

Act 12 of the 1989 Regular Session.

Act 12

SB177

By: Senator Canada

"AN ACT TO AMEND VARIOUS SECTIONS OF SUBCHAPTER 4 OF CHAPTER 110 OF TITLE 23 OF THE ARKANSAS CODE TO AUTHORIZE RACING ON SUNDAY IF APPROVED BY THE ELECTORS OF THE CITY OR TOWN OR COUNTY INVOLVED; TO AUTHORIZE AGREEMENTS AND ARRANGEMENTS CONCERNING SIMULCASTING TO COVER OTHER RACE TRACKS AND LOCATIONS AND ELIMINATE THE RESTRICTION LIMITING SIMULCASTING TO THE PERIOD COVERED BY A RACE MEET; TO SPECIFY THE DISPOSITION OF ALL MONEYS WAGERED FOR CALENDAR YEAR 1989 AND EACH CALENDAR YEAR THEREAFTER; TO CLARIFY CERTAIN LANGUAGE IN SECTION 409 CONCERNING THE ARKANSAS RACING COMMISSION PURSE AND AWARDS FUND; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 23-110-402, as amended, is hereby amended to read as follows:

"23-110-402 (a). The total racing days during any calendar year shall not exceed 68.

(b) A franchise holder shall apply for a license to conduct each racing meet and shall specify in the application for a license the racing days desired (which need not be consecutive). The franchise holder shall not apply for, and the Commission shall not approve, racing on Sundays unless the question of Sunday racing shall have been submitted to the electors of the city or town in which racing is conducted, or if racing is not conducted within the corporate limits of a city or town, to the electors of the county in which racing is conducted, at a special or any regular election and a majority of the electors voting on the question shall have approved Sunday racing at such election. The governing body of the city, town or county, as the case may be, shall submit the question to the electors when requested by a franchise holder. If and when Sunday racing is approved, that approval shall continue in effect from year to year thereafter so long as racing at the location involved is authorized by Arkansas law.

The election shall be held and conducted under the general election laws of the state except as otherwise provided herein. The ordinance shall set forth the ballot question as follows:

For Sunday Racing...../ /
Against Sunday Racing...../ /

As authorized by Act ____ of 1989, the question presented is whether or not thoroughbred horse racing can be held on Sundays in _____ (city, Town or County). Vote for or against Sunday racing by marking the appropriate box above.

Notice of the election shall be given by the clerk of the city, town or county involved by one (1) publication in a newspaper having general circulation within the city, town or county involved not less than ten (10) days prior to the election. No other publication or posting of a notice by

any other public official shall be required. The election shall be held no earlier than fifteen (15) days after the date of adoption of the ordinance in which the election is called by the legislative body. The Mayor of the city or town or the County Judge of the county, as the case may be, shall proclaim the results of the election by issuing a proclamation and publishing it one (1) time in a newspaper having general circulation within the city, town or county involved. The results of the election as stated in the proclamation shall be conclusive unless suit is filed in the circuit court in the county within twenty (20) days after the date of the publication of the proclamation.

(c) On application of the franchise holder, the Commission may change the racing days in any license for a racing meet from those originally set forth in the license.

(d) Prior to each racing meet, the franchise holder shall write and submit to the Commission for approval the horse racing and wagering programs to be conducted at each racing meet which shall specify the conditions and provisions applicable to the requested racing and wagering programs and the Commission shall approve or disapprove, in whole or in part, the requested programs. If any portion of a submission is disapproved, the franchise holder may reapply prior to or at any time during the racing meet involved, but only those horse racing programs and wagering programs that are requested by the franchise holder and approved by the Commission may be conducted at a racing meet."

SECTION 2. Arkansas Code 23-110-405(b), as amended, is hereby amended to read as follows:

"(b). With the prior approval of the Commission, and consistent with applicable federal law, a franchise holder may enter into agreements and arrangements with other parties pursuant to which its patrons may wager on races run at other race tracks which are shown live by television or otherwise at locations on the grounds at the Arkansas race track at any time or times during the calendar year and agreements and arrangements whereby its races are shown live at other race tracks and locations. Such agreements and arrangements shall specify all financial, wagering, distribution and other details which shall govern and to that end the provisions of Arkansas Code 23-110-402 and 23-110-407, as heretofore and as amended by this Act, and any other inconsistent provisions, shall not be applicable to such agreements and arrangements."

SECTION 3. Arkansas Code 23-110-407, is hereby amended to read as follows:

"23-110-407 (a)(1). At the racing meet held in calendar year 1989, and at the racing meet held in each calendar year thereafter, the franchise holder shall withhold not more than seventeen percent (17%) and not less than five and one-half percent (5.5%) of all moneys wagered on races where the wagerer is required to select one horse and not more than twenty-one percent (21%) and not less than five and one-half percent (5.5%) of all moneys wagered on races where the wagerer is required to select more than one horse. Within those limits, the exact amounts to be withheld shall be specified in the wagering program requested by the franchise holder and approved by the Commission as specified in Arkansas Code 23-110-402, as amended.

