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SENATE BILL 410

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

William F. Burt

AN ACT

RELATING TO GAMING CONTROL; UPDATING THE CIRCUMSTANCES UNDER WHICH A RACETRACK GAMING OPERATOR'S LICENSE CAN BE VOIDED; UPDATING RACETRACK LICENSE APPLICATION REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 60-1A-8 NMSA 1978 (being Laws 2007, Chapter 39, Section 8) is amended to read:

"60-1A-8. RACETRACK LICENSES--APPLICATIONS--SPECIFIC REQUIREMENTS.--

A. It is a violation of the Horse Racing Act for a person to hold a public horse race or a race meet for profit or gain in any manner unless the person has been issued a racetrack license by the commission and has been authorized by the commission to hold the horse race or race meet on specific dates.

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1 B. An application for a racetrack license shall be
2 submitted in writing on forms designated by the commission. An
3 applicant shall affirm that information contained in the
4 application is true and accurate. The application shall be
5 signed by the applicant or the applicant's agent, and the
6 signature shall be notarized.

7 C. A racetrack license shall be valid for a period
8 not to exceed one year. The commission may renew a racetrack
9 license upon expiration of the term of the license.

10 D. Renewal applications for racetrack licenses
11 shall be filed no later than June 1 of each year. The race
12 dates for the upcoming year shall be set by the commission
13 after the commission receives all renewal applications.

14 E. An application and renewal application shall
15 specify the dates and days of the week of the race meet that
16 the applicant is requesting the commission to approve. In
17 making its request for race days, a racetrack licensee shall
18 use its business judgment in considering the welfare of the
19 racehorses, available purse funds for distribution in races,
20 its desired minimum daily purse figure, horses available to
21 participate in races, factors impacting pari-mutuel wagering,
22 the ability to operate a safe race meet, staffing and other
23 factors it deems relevant. In setting the number of days for
24 each racetrack licensee's race meet, the commission shall
25 consider each racetrack licensee's business judgment regarding

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1 the race days requested.

2 F. An application shall be filed not less than
3 sixty days prior to the first day the proposed horse race or
4 race meet is to be held.

5 G. The fee for a new racetrack license issued
6 pursuant to this section shall not exceed five thousand dollars
7 (\$5,000).

8 H. The commission may schedule a date for a hearing
9 on the application for a new racetrack license to determine the
10 eligibility of the applicant pursuant to the Horse Racing Act
11 or as needed for determining the eligibility for the renewal of
12 a racetrack license. The applicant shall be notified of the
13 hearing at least five days prior to the date of the hearing.
14 The applicant has the right to present testimony in support of
15 the application. Notice shall be mailed to the address of the
16 applicant appearing upon the application for the racetrack
17 license. Notice of the hearing date, time and location shall
18 be postmarked by United States mail five days prior to the date
19 of the hearing. Deposit of the hearing notice in United States
20 mail constitutes notice.

21 I. If, after a hearing on the application, the
22 commission finds the applicant ineligible pursuant to the
23 provisions of the Horse Racing Act or rules adopted by the
24 board, the racetrack license shall be denied.

25 J. If there is more than one application for a

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1 racetrack license pending at the same time, the commission
2 shall determine the racing days that will be allotted to each
3 successful applicant. Upon renewal, the commission shall
4 determine the racing days that will be allotted to each
5 applicant upon terms and conditions established by the
6 commission.

7 K. A person shall not have a direct, indirect or
8 beneficial interest of any nature, whether or not financial,
9 administrative, policymaking or supervisory, in more than two
10 horse racetracks in New Mexico. For purposes of this
11 subsection, a person shall not be considered to have a direct,
12 indirect or beneficial interest in a horse racetrack if the
13 person owns or holds less than ten percent of the total
14 authorized, issued and outstanding shares of a corporation that
15 is licensed to conduct a race meet in New Mexico, unless the
16 person has some other direct, indirect or beneficial interest
17 of any nature, whether or not financial, administrative,
18 policymaking or supervisory, in more than two licensed horse
19 racetracks.

20 L. To determine interest held in a racetrack, to
21 the extent that the interest is based on stock ownership:

22 (1) stock owned, directly or indirectly, by or
23 for a corporation, partnership, estate or trust shall be
24 considered as being owned proportionately by its shareholders,
25 partners or beneficiaries;

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1 (2) an individual shall be considered as
2 owning the stock, directly or indirectly, if it is held by an
3 immediate family member. For purposes of this paragraph, an
4 "immediate family member" includes only the individual's
5 siblings, spouse or children; and

6 (3) stock constructively owned by a person by
7 reason of the application of Paragraph (1) of this subsection
8 shall be considered to be actually owned by the person; and
9 stock shall be constructively owned by an individual by reason
10 of the application of Paragraph (2) of this subsection if the
11 purpose of the constructive ownership is to make a person other
12 than the individual applicant appear as the owner of the stock.

13 M. A corporation holding a racetrack license shall
14 not issue to a person shares of its stock amounting to ten
15 percent or more of the total authorized, issued and outstanding
16 shares, and a corporation holding a racetrack license shall not
17 issue shares of its stock that would, when combined with that
18 stock transferee's existing shares owned, total more than ten
19 percent of the total authorized, issued and outstanding shares
20 of the corporation, unless:

21 (1) the corporation gives written notice to
22 the commission at least sixty days before the contemplated
23 stock transfer that the person to whom the stock is being
24 transferred will become an owner of ten percent or more of the
25 total authorized, issued and outstanding shares of the

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1 corporation; and

2 (2) the corporation receives written approval
3 from the commission of the proposed transfer.

