

## **BILL ANALYSIS**

Senate Research Center

H.B. 1445  
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State Affairs  
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Engrossed

### **DIGEST**

The Texas Racing Commission (commission) was created in 1987 by the 70th Legislature. The commission is responsible for ensuring fair wagering and safe racing and to help the racing industry grow as an asset to the state's economy. The commission is subject to the Sunset Act and will be abolished September 1, 1997 unless continued by the legislature. As a result of its review of the Texas Racing Commission, the Sunset Advisory Commission recommended continuation of the commission and several statutory modifications.

### **PURPOSE**

As proposed, S.B. 356 recommends continuation of the Texas Racing Commission and several statutory modifications.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Racing Commission in SECTIONS 8, 9, 10, 13, 14, 21, 24, 29, and 34 (Sections 2.11(d), 2.21, 2.23(b), 3.02(a), 3.07(a), 3.13(a), 3.16(a), 3.22(a), 6.061(a) and (f), 6.062(b), 6.092(a), 7.07(b), 11.06, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.02, Article 179e, V.T.C.S. (Texas Racing Act), to provide that the purpose of this Act is to provide for the strict regulation of horse racing and greyhound racing and the control of pari-mutuel wagering in connection with that racing. Deletes existing text regarding the promotion of racing.

SECTION 2. Amends Section 1.03, Article 179e, V.T.C.S., by adding Subdivisions (67)-(76), to define "racetrack facility," "child," "minor," "contraband," "prohibited device," "prohibited substance," "unlawful touting," "race," "outstanding ticket," and "pari-mutuel voucher."

SECTION 3. Amends Sections 2.02(a) and (b), Article 179e, V.T.C.S., to delete existing text regarding appointments to the Texas Racing Commission (commission) by the governor. Adds standard language developed by the Sunset Commission regarding appointments.

SECTION 4. Amends Section 2.03, Article 179e, V.T.C.S., to delete existing text regarding initial appointments to be made by the governor.

SECTION 5. Amends Section 2.05, Article 179e, V.T.C.S., to require four of the appointed members of the commission to be representatives of the general public and have general knowledge of business or agribusiness. Requires one additional appointed member to have special knowledge or experience related to greyhound racing and one additional member to have special knowledge or experience related to horse racing. Adds standard language developed by the Sunset Commission regarding eligibility for appointment to the commission. Provides that a person is not eligible to be an appointed member of the commission if that person owns any financial interest in a racetrack or its operation or if that person is related within the second degree by affinity or the third degree by consanguinity as determined under Chapter 573B, Government Code, to any person who owns any financial interest in a racetrack or its operation. Makes conforming changes.

SECTION 6. Amends Article 2, Article 179e, V.T.C.S., by adding Sections 2.071-2.074, as follows:

Sec. 2.071. CONFLICT OF INTEREST. Adds standard language developed by the Sunset Commission regarding conflicts of interest.

Sec. 2.072. LOBBYIST RESTRICTION. Adds standard language developed by the Sunset Commission regarding lobbying restrictions.

Sec. 2.073. GROUNDS FOR REMOVAL. Adds standard language developed by the Sunset Commission regarding grounds for removal.

Sec. 2.074. MEMBER TRAINING. Adds standard language developed by the Sunset Commission regarding the completion of training.

SECTION 7. Amends Section 2.10, Article 179e, V.T.C.S., as follows:

Sec. 2.10. New heading: PRESIDING OFFICER. Requires the governor to designate a public member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

SECTION 8. Amends Section 2.11, Article 179e, V.T.C.S., to delete existing text regarding a quorum. Requires the commission, by rule, to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

SECTION 9. Amends Article 2, Article 179e, V.T.C.S., by adding Sections 2.17-2.24, as follows:

Sec. 2.17. ANNUAL ACCOUNTING. Adds standard language developed by the Sunset Commission regarding financial reports.

Sec. 2.18. FUNDS PAID TO COMMISSION. Adds standard language developed by the Sunset Commission regarding funds.

Sec. 2.19. EMPLOYMENT PRACTICES. Adds standard language developed by the Sunset Commission regarding employment practices.

