

STORAGE NAME: h1435.ft

DATE: March 31, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 1435

RELATING TO: Thoroughbred Horse Racing; Florida Horsemen's Benevolent and Protective Association, Inc.

SPONSOR(S): Representative Morroni

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REGULATED SERVICES YEAS 8 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
- (3) FINANCE AND TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

This bill designates the Florida Horsemen's Benevolent and Protective Association, Inc., (Association) as the recipient of one percent of the purse pools at thoroughbred tracks. These funds are to be used to provide financial assistance and relief in connection with illnesses or injuries of thoroughbred owners, trainers, exercise riders, grooms, stable attendants, and other thoroughbred racing personnel and their spouses and children. The Association is also charged with representing all horsemen's interests and property rights when dealing with permitholders and is generally entrusted with promoting the sport of thoroughbred horse racing.

The Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation (Division) is required to audit the disbursements to ensure the funds are being utilized for the specified purposes.

This bill requires the written approval of both the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., (Association) before a thoroughbred permitholder may conduct fewer than eight live races each race day.

The annual fiscal impact to the industry will vary; however, according to statistics provided by the Department of Business and Professional Regulation in its 68th Annual Report, Florida thoroughbred racing permitholders reported purse payments of \$53,786,780 for FY 1998-1999. One percent of that amount would have generated \$537,868 for the Florida Horsemen's Benevolent and Protective Association, Inc.

This bill will have an indeterminate, but insignificant fiscal impact on state expenditures, but no fiscal impact to state revenues, and will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government

The division is directed to monitor the membership rolls of the Association to ensure that complete, accurate, and timely listings are monitored for the purposes specified in the bill and in s. 550.3551, F.S. In addition, the Division is directed to audit the distribution of funds from purse pools to the Association to ensure that the funds are being utilized in accordance with the statutes.

B. PRESENT SITUATION:

Section 550.2614, F.S., authorizes one percent of the total purse at a thoroughbred facility to be deducted from the purse pool and paid to a horsemen's association which represents the majority of the owners and trainers of thoroughbred horses stabled in Florida. An owner or trainer automatically becomes a member of the horsemen's association upon receiving a state pari-mutuel occupational license unless the person declines membership in the organization within a 30-day period. The Division is directed to monitor the membership rolls of the horsemen's associations to ensure that complete, accurate, and timely listings are maintained.

Section 550.3551(6)(a), F.S., provides that a thoroughbred permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the horsemen's group representing the majority of thoroughbred racehorse owners and trainers in the state.

Provisions substantially similar to those in current law were first passed by the Florida Legislature in 1978 and codified as s. 550.2615, F.S. In 1981, the Florida Supreme Court ruled that this section was unconstitutional because it constituted an unlawful use of the state's police powers. [See *Horsemen's Benevolent & Protective Association v. Division of Pari-Mutuel Wagering*, 397 So.2d 692 (Fla. 1981).] That statute did not direct the expenditure of the funds paid to the horsemen's association except to state that such funds would be spent in accordance with the Association's goals as stated in its articles of association on file with the Department of State. The court found that the law did not require that the funds be spent for any legitimate state purpose; rather, it allowed a private group to decide the purpose for which the funds would be spent. That law was subsequently repealed in 1983.

Similar provisions were reenacted by the Legislature in 1992 and codified as the current s. 550.2614, F.S. The current statute differs from the original in that it does not require the division to audit distribution of the funds. It also does not require that the horses owned and trained by licensees be stabled in Florida for a "continuous 12-month period" so that the Association representing those licensees qualify for payment under this section. On August 4, 1997, the Circuit Court of the Second Judicial Circuit held that this statute also failed to ensure that funds paid to the Association were spent in furtherance of a legitimate state interest and was therefore an unconstitutional exercise of the state's police powers. On appeal, this judgment was affirmed by the First District Court of Appeal. [See *Florida Horsemen Benevolent & Protective Association v. Rudder*, 738 So.2d 449.]

C. EFFECT OF PROPOSED CHANGES:

Existing law requires each thoroughbred permitholder to deduct one percent of the purse pool and pay that amount to the "horsemen's association representing the majority of the thoroughbred racehorse owners and trainers" in the state. This bill amends s. 550.2614, F.S., to designate the Florida Horsemen's Benevolent and Protective Association, Inc., or its affiliate, as the horsemen's association authorized to receive this disbursement.

These funds are to be used for the purpose of providing for the benefit, aid, assistance, or relief of thoroughbred owners, trainers, exercise riders, grooms, stable attendants, and other thoroughbred racing personnel and their spouses and children. Recipients must demonstrate a need for financial assistance connected to a death, illness, or off-the-job injury and may not be otherwise covered by health and welfare plans, workers' compensation, social security, public assistance, or other insurance. The Association is charged with representing all horsemen's interests and property rights when dealing with permitholders and is generally entrusted with promoting the sport of thoroughbred horse racing.

The Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation is required to monitor membership rolls of the Association and to adopt rules to facilitate the orderly transfer of funds. Moreover, the division is required to audit the distribution of the funds to ensure that the funds are being utilized for the specified purposes.

As in existing law, each thoroughbred owner and trainer receives automatic membership in the Association upon licensure, unless the individual declines the membership in writing within 30 calendar days after receipt of the occupational license.

The bill amends s. 550.3551(6)(a), F.S., to require the written approval of both the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc., before a thoroughbred permitholder may conduct fewer than eight live races each race day.

The annual fiscal impact to the industry will vary; however, according to statistics provided by the Department of Business and Professional Regulation in its 68th Annual Report, Florida thoroughbred racing permitholders reported purse payments of \$53,786,780 for FY 1998-1999. One percent of that amount would have generated \$537,868 for the Florida Horsemen's Benevolent and Protective Association, Inc., to be used for the enumerated purposes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Substantially amends s. 550.2614, F.S.

Subsection (1) specifies that each thoroughbred owner and trainer receives automatic membership in the Florida Horsemen's Benevolent and Protective Association, Inc., unless they decline in writing within 30 days of receipt of their occupational license. This subsection also requires the division to monitor the membership rolls to ensure the association is actively monitoring the listings.

Subsection (2) designates the Florida Horsemen's Benevolent and Protective Association, Inc., as the recipient of one percent of the total purse pool at each thoroughbred facility. These funds are to be used for the benefit and relief of thoroughbred owners and trainers and various other thoroughbred racing personnel and their families. The Association is also charged with representing all horsemen's interests and property rights when dealing with permitholders and is entrusted with promoting the sport of thoroughbred racing.

Subsection (3) requires the Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation to adopt rules concerning the transfer of these funds. Further, this subsection requires that the division audit the distribution of the funds to ensure that the funds are being used for the specified purposes.

Section 2. Amends s. 550.3551(6)(a), F.S., to require the written approval of both the Florida Thoroughbred Breeders' Association (FTBA) and the Florida Horsemen's Benevolent and Protective Association, Inc., before a thoroughbred permitholder may conduct fewer than eight live races on each race day. This paragraph previously required the written approval of both the FTBA and "the horsemen's group representing the majority of thoroughbred racehorse owners and trainers" in the state.

Section 3. Provides that the Act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Division of Pari-Mutuel Wagering of the Department of Business and Professional Regulation is required to adopt rules, monitor membership in, and audit disbursements from, the Florida Horsemen's Benevolent and Protective Association, Inc. As of the date of publication of this analysis, the department had not provided an estimate of those costs.

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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The annual impact of this legislation will vary; however, according to statistics provided by the Department of Business and Professional Regulation in its 68th Annual Report, Florida thoroughbred racing permitholders reported purse payments of \$53,786,780 for FY 1998-1999. One percent of that amount would have generated \$537,868 for the Florida Horsemen's Benevolent and Protective Association, Inc., to be used for the purposes specified in the bill.

Qualified recipients will benefit to the extent that the Association provides financial assistance in connection with a death, illness, or off-the-job injury.

The thoroughbred industry may benefit to the extent that promotional activities are successful.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The trial court in *Rudder v. DBPR* held that present s. 550.2614, F.S., “does not provide a requirement that the monies received by the association be used for a justifiable state objective and does not describe how the funds paid to the association are to be spent.” The court declared the statute unconstitutional on its face and enjoined the Division from enforcing its provisions.

After the Department of Business and Professional Regulation decided not to defend the decision, the Florida Horsemen Benevolent & Protective Association challenged the summary judgment in *Rudder*. On appeal, the First District Court of Appeal held that the statute in question suffered from the same constitutional infirmity as the statute addressed in *Horsemen’s* and affirmed.

The appellate court pointed out that the Supreme Court in *Horsemen’s* accepted the argument that the enhancement of racing in Florida in order to increase state revenues would have been a valid reason for enacting a statute similar to the statute in question at the time (s. 550.2615, F.S.). The Court, however, “found no reasonable relationship between the stated objective of the statute and the form of the statute chosen by the Legislature to advance that purpose.” The essential holding in *Horsemen’s*, according to the appellate court, was that “the statute was unconstitutional because the withheld funds could be spent by the association without regard to any permissible objective under the state police power.”

B. RULE-MAKING AUTHORITY:

This bill requires the Division to adopt rules to facilitate the orderly transfer of the funds.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

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