

CHAPTER 173. COMMISSION OPERATIONS AND ORGANIZATION—TEMPORARY REGULATIONS

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Cross References

This chapter cited in 7 Pa. Code § 179.70 (relating to Commission decisions).

§ 173.1. Establishment of the Commission.

(a) Under section 9311 of the act (relating to State Horse Racing Commission), the Commission is established as a Commission within the Department to independently regulate the operations of horse racing, the conduct of pari-mutuel wagering and the promotion and marketing of horse racing in this Commonwealth. The Commission shall consist of nine Commissioners appointed under in accordance with section 9311(b) of the act.

(b) *Term of office.* A Commissioner's term of office shall be governed by the provisions of the act.

(c) *Chairperson.* The Governor shall appoint the Chairperson of the Commission.

§ 173.2. Meetings.

(a) *Public sessions.* The Commission's public meetings shall take place at a location designated by the Chairperson and approved by the Commission and shall be conducted in accordance with 65 Pa.C.S. Chapter 7 (relating to Sunshine Act).

(b) *Regularly scheduled meetings.* The Commission shall meet at least once a month and at other times as the Chairperson deems necessary. Meetings may be cancelled with appropriate public notice.

(c) *Participation by means of telephone or video teleconference.* A Commissioner may participate in a meeting by means of telephone or video teleconference when it is impractical for the Commissioner to attend the meeting in person.

(d) *Record of proceedings.* The Commission shall cause to be made and shall keep the minutes of the public meetings of the Commission. The Commission

shall also make a verbatim transcript of those proceedings which will be the property of the Commission and will be retained for a period to be determined by the Commission in its records retention policy. Copies of the verbatim transcript may be obtained directly from the court reporting service.

§ 173.3. Participation at meetings and voting.

(a) *Majority vote.* Except as provided in subsection (b), an action by the Commission to suspend, revoke, or to refuse to renew any license previously issued by the Commission or its staff, to impose a fine or penalty for violation of the rules of racing or to take any other administrative action as deemed necessary and appropriate by the Commission will require a majority vote of all the Commissioners.

(b) *Qualified majority vote.*

(1) *Thoroughbred matters.* A qualified majority vote consisting of the two Commissioners appointed under section 9311(b)(1)(i) and (ii) of the act (relating to State Horse Racing Commission) and as many votes of the remaining voting Commissioners as necessary to constitute a majority of those Commissioners voting shall be required to:

(i) Approve, issue, deny or condition a license to conduct Thoroughbred horse race meetings under section 9318 of the act (relating to licenses for horse race meetings).

(ii) Adopt regulations governing Thoroughbred horse race meetings under this section.

(iii) Employ a director of the Bureau of Thoroughbred Horse Racing under section 9311(d)(2) of the act.

(2) *Standardbred matters.* A qualified majority vote consisting of the two Commissioners appointed under section 9311(b)(1)(iii) and (iv) of the act and as many votes of the remaining voting Commissioners as necessary to constitute a majority of those Commissioners voting shall be required to:

(i) Approve, issue, deny or condition a license to conduct Standardbred horse race meetings under section 9318 of the act.

(ii) Adopt rules and regulations governing Standardbred horse race meetings under this section.

(iii) Employ a director of the Bureau of Standardbred Horse Racing under section 9311(d)(2) of the act.

(3) Commissioners appointed under section 9311(b)(1)(i) and (ii) of the act shall be disqualified and must abstain from voting on any Standardbred matter under paragraph (2).

(4) Commissioners appointed under section 9311(b)(1)(iii) and (iv) of the act shall be disqualified and must abstain from voting on any Thoroughbred matter under paragraph (1).

(c) *Participation.* A Commissioner may not participate in a hearing, proceeding or other matter in which the Commissioner or the immediate family thereof,

has a financial interest in the subject matter of the hearing or proceeding or other interest that could be substantially affected by the outcome of the hearing or proceeding, without first fully disclosing the nature of the interest to the Commission and other persons participating in the hearing or proceeding.