Sec. 2.20. STANDARDS OF CONDUCT. Adds standard language developed by the Sunset Commission regarding qualifications for employment.

Sec. 2.21. DIVISION OF RESPONSIBILITY. Requires the commission, by rule, to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive secretary of the commission (executive secretary) and the staff of the commission.

Sec. 2.22. PROGRAM AND FACILITY ACCESSIBILITY. Adds standard language developed by the Sunset Commission regarding program and facility accessibility.

Sec. 2.23. INFORMATION TO PUBLIC. Adds standard language developed by the Sunset Commission regarding the distribution of information to the public.

Sec. 2.24. COMPLAINT HANDLING. Adds standard language developed by the Sunset Commission regarding complaints.

SECTION 10. Amends Section 3.02, Article 179e, V.T.C.S., to delete a reference to Section 3.01. Requires the commission to make rules, issue licenses, and take any other necessary action relating exclusively to horse racing or to greyhound racing. Provides that a majority vote of the members of the commission is necessary for any commission decision. Sets forth procedures regarding adoption of proposed rules.

SECTION 11. Amends Section 3.021, Article 179e, V.T.C.S., by amending Subsection (b) and adding Subsection (d), to remove language requiring the commission to promote the growth of the racing industry. Adds standard language developed by the Sunset Commission regarding rules on competitive bidding and advertising.

SECTION 12. Amends Section 3.03, Article 179e, V.T.C.S., to authorize certain persons to enter any part of the racetrack facility, rather than the office or racetrack, or any other place of business of an association at any time for the purpose of enforcing and administering this Act.

SECTION 13. Amends Sections 3.07(a), (d), and (e), Article 179e, V.T.C.S., to require the commission to employ all of the judges and all of the stewards for the supervision of a horse race or greyhound race meeting. Requires the commission to designate one of the stewards or judges as the presiding steward or judge for each race meeting. Authorizes an association, defined as a person licensed under this Act to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering, following the completion of the race meeting, to submit written comments to the commission regarding the job performance of the stewards and judges. Provides that comments received are not binding on the commission. Requires the commission to employ, rather than appoint, at least one state veterinarian for each race meeting. Deletes existing text regarding compensation for stewards, judges, and state veterinarians. Authorizes the commission, by rule, to impose a fee on an association to offset the costs of compensating the stewards, judges, and state veterinarians. Requires medication or drug testing performed on a race animal under this Act to be conducted by a laboratory selected by the commission on a yearly basis by competitive bidding submitted to the commission for final approval. Requires the commission's decision to be based on cost and integrity. Authorizes the Texas Veterinary Medical Diagnostic Laboratory to aid the commission in its selection. Deletes existing text regarding testing by the Texas Veterinary Medical Diagnostic Laboratory. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Article 179e, V.T.C.S., by adding Sections 3.13-3.22, as follows:

Sec. 3.13. **RECOGNITION OF ORGANIZATION.** Requires the commission, by rule, to adopt criteria to recognize an organization to represent members of a segment of the racing industry, including owners, breeders, trainers, kennel operators, or other persons involved in the racing industry, in any interaction between the members of the organization and a racetrack facility or the commission. Authorizes the commission to recognize an organization that meets the requirements of Subsection (a) of this section.

Sec. 3.14. **DISCIPLINARY ACTIONS.** Adds standard language developed by the Sunset Commission regarding disciplinary actions.

Sec. 3.15. **HEARING REQUIREMENTS.** Adds standard language developed by the Sunset Commission regarding hearings prior to sanctions being taken against a license.

Sec. 3.16. **RULES RELATING TO UNLAWFUL INFLUENCES ON RACING.** Requires the commission to adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race, including rules relating to the use of a prohibited device or prohibited substance. Sets forth drug testing procedures. Sets forth penalties to be assessed against a person who violates a rule adopted under this section.

Sec. 3.17. **SECURITY FOR FEES AND CHARGES.** Authorizes the commission to require an association to post security in an amount and form determined by the commission to adequately ensure the payment of any fees or charges due to the state or the commission relating to pari-mutuel racing, including charges for drug testing.

Sec. 3.18. **CEASE AND DESIST ORDER.** Sets forth regulations regarding cease and desist orders to be issued by the executive secretary of the commission.