4 N. A determination made by the commission of a
5 matter pursuant to this section shall be final and not subject
6 to appeal."

7 SECTION 2. Section 60-2E-27 NMSA 1978 (being Laws 1997,
8 Chapter 190, Section 29, as amended) is amended to read:

9 "60-2E-27. GAMING OPERATOR LICENSEES--SPECIAL CONDITIONS
10 FOR RACETRACKS--NUMBER OF GAMING MACHINES--DAYS AND HOURS OF
11 OPERATIONS.--

12 A. A racetrack licensed by the state racing
13 commission pursuant to the Horse Racing Act to conduct live
14 horse races or simulcast races may be issued a gaming
15 operator's license to operate gaming machines on its premises
16 where live racing is conducted.

17 B. A racetrack's gaming operator's license shall
18 [~~automatically become void if~~]:

19 (1) become automatically void if the racetrack
20 no longer holds an active license to conduct pari-mutuel
21 wagering; or

22 [~~(2) the racetrack paid gaming tax to the~~
23 ~~state on its net take in an amount greater than eight million~~
24 ~~dollars (\$8,000,000) in the prior fiscal year pursuant to~~
25 ~~Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of~~

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1 ~~four live race days a week with at least nine live races on~~
2 ~~each race day during its licensed race meet, except as provided~~
3 ~~in Subsection F of this section; or~~

4 ~~(3) the racetrack paid gaming tax to the state~~
5 ~~on its net take in an amount equal to eight million dollars~~
6 ~~(\$8,000,000) or less in the prior fiscal year pursuant to~~
7 ~~Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of~~
8 ~~three live race days a week with at least ten live races on~~
9 ~~each day during its licensed race meets, except as provided in~~
10 ~~Subsection F of this section.]~~

11 (2) become voidable by formal action of the
12 board if the racetrack fails to maintain at least the number of
13 race days as set by the state racing commission pursuant to
14 Section 60-1A-8 NMSA 1978, except as provided by Subsection F
15 of this section.

16 C. Unless a larger number is allowed pursuant to
17 Subsection D of this section, a gaming operator licensee that
18 is a racetrack may have up to six hundred licensed gaming
19 machines.

20 D. By execution of an allocation agreement, signed
21 by both the allocating racetrack and the racetrack to which the
22 allocation is made, a gaming operator licensee that is a
23 racetrack may allocate any number of its authorized gaming
24 machines to another gaming operator licensee that is a
25 racetrack. To be valid, the allocation agreement must bear the

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1 written approval of the board and the state racing commission,
2 and this approval shall make specific reference to the meeting
3 at which the action of approval was taken and the number of
4 votes cast both for and against the approval. By allocating a
5 number of its authorized machines to another racetrack, the
6 allocating racetrack automatically surrenders all rights to
7 operate the number of machines allocated. No racetrack shall
8 operate or be authorized to operate more than seven hundred
9 fifty gaming machines.

10 E. Gaming machines on a racetrack gaming operator
11 licensee's premises may be played only on days when the
12 racetrack is either conducting live horse races or simulcasting
13 horse race meets. On days when gaming machines are permitted
14 to be operated, a racetrack gaming operator licensee may offer
15 gaming machines for operation for up to eighteen hours per day;
16 provided that the total number of hours in which gaming
17 machines are operated does not exceed one hundred twelve hours
18 in a one-week period beginning on Tuesday at 8:00 a.m. and
19 ending at 8:00 a.m. on the following Tuesday. A racetrack
20 gaming operator licensee may offer gaming machines for play at
21 any time during a day; provided that the total hours of
22 operation in each day from just after midnight of the previous
23 day until midnight of the current day does not exceed eighteen
24 hours. A racetrack gaming operator licensee shall determine,
25 within the limitations imposed by this subsection, the hours it

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1 will offer gaming machines for operation each day and shall
2 notify the board in writing of those hours.

3 F. Maintaining fewer live race days or fewer live
4 races on each race day during a licensed race meet does not
5 constitute a failure to maintain the minimum number of live
6 race days or races as required by [~~Paragraphs~~] Paragraph (2)
7 [~~and (3)~~] of Subsection B of this section if the licensee
8 submits to the board written approval by the state racing
9 commission for the licensee to vary the minimum number of live
10 race days or races, and the variance is due to:

11 (1) the inability of a racetrack gaming
12 operator licensee to fill races as published in the licensee's
13 condition book as long as the same type of canceled race is run
14 within the following two race weeks as the race season permits;

15 (2) severe weather or other act, event or
16 occurrence resulting from natural forces;

17 (3) a strike or work stoppage by jockeys or
18 other persons necessary to conduct a race or meet;

19 (4) a power outage, electrical failure or
20 failure or unavailability of any equipment or supplies
21 necessary to conduct a race or meet;

22 (5) hazardous conditions or other threats to
23 the public health or safety; or

24 (6) any other act, event or occurrence that
25 the board finds is not within the control of the licensee even

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1 with the exercise of reasonable diligence or care.

2 G. Alcoholic beverages shall not be sold, served,
3 delivered or consumed in the area restricted pursuant to
4 Subsection F of Section 60-2E-26 NMSA 1978."

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