servant or in furtherance of activities or operations associated with electricity transmission or distribution, electricity generation or operations associated with the generation of electricity, or natural gas delivery.

(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving livestock animals.

(g) This section does not create a civil cause of action for damages or enforcement of the section.

B. Discussion of the Issue and Problem

Provide background on the issue to build context. Address the following:

- *What specific problems or concerns are involved in this issue?*
- *Who does the issue affect?*
- *What existing model rules relate to this issue?*
- *Provide relevant quantitative or statistical information if possible.*

TEXAS RULES

SECTION 309.359. Live Lures.

(a) An association may not permit the use of a live lure on association grounds.

(b) An association may not permit a greyhound to be kennelled or to race on association grounds if the association knows or can reasonably be expected to know that the greyhound was trained in a state that by statute or rule does not prohibit the knowing use of live lures.

Following are pertinent parts of the RCI Model Rule and selections from other jurisdictions' rules.

RCI MODEL RULE:

ARCI-016-010 Prohibited Acts

(pertinent sections)

No person shall:

- (14) use any lure except the association's artificial lure for training or racing a greyhound at any time at any facility under the Commission's jurisdiction or at anyplace after the greyhound has been booked to race in this jurisdiction;**
- (15) use live animals or animals killed for the purpose of training greyhounds;**
- (46) submit any animal in their charge to cruel or inhumane treatment. Cruel or inhumane treatment includes, but is not limited to:**
 - (d) prohibited conduct described in (jurisdiction's cruelty statute) in the form the statute provided on the effective date of this rule.**

ARIZONA

Rules of Greyhound Racing

R19-2-311. Prohibited Acts

Generally:

14. Any person licensed by the Department found guilty of using live rabbits, cats, or fowl in the training of racing greyhounds may be fined or suspended or both by the stewards, who shall report all such cases to the Department.

FLORIDA

Chapter 550.2415. Racing of animals under certain conditions prohibited; penalties; exceptions.

- (6)(a) It is the intent of the Legislature that animals that participate in races in this state on which pari-mutuel wagering is conducted and animals that are bred and trained in this state for racing be treated humanely, both on and off racetracks, throughout the lives of the animals.**
- (b) The division shall, by rule, establish the procedures for euthanizing greyhounds. However, a greyhound may not be put to death by any means other than by lethal injection of the drug sodium pentobarbital. A greyhound may not be removed from this state for the purpose of being destroyed.**
- (c) It is a violation of this chapter for an occupational licensee to train a greyhound using live or dead animals. A greyhound may not be taken from this state for the purpose of being trained through the use of live or dead animals.**
- (d) Any act committed by any licensee that would constitute cruelty to animals as defined in s. 828.02 involving any animal constitutes a violation of this chapter. Imposition of any penalty by the division for violation of this chapter or any rule adopted by the division pursuant to this chapter shall not prohibit a criminal prosecution for cruelty to animals.**

MINNESOTA

343.315 Live lure greyhound training or racing.

No person may train a greyhound for racing using a live lure or live bait or conduct a greyhound race using a live lure or live bait.

WEST VIRGINIA

Rules of Racing 178-2-40. Disciplinary Action

40.7 It is a misdemeanor for any person to use any animal or fowl in the training or racing of greyhounds, which are being trained for pari-mutuel racing. Any greyhound that has been trained utilizing an animal or fowl shall be banned from participating in pari-mutuel racing for life. The Racing Commission shall notify the pari-mutuel racing facilities within the state in which it has jurisdiction and shall notify all jurisdictions within the United States that the greyhound is on the banned list.

West Virginia's animal cruelty law 61-8-19

(b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than five years and be fined not less than one thousand dollars nor more than five thousand dollars. For the purposes of this subsection, "torture" means an action taken for the primary purpose of inflicting pain.

C. Possible Solutions and Impact

Provide possible recommendations to solve the problem. Include details on each proposed solution such as:

- *What solution does this proposal provide?*
- *How will the solution fix the problem?*
- *How will the change affect any entities or stakeholders?*
- *How will you or your organization be affected by the proposed change?*
- *What are the benefits of the proposed change?*
- *What are the possible drawbacks of the proposed change?*
- *Identify possible fiscal impact of the recommended change.*

Proposed Solution:

Amend the present rule and add additional rules to ensure that the training of any greyhound by using any animal or fowl, living or dead, in this state or out of this state is a violation of the Texas Racing Commission's rules and is grounds for license revocation. Additionally, any greyhound that was trained using this method shall be banned for life from participating in pari-mutuel racing in Texas. Any greyhound whelped or trained at a specific facility or by a specific person that has been found to have used a live or dead animal or fowl shall also be banned for life. The Racing Commission will notify all greyhound racing jurisdictions and the National Greyhound Association of any banned greyhounds.

