

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

IN RE: PETITION FOR DECLARATORY STATEMENT

CALDER RACE COURSE, INC.,
and TROPICAL PARK, INC.

Case No **DS 2003-031**

Petitioners,

and

HARTMAN AND TYNER, INC. d/b/a
Hollywood Greyhound Track,
INVESTMENT CORPORATION OF
PALM BEACH, d/b/a Palm Beach
Kennel Club, and TAMPA BAY DOWNS,
INC.

Final Order No. BPR-2004-00308 Date: **1-30-04**
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: *Brandon M. Nichol*

Intervenors.
_____ /

DECLARATORY STATEMENT

Petitioners, Calder Race Course, Inc. and Tropical Park, Inc. (Petitioners) filed a Petition for Declaratory Statement with the Division of Pari-Mutuel Wagering (Division) regarding the application of Section 550.5251(4), Florida Statutes, after that statute was amended upon the passage of 2003-295, Laws of Florida, during the 2003 legislative session.

The Division has granted intervention in this matter to Hartman and Tyner, Inc., d/b/a Hollywood Greyhound Track and Investment Corporation of Palm Beach d/b/a Palm Beach Kennel Club (Opposing Intervenors) who each filed a separate Memorandum of Law opposing the determination sought by the Petitioners. Tampa Bay Downs, Inc. (TBD) was granted

intervention. TBD's Memorandum of Law in Support of Its Motion to Intervene, which supports the Petitioners, was also made part of the record of this proceeding.

STATEMENT OF THE FACTS

1. Petitioners are pari-mutuel wagering permitholders licensed by the Division of Pari-Mutuel Wagering to operate a thoroughbred horseracing track in Dade County. Petitioners are authorized to operate as a guest track and to receive broadcasts of horse races conducted at out-of-state racetracks pursuant to Section 550.3551(3), Florida Statutes. Similarly, TBD is a licensed thoroughbred pari-mutuel permitholder. TBD, which is located in Hillsborough County, is also statutorily authorized to receive broadcasts of horse races conducted at out-of-state racetracks.

2. Opposing Intervenors are pari-mutuel wagering permitholders licensed by the Division of Pari-Mutuel Wagering to operate greyhound racing tracks located in Dade and Palm Beach Counties.

3. Section 550.5251(4), Florida Statutes was amended by 2003-295, Laws of Florida. The section was specifically amended as follows:

(4) A thoroughbred permitholder may not begin any race later than 7 p.m. ~~However,~~ Any thoroughbred permitholder in a county in which the authority for cardrooms has been approved by the board of county commissioners may ~~elect not to~~ operate a cardroom and, when conducting live races during its current race meet, may and instead to receive and rebroadcast out-of-state races after the hour of 7 p.m. on any day during which the permitholder conducts live races.

ISSUE PRESENTED

4. Petitioners have asserted in their request for a declaratory statement that they believe the purpose of the amendment to Section 550.5251(4), Florida Statutes, was to give thoroughbred permitholders the ability to operate a cardroom and receive and rebroadcast

simulcast signals received pursuant to Section 550.3551(3), Florida Statutes. According to the Petitioners, “dark days” are dates within their current race meet on which live thoroughbred races are not conducted. Petitioners are concerned that there may now be a reading of Section 550.5251(4), Florida Statutes, which would eliminate the ability of a thoroughbred track to receive and rebroadcast simulcast races on “dark days.” Therefore, Petitioners are seeking a declaratory statement from the Division interpreting Section 550.5251(4), Florida Statutes, to the effect that it does not prohibit them from continuing to receive broadcast and rebroadcast simulcast races on “dark days” during their current racing meet and for future live racing meets. TBD joins the Petitioners in their interpretation.

5. Opposing Intervenor do not appear to argue that the amendments to Section 550.5251(4), Florida Statutes, have changed the law with respect to the ability of a thoroughbred permitholder’s ability to receive and rebroadcast simulcast races on their dark days. Rather, Opposing Intervenor assert an interpretation that receipt of simulcast races by a thoroughbred permitholder on dark days was not authorized by the provisions of Chapter 550, Florida Statutes, either before or after the amendments to Section 550.5251(4), Florida Statutes. Opposing Intervenor argue an interpretation of several statutory provisions to conclude that thoroughbred permitholders are only authorized to conduct wagering on simulcast signals on days during which live racing is conducted at their facilities.