Sec. 3.19. **EMERGENCY CEASE AND DESIST ORDER.** Sets forth regulations regarding emergency cease and desist orders to be issued by the executive secretary of the commission.

Sec. 3.20. VIOLATION OF FINAL CEASE AND DESIST ORDER. Sets forth regulations regarding violations of a final and enforceable cease and desist order.

Sec. 3.21. INJUNCTION. Authorizes the commission to institute an action in its own name to enjoin the violation of this Act. Provides that an action for an injunction is in addition to any other action, proceeding, or remedy authorized by law.

Sec. 3.22. ENFORCEMENT REGARDING HORSEMEN'S ACCOUNT. Sets forth regulations regarding monitoring by the commission of the horsemen's account.

SECTION 15. Amends Section 5.01(a), Article 179e, V.T.C.S., to require the commission to provide each occupational licensee with a license certificate or credentials.

SECTION 16. Amends Sections 5.03(a) and (b), Article 179e, V.T.C.S., to require an applicant for any license under this Act, except as allowed under Section 7.10 of this Act, to submit to the commission a complete set of fingerprints of certain persons. Authorizes the Department of Public Safety (DPS) to request any person owning any interest in an applicant for a racetrack license to submit a complete set of fingerprints. Requires the commission, if a complete set of fingerprints is required by the commission, to forward the prints to DPS or the Federal Bureau of Investigation. Makes a conforming change.

SECTION 17. Amends Article 5, Article 179e, V.T.C.S., by adding Section 5.05, as follows:

Sec. 5.05. COST OF CRIMINAL HISTORY CHECK. Requires the commission, in determining the amount of a license fee, to set the fee in an amount that will cover the cost of conducting a criminal history check on the applicant for a license. Requires the commission to reimburse DPS for the cost of conducting a criminal history check.

SECTION 18. Amends Section 6.01, Article 179e, V.T.C.S., to prohibit a person from conducting wagering on a greyhound race or horse race meeting without first obtaining a racetrack license from the commission. Makes conforming changes.

SECTION 19. Amends Sections 6.04(a) and (d), Article 179e, V.T.C.S., to delete existing text regarding promotion of the racing industry by the commission. Makes nonsubstantive changes.

SECTION 20. Amends Sections 6.06(a), (b), (e), and (f), Article 179e, V.T.C.S., to delete text requiring the commission to adopt rules relating to renewal applications. Authorizes the commission to refuse to issue a racetrack license, rather than an original or renewal racetrack license, under certain conditions, including if the applicant fails to fully disclose the true owners of all interests, beneficial or otherwise, in a proposed racetrack facility. Provides that Subsection (a) of this section applies to a partnership or limited partnership whose application comprises more than one person if a partner or limited partner is disqualified under Subsection (a) of this section. Makes conforming and nonsubstantive changes.

SECTION 21. Amends Article 6, Article 179e, V.T.C.S., by adding Sections 6.061 and 6.062, as follows:

Sec. 6.061. REGULATION OF INAPPROPRIATE OR UNSAFE CONDITIONS. Requires the commission to adopt rules implementing this section, including certain rules. Sets forth procedures to be followed if the executive secretary finds that an inappropriate or unsafe condition exists at a racetrack facility. Requires the commission to adopt rules relating to the commission's review of an action taken under this section by the executive secretary. Requires a review procedure adopted under this subsection to be consistent with Chapter 2001, Government Code.

Sec. 6.062. SUPERVISION OF CHANGES TO PREMISES. Requires the commission to adopt a method of supervising and approving the construction, renovation, or maintenance of any building or improvement on the premises of a racetrack facility. Requires the

commission to adopt rules relating to certain construction-related items. Requires a representative of an association to appear before the commission to consider the issue of compliance with the rules adopted under this section if the commission has grounds to believe that an association has failed to comply. Requires the commission to determine whether the construction, renovation, or maintenance of the building or improvement was completed in accordance with the approved plans and specifications and whether other requirements of the commission were met. Provides for enforcement of a requirement of this section or a rule adopted under this section.

Sec. 6.063. SUMMARY SUSPENSION. Sets forth regulations regarding the summary suspension of a racetrack license by the commission.