D. Support or Opposition

Please identify any affected stakeholder groups that expressed support or opposition. (These stakeholders may include the racetracks, breed registries, owners, kennel owners, trainers, jockeys, veterinarians, or others.)

- For those stakeholder groups that have expressed an opinion, please list the points on which they agree or disagree, and the arguments they have expressed.
- Are there any affected stakeholder groups that have not been consulted on this proposal?
- Please submit any formal letters of support or opposition by stakeholder groups.

As this practice is banned by both regulators and the national associations for greyhounds, there should be no opposition to strengthening the rules to ensure compliance. To prevent animal cruelty while training greyhounds and to ensure each greyhound is competing with similar training practices, the Texas Rules of Racing should explicitly ban this practice. These changes will protect the animals, the industry, and the wagering public.

E. Proposal

Provide rule language you are proposing. If you are proposing that current rule language be eliminated, please ~~strikeout~~ the language to be deleted. Please show new language with underlined text.

TEXAS RULES

Sec. 315.112. Ineligibility due to Improper Lure Training

(a) The board of racing judges may ban a greyhound for life from being kenneled or participating in racing on association grounds if it finds that the greyhound's owner, trainer, or kennel owner has engaged in any detrimental practice related to the training of greyhounds using a live or dead animal or fowl.

(b) The board of racing judges may ban a greyhound for life from being kenneled or participating in racing on association grounds if it finds that the greyhound has been trained at any facility that has engaged in any detrimental practice related to the training of greyhounds using a live or dead animal or fowl.

Sec. 309.359. Live Lures Training.

(a) An association may not permit the use of a live or dead animal or fowl for training purposes lure on association grounds.

(b) An association may not permit a greyhound to be kenneled or to race on association grounds if the association knows or can reasonably be expected to know that the greyhound was trained in a state that by statute or rule does not prohibit the knowing use of a live or dead animal or fowl for training purposes lures.

(c) An association may not permit a greyhound to be kenneled or to race on association grounds if the greyhound has been banned from pari-mutuel racing by any racing jurisdiction.

Sec. 311.6. Denial, Suspension, and Revocation of Licenses.

(a) (No change.)

(b)(1)–(4) (No change.)

(5) Detrimental Practices. A license may be denied, suspended or revoked if it is determined that the licensee is engaged in activities or practices that are detrimental to the best interests of the public or to the racing industry. These practices include, but are not limited to, using a live or dead animal or fowl to train a greyhound, or sending a greyhound to a facility located in this state or out of state for the purpose of being trained using a live or dead animal or fowl as a lure.

Sec. 311.102. Greyhound Owners.

(a)–(c) (No change.)

(d) Restriction on Racing. An owner may not enter a greyhound or cause a greyhound to be entered in a race at a racetrack if:

(1) the owner knows or can reasonably be expected to know that the greyhound was trained using a live or dead animal or fowl as a lure in this state or out of this state.

(2) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack;

(3)(2) the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

Sec. 311.104. Trainers.

(a)–(e) (No change.)

(f) Restriction on Racing. A trainer may not enter a race animal or cause a race animal to be entered in a race at a racetrack if:

(1) the trainer knows or can reasonably be expected to know that the greyhound was trained using a live or dead animal or fowl as a lure in this state or out of this state.

(2) the owner or trainer is employed by the racetrack association in a management or supervisory position that is capable of affecting the conduct of races or pari-mutuel wagering at the racetrack;

(3)(2) the owner or trainer is involved in any way with the sale or publication of tip sheets on association grounds.

**Proposal to Amend
Rule 319.3 Medication Restricted**

TEXAS RACING COMMISSION

COMMITTEE ON RULES

Date of Request: July 29, 2011

Request for Proposed Change to an Existing Rule or Addition of a New Rule to the Rules of Racing

Please submit this information to the attention of the Executive Director *at least 21 days* in advance of the next scheduled Committee on Rules meeting. An electronic form is available to assist in your submission or feel free to add additional pages as necessary in order to provide as much detail as possible. Filing this request does not guarantee that your proposal will be considered by the Committee on Rules.

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Contact Information:

Name:	Ken Quirk, DVM	Phone(s):	512-833-6699
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Personal Submission *OR*

Submission on behalf of TxRC Staff

(Name of Organization)

If known, Proposed Change to Chapter: 319, Rule 319.3

If known, Proposed Addition to Chapter: n/a

If known, Other Rules Affected by Proposal: none

A. Brief Description of the Issue

In 2010, the RCI Regulatory Veterinarians Committee recommended lowering the threshold for phenylbutazone, a non-steroidal anti-inflammatory drug (NSAID) commonly referred to as "bute," from 5.0 micrograms per milliliter to 2.0 micrograms per milliliter in plasma or serum. The Committee based its recommendation on its concern that the higher level may interfere with the pre-race veterinary examination.