CONCLUSIONS OF LAW

6. The Division is authorized to regulate the pari-mutuel industry and administer the provisions of Chapter 550, Florida Statutes, pursuant to Section 550.0251, Florida Statutes.

7. Sections 120.565(1) and (2), Florida Statutes, provide as follows:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

* * *

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

8. The purpose of a declaratory statement is to allow a petitioner to select a proper course of action in advance. *Novick v. Department of Health, Board of Medicine*, 816 So. 2d 1237 (Fla. 5th DCA 2002). The Supreme Court of Florida in *Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374 (Fla. 1999) recognized that in enacting Section 120.565, Florida Statutes, the Legislature gave citizens a right to get a clear, binding answer from the agency on how the agency's statute and rules apply. In *Investment Corp of Palm Beach*, the Court also recognized the unique nature of this industry with limited participants who would almost invariably have an interest in a declaratory statement. The Court further found that changes to the Administrative Procedure Act allow for the issuance of declaratory statements even though the interest of persons who are not a party may be affected. *Id.* 747 So. 2d 374, at 378 and 385. Therefore, it appears Petitioners are entitled to a declaratory statement regarding their ability to continue to receive simulcast transmissions.

9. Authorization for a thoroughbred permitholder to receive simulcast horseraces is contained in Section 550.3551(3), Florida Statutes, which reads as follows: "Any horse track licensed under this chapter may receive broadcasts of horseraces conducted at other horse

racetracks located outside this state at the racetrack enclosure of the licensee during its racing meet.”

10. Petitioners assert that the Division has interpreted the term “racing meet” to be the beginning of the first day of live racing and the end of the last day of live racing, thus authorizing them to receive and rebroadcast simulcast signals on “dark days.” More specifically, the Division has interpreted the phrase “during its racing meet” found in Section 550.3551(3), Florida Statutes, to authorize simulcast on “dark days.” This interpretation is most evident in the Divisions forms provided to all pari-mutuel permit holders for their annual pari-mutuel license applications. Paragraph 12 of DBPR Form 15-006, which is incorporated by reference in Rule 61D-10.001, Florida Administrative Code, (effective October 20, 1996) requires each permit holder when applying for its annual pari-mutuel license to “follow instructions on calendars attached to back of permit application, to mark days, dates and types of performances.” The instructions on the calendars annually provided by the Division require the permit holders to “note if you are receiving ITW/Simulcast during dark days.” Therefore, Petitioners are correct that the Division has previously interpreted Section 550.3551(3), Florida Statutes, to allow receipt of simulcast during dark days.

11. In *Galbreath v. School Board of Broward County*, 424 So. 2d 837 (Fla. 4th DCA 1983), the Court adopted the declaratory statement of the Public Employment Relations Commission in *In re: Petition for Declaratory Statement of the Leon County School Board*, Case No. DS-81-001, 81D-238, (June 26, 1981). In a special concurrence to that declaratory statement, Commissioner Parrish wrote as follows:

I think it is reasonable to presume that the Legislature is aware of the construction which has been placed on its enactments; especially where the issue is a significant one. Having engaged in that presumption, I think

it is reasonable to construe the legislative silence on this issue during three consecutive legislative sessions as a legislative ratification of the interpretation given to the applicable statutory provisions by the majority in the *Heath* case; or, at least, as a legislative acquiescence in the agency's interpretation. Accordingly, although I continue to believe that the dissent in the *Heath* case was correct *when written* I am now persuaded by three sessions of legislative silence that the majority view in the *Heath* case has proven to be a correct interpretation of the legislative will.

Id. at 843-844

12. As noted, permitholders have been allowed to receive and rebroadcast simulcast signals for numerous years. Thus, the appropriate question to be answered in this declaratory statement is whether the changes to Section 550.5251(4), Florida Statutes, were intended to change the practice of allowing simulcasting on "dark days."

