

BILL ANALYSIS

C.S.H.B. 4115
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Following review of the Texas Racing Commission during the 2020-2021 sunset review cycle, the Sunset Advisory Commission noted a number of issues with the agency. Rather than continuing the racing commission for a full 12 years, the 87th Legislature instead continued the agency only until 2027. Modernization of the statutory framework governing the racing commission is necessary to address two key sunset concerns--an untenable regulatory structure and an unsustainable fiscal model. C.S.H.B. 4115 seeks to make changes to the Texas Racing Act to provide the racing commission an opportunity to overcome past issues required for the agency to successfully continue beyond 2027. Additionally, the bill seeks to prohibit live greyhound and other dog racing events in Texas and create a pathway for the greyhound racetracks to transition to horse racetracks.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Racing Commission in SECTIONS 2.036 and 2.038 of this bill.

ANALYSIS

C.S.H.B. 4115 amends the Occupations Code to set out and revise provisions relating to the eligibility for membership on, and the regulation of horse racing by, the Texas Racing Commission and to a prohibition on the conduct of greyhound or other dog racing as live events in Texas.

Membership on and Regulation of Horse Racing by Texas Racing Commission

C.S.H.B. 4115 provides for the racing commission's authority to contract with persons as necessary to administer the Texas Racing Act and grants a person contracted by the racing commission immunity from liability for a cause of action arising out of that person's good faith performance or exercise of discretion in the implementation or enforcement of the act or a rule adopted under the act that accrues on or after the bill's effective date. The bill makes the conflict of interest protections established for racing commission employees applicable also to contractors.

C.S.H.B. 4115 makes the conflict of interest protections regarding appointments to the racing commission applicable also with respect to a person designated to serve as an ex officio member's designee on the commission and removes conviction of a crime involving moral

turpitude as a disqualifying factor for service on the racing commission. The bill sets the term of any member serving immediately before the bill's effective date who is rendered ineligible due to these changes to expire on the bill's effective date.

C.S.H.B. 4115 repeals the requirement for the racing commission to adopt rules relating to license applications and the financial responsibility, moral character, and ability of applicants in order to preserve and protect the public health, welfare, and safety and removes certain subjective morality-based licensing standards. The bill also repeals provisions authorizing the racing commission to issue temporary licenses under the act pending investigation of an applicant's qualifications to receive an original or renewal license. The bill requires the racing commission to comply with statutory provisions establishing the consequences of criminal conviction on occupational licensure in the administration of its licensing program.

C.S.H.B. 4115 extends the duration of the period that a racetrack association may conduct races under the authority of a temporary license issued by the racing commission before completion of the permanent facility for which the association received a license by changing the date on which that period ends from the second anniversary of the date of issuance of the temporary license to the fifth anniversary of that date.

C.S.H.B. 4115 requires the racing commission, in adopting rules relating to the content of plans and specifications for the construction, renovation, or maintenance of any building or improvement on the premises of a racetrack, to include a requirement that a plan incorporate proposals for the racetrack to support state emergency management activities under the Texas Disaster Act of 1975.

C.S.H.B. 4115 makes the submission of an annual report by the racing commission discretionary by replacing the requirement for the racing commission to file an annual report with the governor, lieutenant governor, and speaker of the house of representatives with an authorization to do so. The bill repeals requirements regarding the contents of the report and authorizes the report to include, to the extent the racing commission considers appropriate, descriptions of changes to commission programs and recommendations to the governor and the legislature.

C.S.H.B. 4115 increases the cap on the amount of unappropriated money that may remain in the Texas Racing Commission Fund at the close of each state fiscal biennium from \$750,000 to \$2 million. The bill repeals the requirement for any amount of general revenue appropriated for the administration and enforcement of the Texas Racing Act in excess of the cumulative amount deposited in that fund to be reimbursed from the fund not later than the first anniversary of the date the general revenue funds are appropriated, with 6.75 percent interest. The bill authorizes the executive director of the racing commission to apply for and receive any grant applicable to the implementation or enforcement of the act or a rule adopted under the act.

C.S.H.B. 4115 expands the authority of the executive director to issue a cease and desist order or emergency cease and desist order by changing the entities to whom the executive director may issue such an order from a racetrack association or other license holder to any person that the director believes is engaging or is likely to engage in conduct that violates the act or a racing commission rule. Moreover, the bill authorizes the executive director to issue an emergency cease and desist order to a person the director reasonably believes is engaged in continuing activity that involves suspected cruelty to an animal in violation of racing commission rule or in a manner that constitutes an animal cruelty offense. The bill authorizes the executive director, on issuance of such an order, to authorize the seizure of any animal suspected of being or to have been subject to animal cruelty and establishes that an emergency cease and desist order issued for suspected animal cruelty satisfies the evidence requirement for a showing of probable cause for purposes of statutory provisions governing the seizure of a cruelly treated animal.