RCI subsequently adopted this change to the Model Rule regarding allowable medications.

The RCI Drug Testing and Standards Practices Committee, the Racing Medication and Testing Consortium, the Jockey Club's Thoroughbred Safety Committee, the Thoroughbred Owners and Breeders Association (TOBA), and the American Association of Equine Practitioners all support the change.

Additionally, effective January 1, 2012, TOBA is requiring all participants in Graded Stakes races to be subject to the 2.0 microgram threshold.

B. Discussion of the Issue and Problem

Provide background on the issue to build context. Address the following:

- *What specific problems or concerns are involved in this issue?*
- *Who does the issue affect?*
- *What existing model rules relate to this issue?*
- *Provide relevant quantitative or statistical information if possible.*

Reducing the threshold level for phenylbutazone will improve safety for both horses and jockeys by providing for more accurate pre-race veterinary examinations

C. Possible Solutions and Impact

Provide possible recommendations to solve the problem. Include details on each proposed solution such as:

- *What solution does this proposal provide?*
- *How will the solution fix the problem?*
- *How will the change affect any entities or stakeholders?*
- *How will you or your organization be affected by the proposed change?*
- *What are the benefits of the proposed change?*
- *What are the possible drawbacks of the proposed change?*
- *Identify possible fiscal impact of the recommended change.*

Proposed Solution:

Amend Commission Rule 319.3, Medication Restricted, to lower the maximum permissible concentration of phenylbutazone in horses from 5.0 micrograms per milliliter of plasma or serum to 2.0 micrograms per milliliter.

The impact of this change should be minimal as, on average, over 89% of the horse samples in Texas have tested at a level of 2.0 micrograms per milliliter or less.

D. Support or Opposition

Please identify any affected stakeholder groups that expressed support or opposition. (These stakeholders may include the racetracks, breed registries, owners, kennel owners, trainers, jockeys, veterinarians, or others.)

- *For those stakeholder groups that have expressed an opinion, please list the points on which they agree or disagree, and the arguments they have expressed.*
- *Are there any affected stakeholder groups that have not been consulted on this proposal?*
- *Please submit any formal letters of support or opposition by stakeholder groups.*

This proposed change was first introduced at the November 26, 2010, Safety and Medication Meeting. It was also discussed at the July 27, 2011, Safety and Medication meeting held at Retama Park. Although stakeholders voiced no opposition to the change at these meetings, they will have additional opportunities to voice any concerns throughout the rule proposal process.

E. Proposal

Provide rule language you are proposing. If you are proposing that current rule language be eliminated, please strikeout the language to be deleted. Please show new language with underlined text.

Sec. 319.3. Medication Restricted.

(a) Except as otherwise provided by this section, a horse or greyhound participating in a race may not carry in its body a prohibited drug, chemical, or other substance.

(b) The maximum permissible plasma or serum concentration of phenylbutazone in horses is 2.0 ~~5.0~~ micrograms per milliliter.

(c) Furosemide at or below the approved tolerance level in a horse that has been admitted to the furosemide program is permissible. The approved tolerance level shall be published on the list of therapeutic drugs posted under subsection (d) of this section.

(d) Trace levels of drugs which are therapeutic and necessary for treatment of illness or injury in race animals are permissible, provided:

(1) the therapeutic drug is on a written list approved by the executive secretary, maintained by the commission veterinarian, and posted in the commission veterinarians' office; and

(2) the maximum permissible urine or blood concentration of the drug does not exceed the published limit, if any, on the written list of therapeutic drugs.

(e) Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse or greyhound a prohibited drug, chemical, or other substance, by injection, by oral or topical administration, by rectal infusion or suppository, by nasogastric intubation, or by inhalation, and any other means during the 24-hour period before the post time for the race in which the animal is entered.

(f) A positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected before or after the running of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.

1 **Section 319.3. Medication Restricted**

2 (a) Except as otherwise provided by this section, a horse or
3 greyhound participating in a race may not carry in its body a
4 prohibited drug, chemical, or other substance.

5 (b) The maximum permissible plasma or serum concentration of
6 phenylbutazone in horses is 2.0 ~~5.0~~ micrograms per milliliter.

7 (c) Furosemide at or below the approved tolerance level in a
8 horse that has been admitted to the furosemide program is
9 permissible. The approved tolerance level shall be published on
10 the list of therapeutic drugs posted under subsection (d) of
11 this section.