SECTION 22. Amends Section 6.08(1), Article 179e, V.T.C.S., to make a conforming change.

SECTION 23. Amends Section 6.091(a), Article 179e, V.T.C.S., to require a racing association to distribute from the total amount deducted from each simulcast pari-mutuel pool an amount equal to 0.25 percent of each pool set aside to reimburse the general revenue fund for amounts that are appropriated for the administration and enforcement of this Act and that are in excess of the cumulative amount of funds deposited in the Texas Racing Commission fund, until the excess amount and interest on the excess amount are fully reimbursed. Deletes existing text regarding the Texas Commission on Alcohol and Drug Abuse.

SECTION 24. Amends Article 6, Article 179e, V.T.C.S., by adding Section 6.092, as follows:

Sec. 6.092. OVERSIGHT OF USE OF FUNDS GENERATED BY PARI-MUTUEL RACING. Requires the commission to adopt reporting, monitoring, and auditing requirements or other appropriate performance measures for any funds distributed to or used by or any function or service provided by the expenditure of any funds distributed to or used by any organization that receives funds generated by live or simulcast pari-mutuel racing. Sets forth procedures for the oversight of funds by the commission.

SECTION 25. Amends Section 7.01, Article 179e, V.T.C.S., to delete a provision providing that a person who violates this section commits an offense. Makes a nonsubstantive change.

SECTION 26. Amends Section 7.02, Article 179e, V.T.C.S., to require the commission to notify each examinee of the results of the examination not later than the 30th day after the date on which a licensing examination is administered under this Act, if an examination is required for the issuance of a license under this article. Requires the commission to furnish a person with an analysis of the person's performance on the examination if requested in writing by a person who fails a licensing examination.

SECTION 27. Amends Section 7.04, Article 179e, V.T.C.S., to authorize the commission to refuse to issue any original or renewal license or revoke or suspend the license if the commission has reasonable grounds to believe and finds that the applicant has improperly used a temporary pass or has engaged in activities or practices that are detrimental to the best interests of the public and the sport of horse racing or greyhound racing.

SECTION 28. Amends Section 7.05, Article 179e, V.T.C.S., to authorize the commission to determine the best method for recouping the cost of criminal history checks and complying with the other provisions of this section, including collecting the costs over an extended period.

SECTION 29. Amends Section 7.07, Article 179e, V.T.C.S., to add standard language developed by the Sunset Commission regarding a staggered license renewal system.

SECTION 30. Amends Article 7, Article 179e, V.T.C.S., by adding Section 7.10, as follows:

Sec. 7.10. RECIPROCAL LICENSES; OUT-OF-STATE APPLICANTS. Adds standard language developed by the Sunset Commission regarding reciprocal licenses and out-of-state

applicants.

SECTION 31. Amends Section 9.01, Article 179e, V.T.C.S., to require the state horse breed registries to make reasonable rules to establish the qualifications of accredited Texas-bred horses, subject to this Act and any rule of the commission.

SECTION 32. Amends Section 10.04, Article 179e, V.T.C.S., to make a conforming change.

SECTION 33. Amends Section 11.011, Article 179e, V.T.C.S., by amending Subsection (g), and adding Subsections (h)-(l), to provide that nothing in this Act is to be construed to prohibit, rather than to allow, wagering on a simulcast horse race at a greyhound racetrack in this state, or to prohibit, rather than to permit, wagering on a simulcast greyhound race at a horse racetrack in this state. Prohibits a horse racetrack from being required to accept a greyhound simulcast, nor may a greyhound racetrack be required to accept a horse simulcast signal. Sets forth regulations regarding wagering on a simulcast greyhound or horse race.

SECTION 34. Amends Section 11.06, Article 179e, V.T.C.S., to authorize the rules developed by the commission regarding minors and children to except any conduct described as an affirmative defense by Section 14.13 of this Act. Deletes existing text regarding the offense for a violation of a rule adopted under this section or for engaging in gaming if a person is under the minimum age. Makes conforming changes.

SECTION 35. Amends Section 11.08, Article 179e, V.T.C.S., to delete a reference to a pari-mutuel pool. Makes a nonsubstantive change.