C.S.H.B. 4115 authorizes a class 2 racetrack to submit to the racing commission an application to transfer to a class 1 racetrack a race date the racing commission allocated to the class 2

racetrack. The bill requires the horsemen's organization to agree to the transfer before the application is submitted. The bill requires the racing commission to approve or disapprove a transfer application not later than the 10th day after the date the application is submitted and prohibits the racing commission from charging a fee for the submitted application.

C.S.H.B. 4115 abolishes the Texas-bred Incentive Fund on September 1, 2023. The bill requires the comptroller of public accounts to deposit the state's share of the simulcast pari-mutuel pool for use by state breed registries into a trust fund in the state treasury to be known instead as the Texas-bred Escrow Account. The bill transfers money in the fund on September 1, 2023, to the new escrow account on that date and prohibits money in the account from being appropriated for state expenditure.

C.S.H.B. 4115 establishes the Texas Equine Education and Research Escrow Account as a special account in the general revenue fund and establishes that money deposited to the credit of the account may be used only for the purposes described in provisions governing the account. The bill also establishes the Texas Equine Education and Research Council, which is composed of the executive director, who serves as the council's presiding officer, and one representative designated by each of the following entities:

- the Texas A&M Veterinary Medical Diagnostic Laboratory;
- the Texas A&M AgriLife Extension Service;
- the Texas A&M School of Veterinary Medicine & Biomedical Sciences;
- the Texas Animal Health Commission; and
- the Department of State Health Services.

The bill replaces the provision requiring two percent of the funds set aside by horse racetrack associations for the Texas-bred program and paid to the racing commission to then be set aside for purposes of equine research with a requirement for the greater of two percent of that amount or \$50,000 to be set aside for purposes of the council and escrow account.

C.S.H.B. 4115 replaces the provision authorizing the racing commission's testing to determine whether a prohibited substance has been used to be prerace or postrace as determined by the commission with a provision authorizing the testing to be conducted as determined by the commission. The bill defines "occupational license" for purposes of the Texas Racing Act as a license issued to an individual to conduct activities prescribed for that license in racing commission rules. The bill repeals the definition of "horse racing day" applicable under that act.

C.S.H.B. 4115 expands the conduct that constitutes the offenses of unlawful racing and racing without a license under the Texas Racing Act to include participating in, permitting, or conducting a horse race, as applicable, without a permit issued under the Texas Mass Gatherings Act. The bill creates a state jail felony offense for a person who seeks to enter, train, or ride a horse for a horse race that is part of a performance or race meeting conducted under the Texas Racing Act or racing commission rule and knows or reasonably should know that the horse has participated in a performance or race meeting in Texas that was not conducted under that act or racing commission rule or under a permit issued under the Texas Mass Gatherings Act. The penalty for the offense is enhanced to a third degree felony if the recipient of the benefit is a steward, judge, or other racetrack official exercising authority over a horse race that the person providing or offering the benefit intended to influence. The bill applies only to an offense committed on or after the bill's effective date and provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

C.S.H.B. 4115 repeals the provision prohibiting an automobile racing facility from being located within 10,000 feet of a horse or greyhound racetrack that is located in a county with a population of 1.8 million or more. The bill also repeals the provision capping the balance of the horse industry escrow account at \$50 million.

Prohibition on Conducting Greyhound and Other Dog Racing as Live Events

C.S.H.B. 4115 prohibits greyhound racing, or any other form of dog racing, from being conducted as a live racing event in Texas and repeals provisions providing for the licensing of greyhound racetracks. The bill authorizes a greyhound racetrack association to submit an application on or before January 1, 2024, to the racing commission to convert its greyhound racetrack license to a class 2 or class 3 racetrack license for horse racing. The bill requires the racing commission to approve the submitted application if the following conditions are satisfied:

- the applicant is in good standing with the commission;
- information related to the applicant on file with the commission is current, complete, and accurate; and
- the applicant pays a fee of \$25,000 for the commission's review of the application.

The bill requires an approved applicant to complete the conversion not later than December 31, 2027.