12 (d) Trace levels of drugs which are therapeutic and necessary
13 for treatment of illness or injury in race animals are
14 permissible, provided:

15 (1) the therapeutic drug is on a written list approved by the
16 executive secretary, maintained by the commission veterinarian,
17 and posted in the commission veterinarians' office; and

18 (2) the maximum permissible urine or blood concentration of
19 the drug does not exceed the published limit, if any, on the
20 written list of therapeutic drugs.

21 (e) Except as otherwise provided by this chapter, a person may
22 not administer or cause to be administered to a horse or
23 greyhound a prohibited drug, chemical, or other substance, by
24 injection, by oral or topical administration, by rectal infusion
25 or suppository, by nasogastric intubation, or by inhalation, and
26 any other means during the 24-hour period before the post time
27 for the race in which the animal is entered.

28 (f) A positive finding by a chemist of a prohibited drug,
29 chemical, or other substance in a test specimen of a horse or
30 greyhound collected before or after the running of a race,

1 subject to the rules of the commission relating to split
2 specimens, is prima facie evidence that the prohibited drug,
3 chemical, or other substance was administered to the animal and
4 was carried in the body of the animal while participating in a
5 race.

**Proposal to Amend
Rule 321.407. Approval of Wagering
on Simulcast Import Races**

1 **Section 321.407. Approval of Wagering on Simulcast Import Races**

2 (a) To receive approval to conduct pari-mutuel wagering on a
3 simulcast import, an association must file a request for
4 approval to import to the executive secretary on a form
5 prescribed by the executive secretary. A request for approval to
6 import a simulcast must be filed at least one day before the
7 first simulcast race covered by the request.

8 (b) The executive secretary may approve a request for approval
9 to import a simulcast, subject to rescission of the approval by
10 the Commission at its next regular meeting.

11 (c) The executive secretary may require the association to
12 submit additional information if the executive secretary
13 determines the additional information is necessary to
14 effectively evaluate the request.

15 (d) In considering whether or not to approve a request for
16 approval to import a simulcast, the executive secretary shall
17 consider:

18 (1) the financial stability of the association and the effect
19 simulcasting will have on the economic viability of the
20 association;

21 (2) the operating experience of the association;

22 (3) the regulatory compliance and conduct of the association;

23 (4) the impact of the association's proposed simulcasting on
24 purses at the association's racetrack; and

25 (5) the public interest that will be served by the
26 simulcasting.

27 (e) An association may not conduct pari-mutuel wagering on a
28 simulcast import in place of a regularly scheduled live race,
29 except as authorized by the executive secretary.

- 1 (f) For the purposes of this section, a simulcast import horse
- 2 race can be a race of Thoroughbreds, Quarter Horses, Arabians,
- 3 Paint Horses, Appaloosas, Standardbreds, or a mixture of the
- 4 aforementioned breeds of horses.

**Proposal to Amend
Rule 309.8. Racetrack License Fees**

Sec. 309.8. Racetrack License Fees.

(a) Purpose of Fees. An association shall pay a license fee to the Commission to pay the Commission's costs to administer and enforce the Act, and to regulate, oversee, and license live and simulcast racing at racetracks.

(b) Annual License Fee.

(1) A licensed racing association shall pay an annual license fee. The annual license fee for each license type is as follows:

(A) for a Class 1 racetrack, \$500,000;

(B) for a Class 2 racetrack, \$230,000;

(C) for a Class 3 or 4 racetrack, \$70,000; and

(D) for a Greyhound racetrack, \$360,000.

(2) An association that is conducting live racing or simulcasting shall pay its annual license fee by remitting to the Commission 1/12th of the fee on the first business day of each month. For the State Fiscal Year that begins on September 1, 2011, the monthly remittance shall begin in the month of January.

(3) An association that is not conducting live racing or simulcasting shall pay its annual license fee on September 1 of each fiscal year. For the State Fiscal Year that begins on September 1, 2011, the annual license fees shall be paid in two separate payments. The first payment will be of \$100,000 and is due on September 1, 2011. The second payment will be of the remaining unpaid balance and shall be paid on January 1, 2012.

(c) Adjustment of Fees.

