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Bill Analysis
Legislative Service Commission

S.B. 14

123rd General Assembly
(As Reported by S. Judiciary)

Sen. Blessing

BILL SUMMARY

- Specifies that the State Racing Commission has the power to sue and be sued in its own name.
- Grants the Court of Common Pleas of Franklin County original jurisdiction over actions against the Commission and appellate jurisdiction over decisions of the Commission.
- Requires that the Commission's principal office be located in Franklin County.

CONTENT AND OPERATION

Existing law

Existing law establishes the State Racing Commission, consisting of five members appointed by the Governor with the advice and consent of the Senate. The Commission must prescribe the rules and conditions under which horse racing may be conducted in Ohio, may issue, deny, suspend, diminish, or revoke permits to conduct horse racing as authorized by the Horse Racing Law (see below), and may prescribe what forms of wagering are permissible, the number of races, the procedures on wagering, and the wagering information to be provided to the public. The Commission may impose, in addition to any other penalty it imposes, fines in an amount not to exceed \$10,000 on any permit holder or any other person who violates its rules or orders. (R.C. 3769.02 and 3769.03.)

The Commission may issue, deny, suspend, or revoke licenses to persons engaged in racing and to employees of permit holders "as is in the public interest for the purpose of maintaining a proper control over horse-racing meetings" and may also rule any person off a permit holder's premises as is in the public interest for this purpose. The Commission may deny a permit to any permit holder that has

defaulted in payments to the public, employees, or the "horsemen" (changed by the bill to "horsepersons"), may deny a permit to any successor purchaser of a track for as long as any of those defaults have not been satisfied by either the seller or purchaser, must deny a permit to any permit holder that has defaulted in payments to the state of Ohio or has defaulted in connection with certain other required payments, and must deny a permit to any successor purchaser of a track for as long as any of these defaults have not been satisfied by either the seller or purchaser.

Any violation of the Horse Racing Law, of any rule of racing adopted by the Commission, or of any law or rule with respect to racing in any jurisdiction is sufficient reason for the Commission to refuse to issue a license or to suspend or revoke any such license issued by it. With respect to the issuance, denial, suspension, or revocation of a license to a participant in horse racing, the Commission's action is subject to the Administrative Procedure Act (Revised Code Chapter 119.) (see **COMMENT 1**).

The Commission sets licensing and registration fees, and licenses, unless revoked for cause, generally are effective for one year. All license fees established and collected by the Commission must be paid into the state treasury, must be credited to the State Racing Commission Operating Fund, and must be expended by the Commission to defray its operating costs, salaries and expenses, and the cost of administering the Horse Racing Law. (R.C. 3769.03.)

The bill

The bill continues the provisions of existing law described above and additionally specifies that (1) the State Racing Commission may sue and be sued in its own name, (2) any action against the Commission must be brought in the Court of Common Pleas of Franklin County (see **COMMENT 1**), (3) the Commission's principal office must be located in Franklin County (R.C. 3769.02), and (4) any appeal from a determination or decision of the Commission rendered in the exercise of its powers and duties under the Horse Racing Law must be brought in the Court of Common Pleas of Franklin County (R.C. 3769.03). (See **COMMENT 2**.)

COMMENT

1. Existing section 119.12 (not in the bill), contained in the Administrative Procedure Act, specifies that any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a

forfeiture under section 4301.252 may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, provided that appeals from decisions of the Liquor Control Commission may be to the Court of Common Pleas of Franklin County and appeals from decisions of the State Medical Board, Chiropractic Examining Board, and Board of Nursing must be to the Court of Common Pleas of Franklin County. If any such party is not a resident of and has no place of business in Ohio, the party may appeal to the Court of Common Pleas of Franklin County.

Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the Court of Common Pleas of Franklin County, except that appeals from orders of the Fire Marshal issued under Chapter 3737. may be to the court of common pleas of the county in which the building of the aggrieved person is located.

2. Divisions (B) to (G) of Rule 3 of the Rules of Civil Procedure govern the determination of the location at which civil actions must be commenced (that is, the "venue" of the actions). The relevant portions of those provisions specify that:

(B) Venue: where proper. Any action may be venued, commenced, and decided in any court in any county. When applied to county and municipal courts, "county," as used in this rule, shall be construed, where appropriate, as the territorial limits of those courts. Proper venue lies in any one or more of the following counties:

- (1) The county in which the defendant resides;
- (2) The county in which the defendant has his or her principal place of business;
- (3) A county in which the defendant conducted activity that gave rise to the claim for relief;
- (4) A county in which a public officer maintains his or her principal office if suit is brought against him in the officer's official capacity;
- (5) A county in which the property, or any part of the property, is situated if the subject of the action is real property or tangible personal property;

(6) The county in which all or part of the claim for relief arose; or, if the claim for relief arose upon a river, other watercourse, or a road, that is the boundary of the state, or of two or more counties, in any county bordering on the river, watercourse, or road, and opposite to the place where the claim for relief arose;

(7) In actions described in Rule 4.3, in the county where plaintiff resides;

(8) In an action against an executor, administrator, guardian, or trustee, in the county in which the executor, administrator, guardian, or trustee was appointed;

(9) In actions for divorce, annulment, or legal separation, in the county in which the plaintiff is and has been a resident for at least ninety days immediately preceding the filing of the complaint;

(10) In actions for a civil protection order, in the county in which the petitioner currently or temporarily resides;

(11) If there is no available forum in divisions (B)(1) to (B)(10) of this rule, in the county in which plaintiff resides, has his or her principal place of business, or regularly and systematically conducts business activity;

(12) If there is no available forum in divisions (B)(1) to (B)(11) of this rule:

(a) In a county in which defendant has property or debts owing to the defendant subject to attachment or garnishment;

(b) In a county in which defendant has appointed an agent to receive service of process or in which an agent has been appointed by operation of law.

(C) Change of venue. (1) When an action has been commenced in a county other than stated to be

proper in subdivision (B) of this rule, upon timely assertion of the defense of improper venue as provided in Rule 12, the court shall transfer the action to a county stated to be proper in subdivision (B) of this rule.

(2) When an action is transferred to a county which is proper, the court may assess costs, including reasonable attorney fees, to the time of transfer against the party who commenced the action in a county other than stated to be proper in subdivision (B) of this rule.

(3) Before entering a default judgment in an action in which the defendant has not appeared, the court, if it finds that the action has been commenced in a county other than stated to be proper in subdivision (B) of this rule, may transfer the action to a county which is proper. The clerk of the court to which the action is transferred shall notify the defendant of the transfer, stating in the notice that the defendant shall have twenty-eight days from the receipt of the notice to answer in the transferred action.

(4) Upon motion of any party or upon its own motion the court may transfer any action to an adjoining county within this state when it appears that a fair and impartial trial cannot be had in the county in which the suit is pending.

. . .

(E) Venue: multiple defendants and multiple claims for relief. In any action, brought by one or more plaintiffs against one or more defendants involving one or more claims for relief, the forum shall be deemed a proper forum, and venue therein shall be proper, if the venue is proper as to any one party other than a nominal party, or as to any one claim for relief.

Neither the dismissal of any claim nor of any party except an indispensable party shall affect the jurisdiction of the court over the remaining parties.

. . .

(G) Venue: collateral attack; appeal. The provisions of this rule relate to venue and are not jurisdictional. No order, judgment, or decree shall be void or subject to collateral attack solely on the ground that there was improper venue; however, nothing here shall affect the right to appeal an error of court concerning venue.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	pp. 27-28
Reported, S. Judiciary	03-11-99	p. 191

S0014-RS.123/jc