13. Section 849.086(7), Florida Statutes, was also amended by 2003-295, Laws of Florida. The section was specifically amended as follows:

(7) A cardroom may be operated at the facility only when the facility is authorized to accept wagers on pari-mutuel events during its authorized meet. A cardroom may operate between the hours of 12 noon and 12 midnight on any day a pari-mutuel event is conducted live as a part of its authorized meet. However, a permitholder who holds a valid cardroom license may operate a cardroom between the hours of 12 noon and 12 midnight on any day that live racing of the same class of permit is occurring within 35 miles of its facility if no other holder of that class of permit within 35 miles is operating a cardroom at such time and if all holders of the same class of permit within the 35-mile area have given their permission in writing to the permitholder to operate the cardroom during the designated period. Application to operate a cardroom under this paragraph must be made to the division as part of the annual license application. Begin operations within 2 hours prior to the post time of the first pari-mutuel event conducted live at the pari-mutuel facility on which wagers are accepted and must cease operations within 2 hours after the conclusion of the last pari-mutuel event conducted live at the pari-mutuel facility on which wagers are accepted.

14. The legislature has recognized both in the previous and present version of Section 849.086(7), Florida Statutes, that the meet is a period comprised of both days on which live

racing is conducted and days on which live racing is not conducted. Operation of a cardroom was specifically authorized only on days when live racing was being conducted both before and after passage of Chapter 2003-295, Laws of Florida. The word “meet” occurs twice in the newly amended section. Of most significance perhaps is the newly created language that now provides that cardrooms may operate between noon and midnight on “any day a pari-mutuel event is conducted live as a part of its authorized meet.” Here the legislature specifically imposes a restriction to the operation of cardrooms to live days as a part of the permitholder’s meet. The previous language of this section, which is represented by the strike-through text of the act, also used the phrase “during its authorized meet” while limiting operation of cardrooms to live racing days. Therefore, there is no clear indication of legislative intent to change the Division’s interpretation that simulcasting may be conducted on days within a thoroughbred permitholder’s meet on which live racing is not conducted.

15. Similar to the analysis above, the language Opposing Intervenors cite language within Section 550.5251(4), Florida Statutes, to indicate that “dark day” simulcast is not authorized. That section was originally created by Chapter 96-364, Laws of Florida, which authorized cardrooms for the first time. The live racing limitation in this section is a reflection of the live racing day limitation for the operation of cardrooms contained in Section 849.086(7), Florida Statutes. Therefore, it is appropriate for the Division to continue to interpret these provisions in the same manner and there is no indication in the record of this proceeding of the legislature’s intent to alter that interpretation.

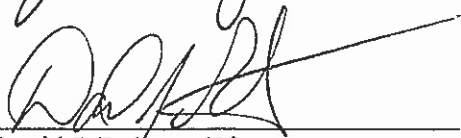
16. As previously stated, Opposing Intervenors are asserting an interpretation that receipt of simulcast races by a thoroughbred permitholder on dark days was not authorized by the provisions of Chapter 550, Florida Statutes. In support of their position, Opposing

Intervenors cite to the definitions for “meet” or “meeting” and “current meet” or “current race meet” found in Section 550.002, Florida Statutes. Such a change in interpretation of the statutory definition of term “meet” or “meeting” used in Section 550.3551(3), Florida Statutes, would constitute a significant break from the Division’s current interpretation that would require rule making under the holding in *Investment Corp. of Palm Beach*, wherein the Court held that when a declaratory statement in reality adopts a broad agency policy or provides statutory or rule interpretations that apply to an entire class of persons, it will be set aside on appeal. *Investment Corp. of Palm Beach*, 747 So. 2d 374, at 376.

CONCLUSION

Based upon the foregoing, the Division holds that the amendments to Section 550.5251(4), Florida Statutes, contained in 2003-295, Laws of Florida, do not prohibit the Petitioners from continuing to receive and rebroadcast simulcast races on days within their authorized meet on which live racing is not conducted.

DONE AND ORDERED this 29th day of January 2004.