(1) Annual fees are calculated using a projected base of 143 days of live horse racing and 270 performances of live greyhound racing per calendar year. To cover the

Texas Racing Commission
Title 16, Part VIII
Chapter 309. Racetrack Licenses and Operations
Subchapter A. Racetrack Licenses

additional regulatory cost in the event additional days or performances are requested by the associations the executive secretary may:

- (A) recalculate a horse racetrack's annual fee by adding \$3,750 for each live day added beyond the base,
 - (B) recalculate a greyhound racetrack's annual fee by adding \$750 for each live performance added beyond the base, and
 - (C) review the original or amended race date request submitted by each association to establish race date baselines for specific associations if needed.
- (2) If at any point the executive secretary determines the total revenue from the annual fees is insufficient to pay the Commission's costs during a fiscal year, the executive secretary shall recommend to the Commission a supplemental fee, in addition to the license fee, that each association would be required to pay to generate the necessary revenue to pay the Commission's costs.
- (3) If the executive secretary determines that the total revenue from the annual fees exceeds the amount needed to pay those costs, the executive secretary may order a moratorium on all or part of the annual license fees remitted monthly by any or all of the associations. Before entering a moratorium order, the executive secretary shall develop a formula for providing the moratorium in an equitable manner among the associations. In developing the formula, the executive secretary shall consider the amount of excess revenue received by the Commission, the source of the revenue, the Commission's costs associated with regulating each association, the Commission's projected receipts for the next fiscal year,

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Chapter 309. Racetrack Licenses and Operations
Subchapter A. Racetrack Licenses

and the Commission's projected expenses during the next
fiscal year.

**Proposal to Amend
Certain Rules to Implement the
Requirements of HB 2271,
82nd Regular Session**

HB 2271

Section 1

SECTION 1. Section 1.03, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended by amending Subdivision (52) and adding Subdivisions (80) and (81) to read as follows:

(52) "Performance" means the consecutive running of a specified number of greyhound races as determined by the commission [~~not more than 13 greyhound races~~].

(80) "Active license" means a racetrack license designated by the commission as active.

(81) "Inactive license" means a racetrack license designated by the commission as inactive.

Texas Racing Commission
Title 16, Part VIII
Chapter 301. Definitions

1 **Section 301.1 Definitions**

2 (a) (No change.)

3 (b) (1) - (50) (No change.)

4 (51) Performance--the schedule of horse or greyhound races run
5 consecutively as one program. A greyhound performance consists
6 of fifteen or fewer races unless approved by the executive
7 secretary.

8 (52) - (89) (No change.)

9 (90) "Active license" means a racetrack license designated by
10 the commission as active.

11 (91) "Inactive license" means a racetrack license designated by
12 the commission as inactive.

HB 2271 Section 18

SECTION 18. Sections 11.04(a) and (c), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) This provision not proposed for implementation at this time.

(c) The commission shall adopt rules prohibiting an association from accepting a wager made on credit and shall adopt rules providing for the use of automatic banking machines within the enclosure. The commission shall limit the use of an automatic banking machine to [:

~~[(1)]~~ allow a person to have access to only the person's checking account at a bank or other financial institution~~[- and~~

~~[(2)] deliver no more than \$200].~~

Texas Racing Commission
Title 16, Part VIII
Chapter 309. Racetrack Licenses and Operations
Subchapter B. Operation of Racetracks

1 **Section 309.129. Automatic Banking Machines**

2 (a)-(b) (No Change.)

3 (c) Configuration. An automatic banking machine placed on
4 association grounds must be configured with the following
5 restrictions:

6 (1) A customer using the machine may withdraw funds only
7 from his or her checking account at a bank or other financial
8 institution. A customer may not use the machine to withdraw
9 funds from a savings account.

10 ~~(2) A customer may withdraw no more than \$200 per day per~~
11 ~~account. For purposes of this paragraph, a "day" is the 24 hour~~
12 ~~period beginning at 12:00 midnight.~~

13 (2)~~(3)~~ For each transaction at a machine, a statutory fee
14 of \$1.00 must be withdrawn from the customer's account in
15 addition to the amount delivered to the customer and any other
16 fees authorized and imposed by the bank or other financial
17 institution, by the association, or by the vendor.

18 (3)~~(4)~~ Before the customer authorizes the transaction, the
19 machine must display a screen that notifies the customer of the
20 statutory fee and permits the customer to cancel the
21 transaction. The notice must state the following or its
22 equivalent: UNDER TEXAS RACING ACT, §11.04(E), A \$1 FEE MUST BE
23 COLLECTED ON EACH TRANSACTION AT THIS MACHINE FOR DEPOSIT INTO
24 THE TEXAS STATE TREASURY.

25 (d)-(f) (No change.)

HB 2271

Section 6

SECTION 6. Sections 5.03(a) and (c), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) An applicant for any license or license renewal under this Act must, except as allowed under Section 7.10 of this Act, submit to the commission 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. The Department of Public Safety may request any person owning any interest in an applicant for a racetrack license to submit a complete set of fingerprints.