SECTION 36. Amends Section 11.09, Article 179e, V.T.C.S., to provide that the defense to prosecution under Chapter 47, Penal Code, that the conduct was authorized under this Act is available only to a person who is permitting the lawful conduct of an activity described by Subdivision (1) of this section on any racetrack facility. Makes conforming changes.

SECTION 37. Amends Section 13.03, Article 179e, V.T.C.S., as follows:

Sec. 13.03. New heading: CRIMINAL TRESPASS. Provides that a person, for the purposes of Section 30.05, Penal Code, is presumed, under certain circumstances, to have received notice that entry to an enclosure was forbidden. Deletes existing text regarding an offense under this section.

SECTION 38. Amends Article 14, Article 179e, V.T.C.S., as follows:

ARTICLE 14. New heading: CRIMINAL OFFENSES

Sec. 14.01. TOUTING. Provides that a person commits a Class A misdemeanor, rather than a felony of the third degree, if the person, with an intent to deceive and an intent to obtain a benefit, knowingly makes a false statement or offers, agrees to convey, or conveys false information about a greyhound race or horse race to another. Provides that a person commits a state jail felony if certain conditions are met. Deletes existing text regarding an offense under this section and imposing criminal responsibility on a corporation or association.

Sec. 14.02. New heading: UNLAWFUL POSSESSION OR USE OF CREDENTIAL. Provides that a person commits a Class C misdemeanor if the person knowingly or intentionally possesses or displays a credential or false credential that identifies the person as the holder of the credential and the person knows that the credential is not issued to the person or the person is not a licensee. Deletes existing text regarding an offense under this section and imposing criminal responsibility on a corporation or association. Deletes existing Section 14.03 regarding the illegal influence of a race outcome.

Sec. 14.04. ILLEGAL ACCESS. Provides that a person commits a Class B misdemeanor, rather than a felony of the third degree, if the person is a licensee and the person knowingly or intentionally permits, facilitate, or allows access to an enclosure where races are

conducted, to another person who the person knows meets certain criteria.

Sec. 14.05. RACES CONDUCTED ON CERTAIN INDIAN LANDS. Makes no change.

Sec. 14.06. FALSE STATEMENTS. Deletes a provision that a person commits an offense if the person intentionally, recklessly, or with criminal negligence makes a material and false, incorrect, or deceptive statement to certain persons. Redefines "statement." Provides that a person commits a state jail felony if the person commits an offense under this section, unless the statement was material in a commission action relating to a racetrack license, in which event, the offense is a felony of the third degree.

Sec. 14.07. New heading: HINDERING OF ENTRY OR SEARCH. Provides that a person commits an offense if the person with criminal negligence, rather than intentionally, knowingly, or recklessly, refuses, denies, or hinders entry to another who is exercising or attempting to exercise a power of entry under this Act or commission rule. Provides that a person commits an offense if the person with criminal negligence refuses, denies, hinders, interrupts, disrupts, impedes, or otherwise interferes with a search by a person exercising or attempting to exercise a power to search under this Act or a commission rule. Makes a conforming change.

Sec. 14.08. FORGING PARI-MUTUEL TICKET. Provides that a person commits a felony of the third degree if the person intentionally or knowingly forges a pari-mutuel ticket with the intent to defraud or harm another. Defines "forge."

Sec. 14.09. IMPERSONATING A LICENSEE. Provides that a person commits a Class A misdemeanor if the person impersonates a licensee with the intent to induce another person to submit to the actor's purported authority as a licensee or to rely on the actor's actions as an alleged licensee.

Sec. 14.10. UNLAWFUL INFLUENCE ON RACING. Provides that a person commits a state jail felony if the person possesses a prohibited device or prohibited substance on a racetrack facility, unless the actor possessed the device or substance with the intent to influence or affect the outcome of a horse or greyhound race in a manner contrary to this Act or a commission rule, in which event it is a felony of the third degree. Provides that a person commits a felony of the third degree if the person, with the intent to influence or affect a horse or greyhound race in a manner contrary to this Act or a commission, uses or offers to use a prohibited device or prohibited substance.