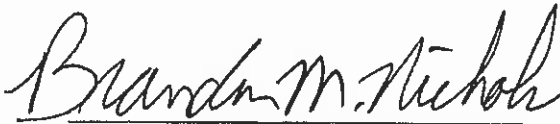
David J. Roberts, Director
Division of Pari-Mutuel Wagering
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Declaratory Statement, has been provided by U.S. Mail to Wilbur E. Brewton and Kelly B. Plante, Attorneys for Calder Race Course and Tropical Park, 225 South Adams Street, Suite 250, Tallahassee, Florida 32301, Robert W. Clark, Attorney for Tampa Bay Downs, Post Office Box 2939, Tampa, Florida 33601, to Harold F. X. Purnell, Attorney for Palm Beach Kennel Club, Post Office Box 551, Tallahassee, Florida 32302-0551 and M. Christopher Bryant and Jeffery Brown, Attorneys for Hollywood Greyhound Track, Post Office Box 1110, Tallahassee, Florida 32302-1110, this 30th day of January, 2004.


for: Sarah Wachman, Agency Clerk

Copy to:

Joseph M. Helton, Jr., Chief Attorney for PMW
Susanne Printy, Joint Administrative Procedure Committee

STATE OF FLORIDA **DS 2003-031**
DIVISION OF PARI-MUTUEL WAGERING
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Case No.: _____

In Re: Petition of
Calder Race Course, Inc.
and Tropical Park, Inc.

FILED

Department of Business and Professional Regulation
DEPUTY CLERK

CLERK *Brandon M. Nichols*
DATE 9-9-2003

PETITION FOR DECLARATORY STATEMENT
BEFORE THE DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION

COME NOW, Calder Race Course, Inc. ("Calder") and Tropical Park, Inc. ("Tropical") and file this Petition for Declaratory Statement pursuant to Section 120.565, Florida Statutes, and would state the following:

1. Calder is a Florida corporation with its principal place of business located in Miami, Florida, and whose business address is 21001 N.W. 27th Avenue, Miami Gardens, Florida 33056. Calder's telephone number is 305-625-1311 and Calder's facsimile number is 305-620-2569. Calder is the holder of a pari-mutuel permit and license pursuant to Chapter 550, Florida Statutes.

2. Tropical is a Florida corporation with its principal place of business located in Miami Gardens, Florida, and whose business address is 21001 N.W. 27th Avenue, Miami, Florida 33056. Tropical's telephone number is 305-625-

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1311 and Tropical's facsimile number is 305-620-2569. Tropical is the holder of a pari-mutuel permit and license pursuant to Chapter 550, Florida Statutes.

3. State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (hereinafter referred to as the "Division"), is a state agency. The Department of Business and Professional Regulation's address is Northwood Centre, 1940 North Monroe Street, Tallahassee, FL 32399-1035.

4. "Current race meet" is defined in Section 550.002(5), Florida Statutes, as "the conduct of racing or games pursuant to a current year's operating license issued by the division."

5. Calder holds valid operating licenses issued by the Division to conduct live thoroughbred racing from April 26, 2004, to May 31, 2004.

6. Tropical holds valid operating licenses issued by the Division to conduct live thoroughbred racing from October 23, 2003, to January 2, 2004.

7. As permitholders licensed by the Division of Pari-Mutuel Wagering, Calder and Tropical are required to comply with the provisions of Chapter 550, Florida Statutes, and all rules and regulations promulgated by the Division pursuant to Chapter 550, Florida Statutes, and failure to comply with Chapter 550, Florida Statutes, could result in fines, or suspension or revocation of their pari-

mutuel license to conduct thoroughbred racing in Florida. Thus, Calder's and Tropical's interests are substantially affected by interpretations of Chapter 550, Florida Statutes and the Division's rules and regulations.

8. During Calder's current race meet, Calder operates live thoroughbred horse races at its facility at least five (5) days per week. Likewise, during Tropical's current race meet, Tropical operates live thoroughbred horse races at its facility at least five (5) days per week.

9. The days during Calder's current race meet in which it does not conduct live thoroughbred horse races at its facility are called "dark days." Likewise, the days during Tropical's current race meet in which it does not conduct live thoroughbred horse races at its facility are called "dark days."