(c) A peace officer of this or any other state, or any district office of the commission, shall take the fingerprints of an applicant for a license or license renewal on forms approved and furnished by the Department of Public Safety and shall immediately deliver them to the commission.

Texas Racing Commission
Title 16, Part VIII, Chapter 311. Other Licenses
Subchapter A. Licensing Provisions
Division 1. Occupational Licenses

1 **Section 311.3. Information for Background Investigation**

2 (a) Fingerprint Requirements and Procedure.

3 (1) Except as otherwise provided by this section, an
4 applicant for a license or license renewal must submit with the
5 application documents a set of the applicant's fingerprints in a
6 form prescribed by the Department of Public Safety. If the
7 applicant is not an individual, the applicant must submit a set
8 of fingerprints on the above-referenced forms for each
9 individual who:

10 (A) serves as a director, officer, or partner of the
11 applicant;

12 (B) holds a beneficial ownership interest in the
13 applicant of 5.0% or more; or

14 (C) owns any interest in the applicant, if requested
15 by the Department of Public Safety.

16 (2)-(5) (No change.)

17 (6) If an applicant for a license or license renewal is
18 required to submit fingerprints under this section, the
19 applicant must also submit a fingerprinting fee of \$44.20
20 ~~\$12.00~~.

21 (b) (No change.)

HB 2271 Section 4

SECTION 4. Sections 3.07(b) and (e), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), are amended to read as follows:

(e) To pay the charges associated with the medication or drug testing, an association may use the money held by the association to pay outstanding tickets and pari-mutuel vouchers. If additional amounts are needed to pay the charges, the association shall pay those additional amounts. ~~[If the amount held exceeds the amount needed to pay the charges, the association shall pay the excess to the commission in accordance with Section 11.08 of this Act.]~~

Texas Racing Commission
Title 16, Part VIII
Chapter 319. Veterinary Practices and Drug Testing
Subchapter D. Drug Testing
Division 2. Testing Procedures

1 **Section 319.335. ~~Auditing and~~ Approval of Testing Costs**

2 (a) All charges for conducting tests under this subchapter must
3 be reconciled with the number of tests actually conducted
4 ~~audited~~ and be approved by the executive secretary before
5 payment. ~~The executive secretary shall audit the charges as to~~
6 ~~the reasonableness of the charges in accordance with industry~~
7 ~~standards for comparable testing procedures.~~

8 (b) Charges for conducting tests under this subchapter may
9 include expenses incurred for travel, lodging, testing, and
10 processing test results.

11 (c) On approval of the charges, the executive secretary shall
12 forward a copy of the charges to the association for which the
13 tests were conducted.

Texas Racing Commission
Title 16, Part VIII
Chapter 319. Veterinary Practices and Drug Testing
Subchapter D. Drug Testing
Division 2. Testing Procedures

1 **Section 319.336. Payment of Testing Costs**

2 (a) Responsibility for Payment. Immediately on receipt of
3 approved charges for conducting tests under this subchapter, an
4 association shall pay the charges.

5 (b) Authority to Use Outstanding Tickets and Pari-mutuel
6 Vouchers. An association may use money held by the association
7 to pay outstanding tickets and outstanding pari-mutuel vouchers
8 to pay for charges under this section. If the money held is
9 insufficient to pay the charges, the association shall pay the
10 remainder of the charges.

11 ~~(c) Accounting and Payment of Remainder.~~

12 ~~(1) The accounting and payment of remainder of outs and~~
13 ~~vouchers to the Commission shall be done in accordance with~~
14 ~~§321.36.~~

15 ~~(2) The executive secretary will review the accounting~~
16 ~~submitted by the association. If the executive secretary~~
17 ~~determines the accounting is in error, the executive secretary~~
18 ~~may adjust the amount due to the Commission from outstanding~~
19 ~~tickets and either demand payment of the additional amount owed~~
20 ~~or reimburse the association for the excess amount paid to the~~
21 ~~Commission.~~

22 ~~(d) Pooling of Drug Testing Costs. The executive secretary may~~
23 ~~establish a procedure to pay drug testing costs by pooling the~~
24 ~~amounts held by all associations to pay outstanding tickets. If~~
25 ~~the amount held by an association does not cover the full costs~~
26 ~~of drug testing for that association, the executive secretary~~

~~1 may pay these costs using funds paid to the Commission under
2 subsection (c) (1) of this section.~~

Texas Racing Commission
Title 16, Part VIII
Chapter 321. Pari-Mutuel Wagering
Subchapter A. Mutuel Operations
Division 1. General Provisions