(d) *Disqualifying interest.* If a Commissioner has a disqualifying interest in a voting matter, the Commissioner shall disclose the nature of the disqualifying interest, disqualify himself or herself and abstain from voting in a proceeding in which the Commissioner's objectivity, impartiality, integrity or independence of judgment may be reasonably questioned, including instances where the Commissioner knows that the Commissioner possesses a substantial financial interest in the subject matter of the proceeding or an interest that could be substantially affected by the outcome of the proceeding.

(e) *Commissioner abstention.* When disqualified, the Commissioner's abstention from voting will apply only to the singular voting matter that led to the disqualification and not apply to other matters under consideration by the Commission for which the Commissioner is otherwise qualified.

§ 173.4. Delegation of powers.

(a) The Commission may, by simple majority vote and consistent with the act and this part, delegate its authority to perform any of its administrative or adjudicatory functions to a Commissioner, a bureau director, a presiding officer or any other member of the Commission's staff.

(b) A delegation of Commission authority may be effectuated by promulgation of a regulation or the adoption of an order or a resolution at a public meeting of the Commission. The regulation, order or resolution will specify:

- (1) The specific authority delegated.
- (2) The Commissioner, bureau director or Commission staff member to whom the authority is delegated.
- (3) Limitations or conditions imposed on the authority delegated.

(c) Delegations of authority made under this section will remain in effect indefinitely unless otherwise specified in the implementing regulation, order or resolution.

(d) A delegation of authority adopted by the Commission may be modified or rescinded by the Commission through promulgation of a regulation or the adoption of a subsequent order or resolution at a public meeting of the Commission by a simple majority vote.

§ 173.5. Commission docket.

(a) *Administrative Docket.* The Commission shall designate an Administrative Clerk who shall:

- (1) Maintain a complete docket of administrative orders, resolutions or directives issued by the Commission.

(2) Maintain all formal records, documents, annual reports and record of meetings proceedings, including verbatim transcripts of the Commission's public meetings as specifically set forth in section 9311 of the act and § 173.2 (relating to meetings).

(b) *Public Records.* By October 1 of each year, the Commission shall post on its internet web site a final report of all the itemized expenses, for the preceding fiscal year, of employees and Commissioners that were or are to be reimbursed from the State Racing Fund. The list shall identify the nature of the expense, the employee, member or the agency and employee of the agency to which an expense is attributable. Information posted on the internet web site under this subsection shall be considered financial records for the purposes of and subject to redaction under the Right-to-Know Law (65 P.S. §§ 67.101—67.3104).

(1) A request for access to public information will be addressed in accordance with the Right-to-Know Law and in coordination with the Department's Right to Know Officer.

(2) Nonconfidential information in formal records will be available for inspection during normal Commission business hours at the Commission's executive offices.

(c) *Records Retention Policy.* The Commission may adopt a records retention policy consistent with the record retention policies of the Commonwealth, the Department or the Commission may establish and publish its own retention policy in the *Pennsylvania Bulletin*.

§ 173.6. Commission office hours.

The Commission office will be open from 8 a.m. to 4 p.m. on business days except Saturdays, Sundays, legal holidays and Commonwealth office closures declared by the Governor, unless otherwise directed by the Commission.

§ 173.7. Contact information and public information.

Requests for Commission information, documents and administrative matters may be directed to:

Administrative Clerk
State Horse Racing Commission
Department of Agriculture Building
Executive Offices—Room 301
2301 North Cameron Street
Harrisburg, PA 17110
(717) 787-5196
horseracing@pa.gov

§ 173.8. Confidential information.

Under section 9311(g)(1) of act (relating to State Horse Racing Commission), the following documents and records are designated as confidential.

(1) Information submitted by an applicant or licensee relating to applications, renewals or both, to conduct horse race meetings under sections 9318, 9323 and 9353 of the act (relating to licenses for horse race meetings; occupational licenses for individuals; and license application procedures), including but not limited to electronic wagering applications/petitions, SPMO, Racing Vendor, totalisator applications or any other application or petition designated by the Commission and other information obtained by the Commission as part of a background or other investigation from any source shall be confidential and withheld from public disclosure:

(i) All information relating to character, honesty and integrity, including family, habits, reputation, history of criminal activity, business activities, financial affairs and business, professional and personal associations submitted under sections 9318, 9323 or 9353 of the act or otherwise obtained by the Commission.