10. Section 550.3551(3), Fla. Stat., provides:

(3) Any horse track licensed under this chapter may receive broadcasts of horseraces conducted at other horserace tracks located outside this state at the racetrack enclosure of the licensee during its racing meet.

11. The balance of Section 550.3551 provides that wagering may be taken on the broadcast from outside the state. The provisions of Section 550.6305(9), Fla. Stat., further provide:

(9) A host track that has contracted with an out-of-state horse track to broadcast live races conducted at

such out-of-state horse track pursuant to s.550.3551(5) may broadcast such out-of-state races to any guest track and accept wagers thereon in the same manner as provided in s. 550.3551.

12. In addition, s. 550.6305(9)(g), provides as follows:

(g)1. Any thoroughbred permitholder which accepts wagers on a simulcast signal must make the signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345.

2. Any thoroughbred permitholder which accepts wagers on a simulcast signal received after 6 p.m. must make that signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345, including any permitholder located as specified in s. 550.615(6). Such guest permitholders are authorized to accept wagers on such simulcast signal, notwithstanding any other provision of this chapter to the contrary.

3. Any thoroughbred permitholder which accepts wagers on a simulcast signal after 6 p.m. must make such signal available to any permitholder that is eligible to conduct intertrack wagering under the provisions of ss. 550.615-550.6345, including any permitholder located as specified in s. 550.615(9). Such guest permitholders are authorized to accept wagers on such simulcast signals for a number of performances not to exceed that which constitutes a full schedule of live races for a quarter horse permitholder pursuant to s. 550.002(11), notwithstanding any other provision of this chapter to the contrary, except that the restrictions provided in s. 550.615(9)(a) apply to wagers on such simulcast signals.

13. Calder and Tropical are currently authorized pursuant to Section 550.3551, Florida Statutes, to receive and rebroadcast horseraces from out-of-state horse tracks, and take wagers on such horseraces (i.e., conduct interstate simulcast wagering) during their respective current race meets.

14. Since 1996, Calder and Tropical have been authorized pursuant to Section 550.3551, Florida Statutes, to conduct interstate simulcast wagering during their respective live racing meets.

15. The Division has previously interpreted "racing meet" to be the beginning of the first day of live racing and the end of the last day of live racing of a license. All days which are operated within such time frame are considered part of the racing meet, including the dark days.

16. Since 1996 and until July 1, 2003, Calder and Tropical have been authorized by Chapter 550, Florida Statutes, and the Division, to conduct interstate simulcast wagering during every day of their respective live race meets, including their dark days, and were mandated pursuant to Chapter 550, Florida Statutes, to then rebroadcast those races to any guest track which is eligible to take intertrack wagering; and further, for any broadcast taken after 6 p.m. on any day, Calder and Tropical were mandated to rebroadcast such simulcast races to every guest track in the state, including those guest tracks within the market area of the thoroughbred

permitholder.

17. On August 8, 2003, HB 1059, now Chapter 2003-295, Laws of Florida, became law (effective date is July 1, 2003) which, among other things, amended Section 550.5251(4), Florida Statutes.

18. Prior to being amended, Section 550.5251(4), Florida Statutes, provided:

(4) A thoroughbred racing permitholder may not begin any race later than 7 p.m. However, any thoroughbred permitholder in a county in which the authority for cardrooms has been approved by the board of county commissioners may elect not to operate a cardroom when conducting live races during its current race meet and instead to receive and rebroadcast out-of-state races after the hour of 7 p.m. on any day during which the permitholder conducts live races. However, such permitholder may not engage in both operating a cardroom and receiving or rebroadcasting out-of-state races after 7 p.m. Permitholders shall be required to elect between either operating a cardroom or engaging in simulcasting after 7 p.m. at the time of submitting its application for its annual license pursuant to this section.

Thus, this subsection prohibited a thoroughbred track from operating a cardroom and receiving and rebroadcasting out-of-state races.

19. Section 550.5251(4), Florida Statutes, as amended by 2003-295, Laws of Florida, provides:

(4) A thoroughbred racing permitholder may not begin any race later than 7 p.m. ~~However, Any~~ Any thoroughbred permitholder in a county in which the authority for cardrooms has been approved by the board of county commissioners may ~~elect not to operate a cardroom and,~~ when conducting live races during its current race meet, may ~~and instead to receive and~~ rebroadcast out-of-state races after the hour of 7 p.m. on any day during which the permitholder conducts live races.