1 **Section 321.36. ~~Remittance of Unclaimed Outs and Vouchers~~**

2 (a) Pursuant to the Act, §3.07, to pay the charges associated
3 with the medication or drug testing, an association may use the
4 money held by the association to pay outstanding tickets and
5 pari-mutuel vouchers. If additional amounts are needed to pay
6 the charges, the association shall pay those additional amounts.
7 If the amount of outstanding tickets and pari-mutuel vouchers
8 held exceeds the amount needed to pay the charges, the
9 association may retain the excess amount as outstanding tickets
10 and pari-mutuel vouchers expire. ~~shall pay the excess to the~~
11 ~~commission.~~

12 ~~(b) The association shall file a quarterly report, on a form~~
13 ~~prescribed by the executive director, that reports:~~

14 ~~(1) the amount of outstanding tickets and pari-mutuel~~
15 ~~vouchers that have expired during the quarter as outlined under~~
16 ~~§321.33;~~

17 ~~(2) the amount needed to reimburse the association for~~
18 ~~payments made by the association to cover charges associated~~
19 ~~with the medication or drug testing pursuant to §3.07 of the~~
20 ~~Act; and~~

21 ~~(3) the amount of excess expired tickets and pari-mutuel~~
22 ~~vouchers, if any, due to the commission.~~

23 ~~(c) The association shall file the quarterly reports and make~~
24 ~~payments when applicable on the following schedule:~~

25 ~~(1) September, October and November will constitute the~~
26 ~~first quarter and shall be filed with the commission no later~~
27 ~~than December 15;~~

1 ~~(2) December, January and February will constitute the~~
2 ~~second quarter and shall be filed with the commission no later~~
3 ~~than March 15;~~

4 ~~(3) March, April and May will constitute the third quarter~~
5 ~~and shall be filed with the commission no later than June 15;~~
6 ~~and~~

7 ~~(4) June, July and August shall constitute the fourth~~
8 ~~quarter and shall be filed with the commission no later than~~
9 ~~September 15.~~

10 ~~(d) The reports and payments submitted by the association are~~
11 ~~subject to audit by the Commission.~~

**Discussion of
Rules Eligible for Adoption**

1 **Section 321.1. Definitions and General Provisions.**

2 (a) The following words and terms, when used in this chapter,
3 shall have the following meanings, unless the context clearly
4 indicates otherwise:

5 (1) - (12) (No change.)

6 (13) Player Tracking System--a system that provides
7 detailed information about pari-mutuel play activity of patrons
8 who volunteer to participate. The system can be used to
9 customize highly specific promotions and tailor rewards to
10 encourage incremental visits by patrons. The system should be
11 able to produce customized informational reports based on such
12 parameters as type of wager, type of race, favorite race meet,
13 or other parameters deemed helpful by the association in
14 supporting the patron.

15 (14) [~~+13~~] Remote site--a racetrack or other location at
16 which wagering is occurring that is linked via the totalisator
17 system to a racetrack facility for pari-mutuel wagering
18 purposes.

19 (15) [~~+14~~] Report--a summary of betting activity.

20 (16) [~~+15~~] Resultant--the profit-per-dollar wagered in a
21 pari-mutuel pool computation.

22 (17) [~~+16~~] Ticketless Electronic Wagering (E-wagering)--a
23 form of pari-mutuel wagering in which wagers are placed and
24 cashed through an electronic ticketless account system operated
25 through a licensed totalisator vendor in accordance with §11.04
26 of this Act. Wagers are automatically debited and credited to
27 the account holder.

28 (18) [~~+17~~] TIM--ticket-issuing machine.

Texas Racing Commission
Title 16, Part VIII
Chapter 321. Pari-mutuel Wagering
Subchapter A. Mutuel Operations
Division 1. General Provisions

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1 (19) [~~+18~~] TIM-to-Tote network--a wagering network
2 consisting of a single central processing unit and the TIMs at
3 any number of remote sites.

4 (20) [~~+19~~] Totalisator system--a computer system that
5 registers and computes the wagering and payoffs in pari-mutuel
6 wagering.

7 (21) [~~+20~~] Totalisator operator--the individual assigned
8 to operate the totalisator system at a racetrack facility.

9 (22) [~~+21~~] Tote-to-tote network--a wagering network in
10 which each wagering location has a central processing unit.

11 (23) [~~+22~~] User--a totalisator company employee authorized
12 to use the totalisator system in the normal course of business.

13 (b) - (c) (No change.)

1 **Section 321.35.Claim for Payment.**

2 (a) Claims on pari-mutuel tickets or vouchers presented for
3 payment.