(2) The franchise holder shall pay from the amounts withheld pursuant to the provisions of (a)(1) above the following:

(A) at all racing meets conducted in calendar year 1989 and in each calendar year thereafter, an amount equal to two and one-half percent (2.5%) of all moneys wagered on all races shall be paid to the Commission for the use and benefit of the State of Arkansas, as a privilege tax; and

(B) in the case of all racing meets for thoroughbred horses, an

amount equal to one-half of one percent (.5%) of all moneys wagered shall be paid to the Commission for deposit in the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards and/or stallion awards as hereinafter specified. The number of Arkansas bred races shall be a matter for negotiation between the franchise holder and the Arkansas Thoroughbred Breeders and Horsemen's Association.

(3) The remainder of the amounts withheld pursuant to the provisions of (a) (1) above shall be retained by the franchise holder for use as follows:

(A) For all racing meets in calendar year 1989 and in each calendar year thereafter, three percent (3%) of all monies wagered on races where the wagerer is required to select one horse and two percent (2%) of all monies wagered on races where the wagerer is required to select more than one horse (the 'Purse and Construction Moneys') shall be set aside by the franchise holder in a separate account to be used only for purses and construction ('construction' as used herein, shall include all items and expenditures incurred in keeping the overall racing facility in the best possible condition for the patrons, horsemen and franchise holder, including, without limitation, land acquisition, new construction with related equipment and reconstruction, renovation, reconditioning and repairing of facilities with related equipment), or for debt service on money borrowed by the franchise holder for construction. The Commission shall have jurisdiction to check and verify compliance by the franchise holder with the provisions of this subsection (a) (3) (A) and shall make periodic determinations as to compliance under such rules and regulations as the Commission shall adopt. In the case of construction, the Commission may use a multi-year approach based on a multi-year program being undertaken by the franchise holder so that accountability for expenditures may be based on expenditures made during the entire multi-year period out of the Purse and Construction Moneys derived during the multi-year period. If there is a final determination that any of the Purse and Construction Moneys have not been used for the purposes herein specified, the franchise holder shall pay the amount equal to any moneys used for an unauthorized purpose to the Commission for the use and benefit of the State of Arkansas. The Purse and Construction Moneys shall not be subject to the provisions of any contract or agreement between the franchise holder and any organization representing horsemen, to the end that any contractual obligations for the use of moneys for purses shall not apply to any expenditures for construction out of the Purse and Construction Moneys and any expenditures for purses out of the Purse and Construction Moneys shall be in addition to contractual purse obligations affecting moneys other than the Purse and Construction Moneys. The franchise holder shall determine the amount of the Purse and Construction Moneys to be used for the authorized purposes except that at least one-half (1/2) of the Purse and Construction Moneys must be used for purses.

(B) The remainder of the amounts withheld pursuant to the provisions of (a) (1) above shall be retained by the franchise holder for its own use and benefit.

(C) One percent (1%) of the moneys set aside by the franchise holder for purses from the moneys retained by it pursuant to the provisions of (a) (3) above, including that portion of the Purse and Construction Moneys actually used for purses, shall be paid from such moneys set aside for purses to the Arkansas Horsemen's Benevolent and Protective Association to be used for its benevolent purposes. Such payment shall be made by the franchise holder at the conclusion of each racing meet.

(b) All payments to the Commission under (a) (2) (B) above and all payments to a city or town and a county shall be made by the franchise holder at the conclusion of the racing meet involved. Such payments to a city or town and a county shall be used by the city, town or county for such lawful

purposes as the city, town or county shall determine. All payments due the State of Arkansas under (a) (2) (A) above shall be paid to the Commission daily."

SECTION 4. Arkansas Code 23-110-409 (c) is hereby amended to read as follows:

"23-110-409 (c). The franchise holder shall be solely responsible for writing the various races for each racing meet."

SECTION 5. Arkansas Code 23-110-408 and all laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. The provisions (sections, sentences and phrases) of this act are hereby declared to be severable and if any provision shall be determined illegal for any reason such determination shall not affect the validity of the remaining provisions and all remaining provisions shall continue in full force and effect.

SECTION 7. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. It is hereby found and declared that horse racing and activities related thereto in Arkansas have had a most significant favorable impact on the economy of the entire state and the welfare of our citizens and residents, which is threatened by increased competition from racing in other states, including new and improved plants and programs in surrounding and nearby states, and it is imperative that Arkansas franchise holders be able to increase purses and improve facilities in order to keep up with competition and hold and improve Arkansas' premiere and traditional position in horse racing, and that in order to accomplish these goals (essential to the welfare of the state and its citizens and residents) the amendments and provisions set forth in this act must be effective immediately. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the protection of the public peace, health and safety, shall take effect, and be in full force, immediately upon its passage and approval.

APPROVED: February 3, 1989