20. Calder and Tropical believe that the purpose of the amendment to Section 550.5251(4), Florida Statutes, was to give to thoroughbred tracks the right to operate a cardroom and receive and rebroadcast out-of-state races.

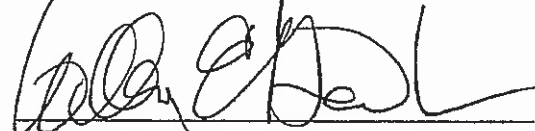
21. However, the language that is set forth in amended Section 550.5251(4), Florida Statutes, could be interpreted to eliminate the ability of a thoroughbred track to receive and rebroadcast out-of-state races on its dark days.

22. Calder and Tropical believe that the amendment to Section 550.5251(4), Florida Statutes, was not intended to, nor does it, impact Calder's or Tropical's ability to receive broadcasts and rebroadcast races from out-of-state race tracks, and take wagers on such broadcasts under Section 550.3551, Florida Statutes, on their dark days during their respective current racing meet or their future live racing meets.

23. Calder and Tropical are unsure of their rights under Chapter 550, Florida Statutes, given the amendment to Section 550.5251(4), Florida Statutes, regarding conducting interstate simulcast wagering on their respective dark days during their current and future live racing meets.

WHEREFORE, Calder and Tropical request that the Division issue a Declaratory Statement to provide its interpretation of Section 550.5251(4), Florida Statutes, as amended, to the effect that Section 550.5251(4), Florida Statutes, does not prohibit Calder or Tropical from continuing to receive broadcasts and rebroadcast races from out-of-state race tracks, and take wagers on such broadcasts and rebroadcasts under Section 550.3551, Florida Statutes, on their dark days during their current racing meet or their future live racing meets.

Respectfully submitted this ^{9th} day of September, 2003.



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Counsel for Calder Race Course, Inc.
and Tropical Park, Inc.

CHAPTER 2003-295

House Bill No. 1059

An act relating to pari-mutuel wagering; amending s. 550.26165, F.S.; revising criteria for making breeders' awards for racehorses; amending s. 550.2625, F.S.; providing for payment of special racing awards; amending s. 550.5251, F.S.; authorizing a thoroughbred racing permitholder to operate a cardroom; amending s. 849.086, F.S.; redefining the term "authorized game"; providing for certain permitholders to amend the annual application to include operation of a cardroom; providing requirements for a harness permitholder to operate a cardroom; clarifying requirements for the license fee; revising certain restrictions on the hours that a cardroom may be operated; authorizing the cardroom operator to limit the amount wagered; providing certain restrictions with respect to the amount of bets and the number of raises in a round of betting; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) of section 550.26165, Florida Statutes, are amended to read:

550.26165 Breeders' awards.—

(1) The purpose of this section is to encourage the agricultural activity of breeding and training racehorses in this state. Moneys dedicated in this chapter for use as breeders' awards and stallion awards are to be used for awards to breeders of registered Florida-bred horses winning horseraces and for similar awards to the owners of stallions who sired Florida-bred horses winning stakes races, if the stallions are registered as Florida stallions standing in this state. Such awards shall be given at a uniform rate to all winners of the awards, shall not be greater than 20 percent of the announced gross purse, and shall not be less than 15 percent of the announced gross purse if funds are available. In addition, no less than 17 percent nor more than 40 percent, as determined by the Florida Thoroughbred Breeders' Association, of the moneys dedicated in this chapter for use as breeders' awards and stallion awards for thoroughbreds shall be returned pro rata to the permitholders that generated the moneys for special racing awards to be distributed by the permitholders to owners of registered Florida-bred thoroughbred horses participating winning in prescribed thoroughbred stakes races, nonstakes races, or both ~~and winning or placing in thoroughbred stakes races,~~ all in accordance with a written agreement establishing the rate, procedure, and eligibility requirements for such awards entered into plan established annually no later than 120 days before the first day of the permitholders' racing meet and agreed upon by the permitholder, the Florida Thoroughbred Breeders' Association, and the Florida Horsemen's Benevolent and Protective Association, Inc., except that the plan for the distribution by any permitholder located in the area described in s. 550.615(9) shall be agreed upon by that permitholder, the Florida Thoroughbred Breeders' Association, and the association representing a majority of