4 (1) An association shall accept a claim for payment if the
5 association has withheld payment or has refused to cash a pari-
6 mutuel ticket or a voucher presented for payment. The claim for
7 payment must be [made] on a form prescribed by the association
8 and approved by the executive secretary. [~~signed by the~~
9 ~~claimant.~~]

10 (2) The original of the claim must be signed by the
11 claimant and shall be promptly forwarded to the Commission.

12 [~~(b) If a claim is made for payment of a mutilated ticket that~~
13 ~~does not contain the information required under §321.29 of this~~
14 ~~title (relating to Mutuel Tickets), the]~~

15 (3) The association shall make a recommendation to
16 accompany the claim forwarded to the Commission. The
17 recommendation must state whether or not the [mutilated] ticket
18 or voucher can [~~has sufficient elements to~~] be positively
19 identified as a winning ticket or voucher.

20 [~~(c) If a claim is made for payment of a mutilated voucher that~~
21 ~~does not contain the information required under §321.31 of this~~
22 ~~title (relating to Vouchers), the association shall make a~~
23 ~~recommendation to accompany the claim forwarded to the~~
24 ~~Commission. The recommendation must state whether or not the~~
25 ~~mutilated voucher has sufficient elements to be positively~~
26 ~~identified as an outstanding voucher.~~]

27 (4) [~~(d)~~] If a claim is made for the payment of a mutuel
28 ticket or a voucher, the executive secretary shall investigate
29 the claim and may:

1 (A) [~~1~~] order the association to pay the claim;

2 (B) [~~2~~] deny the claim; or

3 (C) [~~3~~] enter any other order the executive
4 secretary determines appropriate.

5 (b) Claims on pari-mutuel tickets or vouchers that have been
6 lost or destroyed.

7 (1) An association may cash a lost or destroyed ticket
8 voucher if the ticket or voucher has not been previously cashed
9 and the claimant can:

10 (A) demonstrate ownership via the use of the
11 claimant's unique and personally identifiable player tracking
12 account at the association where the transaction was made on the
13 claimant's account; or

14 (B) can provide the mutuel manager sufficient
15 information whereby the transaction can be positively verified
16 through wagering system logs.

17 (2) If an association refuses to pay a claim for a lost or
18 destroyed ticket or voucher, the claimant may file a claim for
19 payment with the Commission. The claim for payment must be on a
20 form prescribed by the association and approved by the executive
21 secretary.

22 (A) The original of the claim must be signed by the
23 claimant, and shall be promptly forwarded to the Commission.

24 (B) The association shall make a recommendation to
25 accompany the claim forwarded to the Commission. The
26 recommendation must state:

27 (i) whether or not the ticket or voucher can be
28 positively verified as a winning transaction;

1 (ii) whether or not the ticket or voucher has
2 been previously cashed, and date the ticket or voucher was
3 cashd; and

4 (iii) why the association refused to pay the
5 claimant.

6 (3) If a claim for payment is received by the executive
7 secretary under paragraph (2) of this subsection, then the
8 executive secretary shall investigate the claim and may:

9 (A) order the association to pay the claim;

10 (B) deny the claim; or

11 (C) enter any other order the executive secretary
12 determines appropriate.

13 (c) An association shall be responsible for maintaining records
14 and logs to validate claims for payments in this section.
15 Records and logs must be maintained for 365 days.

16 (d) In the event a claim is made for a ticket that meets the
17 criteria established in §321.41(a) of this chapter (relating to
18 Cashing Outstanding Tickets), the claim must be approved by the
19 executive secretary before the claim can be paid.

20 (e) In the event a claim is made for a voucher that meets the
21 criteria established in §321.42(a) of this chapter (relating to
22 Cashing Outstanding Vouchers), the claim must be approved by the
23 executive secretary before the claim can be paid. [A claim may
24 not be made for a lost or destroyed mutuel ticket or voucher.]

1 **Section 321.41.Cashing Outstanding Tickets.**

2 (a) - (d) (No change.)

3 (e) In the event a photostatic copy can not be provided, the
4 association will not be held liable for:

5 (1) a reader cashed ticket if the association can produce
6 documentation to support the ticket's existence ; or[-]

7 (2) a ticket cashed in accordance with the executive secretary's
8 approval under §321.35(b) or (d) of this chapter (relating to
9 Claim for Payment).

1 **Section 321.42.Cashing Outstanding Vouchers.**

2 (a) - (d) (No change.)

3 (e) In the event a photostatic copy can not be provided, the
4 association will not be held liable for:

5 (1) a reader cashed voucher if the association can produce
6 documentation to support the voucher's existence ; or[-]

7 (2) a voucher cashed in accordance with the executive
8 secretary's approval under §321.35(b) or (d) of this chapter
9 (relating to Claim for Payment).