C.S.H.B. 4115 provides for the required transfer of greyhound purse funds held by any greyhound racetrack association on September 1, 2023, to the racing commission for deposit into an escrow account in the commission's registry and requires the racing commission by rule to determine the allocation of the transferred greyhound purse funds. The bill provides that any horse breed registry that holds greyhound purse funds on September 1, 2023, retains those funds but restricts the use of those funds to live horse race purses. The bill authorizes a racetrack association conducting live horse racing in Texas on or after September 1, 2023, to apply to the racing commission for allocation of transferred greyhound purse funds to be used for purses at the association's racetrack during the calendar year for which the purse funds are requested and establishes that a racing commission decision relating to the allocation of purse funds is final.

C.S.H.B. 4115 repeals provisions including greyhounds as part of the Texas-bred program under the Texas Racing Act and updates provisions of the act to reflect that repeal and to remove references to the greyhound breeding industry. The bill updates that act to also reflect the prohibition against conducting live greyhound or other dog racing events in Texas and removes the requirement for one of the members appointed to the racing commission to have special knowledge or experience related to greyhound racing. The bill requires the racing commission to adopt the rules necessary to implement the bill's provisions providing for a statewide prohibition on conducting live greyhound or other dog racing events.

C.S.H.B. 4115 amends the Government Code, Health and Safety Code, and Tax Code to conform to the applicable repeals and removals of references to greyhound racing provisions.

Repealed Provisions

C.S.H.B. 4115 repeals the following Occupations Code provisions:

- Sections 2021.003(15), (16), (17), (19), (22), and (35);
- Section 2023.053(e);
- Section 2023.054;
- Sections 2023.061(b) and (c);
- Section 2025.001(a);
- Section 2025.260;
- Section 2026.011;
- Subchapter D, Chapter 2025;
- Section 2026.010;
- Section 2027.056;
- Subchapter D, Chapter 2028;
- Sections 2028.202(b), (c), (d), and (e);
- Section 2028.2041(c);
- Section 2028.205;
- Subchapter B, Chapter 2029; and

- Subchapter B, Chapter 2030.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4115 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions absent from the introduced:

- a provision extending the duration of the period that a racetrack association may operate under a temporary license before the completion of construction at the designated place for which the association's license was issued;
- a provision requiring the racing commission, in adopting rules relating to the content of plans and specifications for the construction, renovation, or maintenance of any building or improvement on the premises of a racetrack, to include a requirement that a plan incorporate proposals for the racetrack to support state emergency management activities under the Texas Disaster Act of 1975;
- a provision authorizing the executive director to apply for and receive any grant applicable to the implementation or enforcement of the Texas Racing Act or a rule adopted under the act;
- provisions creating the Texas Equine Education and Research Escrow Account and the Texas Equine Education and Research Council;
- a provision replacing the provision requiring two percent of the funds set aside by horse racetrack associations for the Texas-bred program and paid to the racing commission to then be set aside for purposes of equine research with a requirement for the greater of two percent of that amount or \$50,000 to be set aside for purposes of the Texas Equine Education and Research Escrow Account and the Texas Equine Education and Research Council;
- a provision repealing the prohibition against an automobile racing facility being within 10,000 feet of a horse or greyhound racetrack that is located in a county with a population of 1.8 million or more; and
- a provision repealing the \$50 million cap on the balance of the horse industry escrow account.

The substitute includes provisions absent from the introduced regarding the transfer of an allocated race date from a class 2 racetrack to a class 1 racetrack. The substitute omits a provision from the introduced that makes ineligible for appointment or designation to the racing commission a person who has held a license issued by the commission during the 10-year period preceding the appointment.

The substitute prohibits greyhound racing, and any other form of dog racing, from being conducted as live events in Texas, whereas the introduced did not. The substitute repeals provisions of the Occupations Code to conform to this prohibition that were not repealed in the introduced and also repeals provisions providing for the issuance of greyhound racetrack licenses. Accordingly, the substitute includes provisions also absent from the introduced regarding the conversion of a greyhound racetrack license to a class 2 or class 3 racetrack license for horse racing and regarding greyhound purse funds. The substitute repeals provisions including greyhounds as part of the Texas-bred program under the Texas Racing Act, whereas the introduced did not, and updates provisions of the act to reflect that repeal and to remove references in the Government Code, Health and Safety Code, and Tax Code to the greyhound breeding industry. Finally, the substitute includes a requirement not in the introduced for the racing commission to adopt the rules necessary to implement the bill's provisions providing for the statewide prohibition against live greyhound or other dog racing events.