the thoroughbred racehorse owners and trainers at that location. Awards for thoroughbred races are to be paid through the Florida Thoroughbred Breeders' Association, and awards for standardbred races are to be paid through the Florida Standardbred Breeders and Owners Association. Among other sources specified in this chapter, moneys for thoroughbred breeders' awards will come from the 0.955 percent of handle for thoroughbred races conducted, received, broadcast, or simulcast under this chapter as provided in s. 550.2625(3). The moneys for quarter horse and harness breeders' awards will come from the breaks and uncashed tickets on live quarter horse and harness racing performances and 1 percent of handle on intertrack wagering. The funds for these breeders' awards shall be paid to the respective breeders' associations by the permitholders conducting the races.

(2) Each breeders' association shall develop a plan each year that will provide for a uniform rate of payment and procedure for breeders' and stallion awards payment. The plan for payment of breeders' and stallion awards may set a cap on winnings and may limit, exclude, or defer payments on to certain classes of races, such as the Florida stallion stakes races, in order to assure that there are adequate revenues to meet the proposed uniform rate. Priority shall be placed on imposing such restrictions in lieu of allowing the uniform rate for breeders' and stallion awards to be less than 15 percent of the total purse payment. The plan must provide for the maximum possible payments within revenues.

Section 2. Subsection (3) of section 550.2625, Florida Statutes, is amended to read:

550.2625 Horseracing; minimum purse requirement, Florida breeders' and owners' awards.—

(3) Each horseracing permitholder conducting any thoroughbred race under this chapter, including any intertrack race taken pursuant to ss. 550.615-550.6305 or any interstate simulcast taken pursuant to s. 550.3551(3) shall pay a sum equal to 0.955 percent on all pari-mutuel pools conducted during any such race for the payment of breeders', ~~and~~ stallion, or special racing awards as authorized in this chapter section. This subsection also applies to all Breeder's Cup races conducted outside this state taken pursuant to s. 550.3551(3). On any race originating live in this state which is broadcast out-of-state to any location at which wagers are accepted pursuant to s. 550.3551(2), the host track is required to pay 3.475 percent of the gross revenue derived from such out-of-state broadcasts as breeders', ~~and~~ stallion, or special racing awards. The Florida Thoroughbred Breeders' Association is authorized to receive these payments from the permitholders and make payments of awards earned. The Florida Thoroughbred Breeders' Association has the right to withhold up to 10 percent of the permitholder's payments under this section as a fee for administering the payments of awards and for general promotion of the industry. The permitholder shall remit these payments to the Florida Thoroughbred Breeders' Association by the 5th day of each calendar month for such sums accruing during the preceding calendar month and shall report such payments to the division as prescribed by the division. With the exception of the 10-percent fee, the moneys paid by the permitholders shall be maintained in a separate, interest-bearing account, and such payments together with any interest earned

shall be used exclusively for the payment of breeders', ~~awards and~~ stallion, or special racing awards in accordance with the following provisions:

(a) The breeder of each Florida-bred thoroughbred horse winning a thoroughbred horse race is entitled to an award of up to, but not exceeding, 20 percent of the announced gross purse, including nomination fees, eligibility fees, starting fees, supplementary fees, and moneys added by the sponsor of the race.

(b) The owner or owners of the sire of a Florida-bred thoroughbred horse that wins a stakes race is entitled to a stallion award of up to, but not exceeding, 20 percent of the announced gross purse, including nomination fees, eligibility fees, starting fees, supplementary fees, and moneys added by the sponsor of the race.

(c) The owners of ~~registered Florida-bred~~ thoroughbred horses participating winning or placing in thoroughbred stakes races, nonstakes races, or both may receive a special racing ~~an~~ award in accordance with the agreement ~~a plan~~ established pursuant to ~~in~~ s. 550.26165(1).