(ii) Nonpublic personal information, including home addresses, telephone numbers and other personal contact information, Social Security numbers, educational records, memberships, medical records, tax returns and declarations, actual or proposed compensation, financial account records, creditworthiness or financial condition relating to an applicant, licensee or permittee or the immediate family thereof.

(iii) Information relating to proprietary information, trade secrets, patents or exclusive licenses, architectural and engineering plans and information relating to competitive marketing materials and strategies, which may include customer-identifying information or customer prospects for services subject to competition.

(iv) Security information, including risk prevention plans, detection and countermeasures, location of count rooms, emergency management plans, security and surveillance plans, equipment and usage protocols and theft and fraud prevention plans and countermeasures.

(v) Information with respect to which there is a reasonable possibility that public release or inspection of the information would constitute an unwarranted invasion into personal privacy of any individual as determined by the Commission.

(vi) Records of an applicant or licensee not required to be filed with the Securities and Exchange Commission by issuers that either have securities registered under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 781) or are required to file reports under section 15(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 780).

(vii) Records considered nonpublic matters or information by the Securities and Exchange Commission as provided by 17 CFR 200.80 (relating to Securities and Exchange Commission records and information).

(viii) Financial information or records submitted by the applicant or licensee.

(2) No claim of confidentiality shall be made regarding any criminal history record information that is available to the public under 18 Pa.C.S. § 9121(b) (relating to general regulations).

(3) No claim of confidentiality shall be made regarding any record in possession of the Commission that is otherwise publicly available from a Commonwealth agency, local agency or another jurisdiction.

(4) The information made confidential under this section shall be withheld from public disclosure in whole or in part, except that any confidential information may be released upon the order of a court of competent jurisdiction or, with the approval of the Attorney General, to a duly authorized law enforcement agency or shall be released to the public, in whole or in part, to the extent that the release is requested by an applicant or licensee and does not otherwise contain confidential information about another person.

(5) The Commission may seek a voluntary waiver of confidentiality from an applicant or licensee but may not require any applicant or licensee to waive any confidentiality provided for in this subsection as a condition for the approval of an application, renewal of a license or any other action of the Commission.

(6) No current or former member and no current or former employee, agent or independent contractor of the Commission, who has obtained confidential information in the performance of duties under the act shall intentionally and publicly disclose the information to any person, knowing that the information being disclosed is confidential under this policy, unless the person is authorized by law to receive it.

Cross References

This section cited in 7 Pa. Code § 179.15 (relating to motions to protect confidential information); and 7 Pa. Code § 179.53 (relating to Commission hearings).

§ 173.9. Annual report.

The Commission, through the Department, shall issue its annual report in accordance with the provisions of the act. Copies of the annual report shall be posted on the Commission's web site or available for public inspection during normal office hours at the Commission's executive offices.

§ 173.10. Mechanical and electronic records.

The Commission may prohibit the use of mechanical and electronic recording or video recording devices at its public meetings if the use of the devices will disrupt or otherwise interfere with the orderly conduct of the proceedings.

§ 173.11. Adoption of National standards.

Under section 9312(6) of the act (relating to additional powers of commission), the Commission may adopt by order and publication in the *Pennsylvania Bulle-*

tin, National, State or regional standards from other racing jurisdictions or the Association of Racing Commissioners International, the USTA or similar Commission-approved trade organizations to establish:

- (1) Uniform drug threshold levels.
- (2) Consistent sanctions for drug testing violations.
- (3) A system to monitor advanced deposit wagering and online pari-mutuel wagering company activities.

§ 173.12. Reporting violations to the Commission.

A person licensed by the Commission and properly brought before it, in the course of an investigative, adjudicative or rulemaking proceeding, who may be in possession of information regarding a solicitation, an attempt or a completed act violating the rules of racing, shall promptly report the information to the applicable Board of Stewards, Board of Judges or the Commission. Failure to report the information may result in the imposition of disciplinary action by the Commission.

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