Sec. 14.11. BRIBERY AND CORRUPT INFLUENCE. Provides that a person commits a state jail felony if the person, with the intent to influence or affect the outcome of a race in a manner contrary to this Act or a commission rule, offers, confers, agrees to confer on another, or solicits, accepts, or agrees to accept from another person any benefit as consideration for the actions of a person who receives the benefit relating to the conduct, decision, opinion, recommendation, vote, or exercise of discretion as a licensee or other person associated with or interest in any stable, kennel, horse, greyhound, or horse or greyhound race. Provides that a person commits a felony of the third degree if the person commits an offense under this section and the recipient of the benefit is a steward, judge, or other racetrack official exercising authority over a horse or greyhound race that the person providing or offering the benefit intended to influence, in which event it is a felony of the third degree.

Sec. 14.12. CRIMINAL CONFLICT OF INTEREST. Sets forth actions that constitute an offense if committed by a member of the commission.

Sec. 14.13. OFFENSES INVOLVING A MINOR. Provides that a person commits a Class B misdemeanor if the person with criminal negligence permits, facilitates, or allows wagering by a minor at a racetrack facility or entry by a child to the viewing section of a racetrack facility. Provides that a person commits a Class C misdemeanor if the person is a minor and intentionally and knowingly engages in wagering at a racetrack. Sets forth affirmative

defenses to prosecution of an offense under this section.

Sec. 14.14. UNLAWFUL RACING. Sets forth provisions relating to an offense for unlawful racing.

Sec. 14.15. PARI-MUTUEL RACING WITHOUT LICENSE. Provides that a person commits a Class A misdemeanor if the person, without a license, participates or is otherwise involved in greyhound racing or horse racing with pari-mutuel wagering, unless the actor was required by this Act to obtain a racetrack license, in which event it is a state jail felony. Provides that it is an affirmative defense to prosecution under Subsection (a) that the actor was a spectator or a person placing a wager.

Sec. 14.16. RACING WITHOUT LICENSE. Provides that a person commits a third degree felony if the person conducts a greyhound or horse race without a racetrack license and knows or reasonably should know that another person is betting on the final or partial outcome of the race.

Sec. 14.17. FAILURE TO DISPLAY CREDENTIAL. Sets forth the penalty for failure to display a credential or provide certain information after a lawful request. Defines "lawful request."

Sec. 14.18. SEARCH AND SEIZURE. Sets forth procedures for a search of a licensee on the premises of a racetrack facility and the seizure of certain prohibited items.

Sec. 14.19. PROSECUTION. Authorizes a person who is subject to prosecution for a penal offense under this Act and another law to be prosecuted under either law.

Sec. 14.20. COMMISSION AUTHORITY. Prohibits this article from being construed to restrict the commission's administrative authority to enforce this Act or commission rules to the fullest extent authorized under this Act.

SECTION 39. Amends Section 15.01, Article 179e, V.T.C.S., to provide that a person commits a state jail felony if the person violates a provision of this Act that is a penal offense, but for which a penalty is not provided.

SECTION 40. Amends Section 18.01(a), Article 179e, V.T.C.S., to update the commission's Sunset review date to September 1, 2005, which provides for an eight-year review.

SECTION 41. Amends Section 481.172, Government Code, to require the Department of Commerce to promote and encourage the horse racing and greyhound racing industry, if the funds are appropriated for the promotion or encouragement.

SECTION 42. Repealers: Sections 2.07, 3.01, 11.04(d), 15.02, and 18.02, Article 179e, V.T.C.S. (Prohibited Conduct, Commission Sections, Wagering Inside Enclosure, Person Defined, and Application of Administrative Procedure and Texas Register Act).

SECTION 43. (a) Effective date: September 1, 1997.

(b) Provides that the changes made by this Act apply only to members of the commission appointed after the effective date of this bill.

(c) Requires the commission to review all of the rules of the commission and readopt, modify, or repeal these rules before January 1, 2002.

(d) Provides that the authority for rulemaking and licensing and for any action exclusively to horse racing or exclusively to greyhound racing that was granted to a separate section of the Texas Racing Commission is transferred to the Texas Racing Commission.

SECTION 44. Makes application of this Act prospective.

SECTION 45.           Emergency clause.