(d) ~~In order for a breeder of a Florida-bred thoroughbred horse to be eligible to receive a breeder's award, or for the owners of a registered Florida-bred thoroughbred horse to be eligible to receive an award under paragraph (c), the horse must have been registered as a Florida-bred horse with the Florida Thoroughbred Breeders' Association, and the Jockey Club certificate for the horse must show that it has been duly registered as a Florida-bred horse as evidenced by the seal and proper serial number of the Florida Thoroughbred Breeders' Association registry. The Florida Thoroughbred Breeders' Association shall be permitted to charge the registrant a reasonable fee for this verification and registration.~~

(e) In order for an owner of the sire of a thoroughbred horse winning a stakes race to be eligible to receive a stallion award, the stallion must have been registered with the Florida Thoroughbred Breeders' Association, and the breeding of the registered Florida-bred horse must have occurred in this state. The stallion must be standing permanently in this state during the period of time between February 1 and June 15 of each year or, if the stallion is dead, must have stood permanently in this state for a period of not less than 1 year immediately prior to its death. The removal of a stallion from this state during the period of time between February 1 and June 15 of any year for any reason, other than exclusively for prescribed medical treatment, as approved by the Florida Thoroughbred Breeders' Association, renders the owner or owners of the stallion ineligible to receive a stallion award under any circumstances for offspring sired prior to removal; however, if a removed stallion is returned to this state, all offspring sired subsequent to the return make the owner or owners of the stallion eligible for the stallion award but only for those offspring sired subsequent to such return to this state. The Florida Thoroughbred Breeders' Association shall maintain complete records showing the date the stallion arrived in this state for the first time, whether or not the stallion remained in the state permanently, the location of the stallion, and whether the stallion is still standing in this state and complete records showing awards earned, received, and distributed. The

association may charge the owner, owners, or breeder a reasonable fee for this service.

(f) A permitholder conducting a thoroughbred horse race under the provisions of this chapter shall, within 30 days after the end of the race meet during which the race is conducted, certify to the Florida Thoroughbred Breeders' Association such information relating to the thoroughbred horses winning a stakes or other horserace at the meet as may be required to determine the eligibility for payment of breeders', awards and stallion, and special racing awards.

(g) The Florida Thoroughbred Breeders' Association shall maintain complete records showing the starters and winners in all races conducted at thoroughbred tracks in this state; shall maintain complete records showing awards earned, received, and distributed; and may charge the owner, owners, or breeder a reasonable fee for this service.

(h) The Florida Thoroughbred Breeders' Association shall annually establish a uniform rate and procedure for the payment of breeders' and stallion awards and shall make breeders' and stallion award payments in strict compliance with the established uniform rate and procedure plan. The plan may set a cap on winnings and may limit, exclude, or defer payments to certain classes of races, such as the Florida stallion stakes races, in order to assure that there are adequate revenues to meet the proposed uniform rate. Such plan must include proposals for the general promotion of the industry. Priority shall be placed upon imposing such restrictions in lieu of allowing the uniform rate to be less than 15 percent of the total purse payment. The uniform rate and procedure plan must be approved by the division before implementation. In the absence of an approved plan and procedure, the authorized rate for breeders' and stallion awards is 15 percent of the announced gross purse for each race. Such purse must include nomination fees, eligibility fees, starting fees, supplementary fees, and moneys added by the sponsor of the race. If the funds in the account for payment of breeders' and stallion awards are not sufficient to meet all earned breeders' and stallion awards, those breeders and stallion owners not receiving payments have first call on any subsequent receipts in that or any subsequent year.

(i) The Florida Thoroughbred Breeders' Association shall keep accurate records showing receipts and disbursements of such payments and shall annually file a full and complete report to the division showing such receipts and disbursements and the sums withheld for administration. The division may audit the records and accounts of the Florida Thoroughbred Breeders' Association to determine that payments have been made to eligible breeders and stallion owners in accordance with this section.

(j) If the division finds that the Florida Thoroughbred Breeders' Association has not complied with any provision of this section, the division may order the association to cease and desist from receiving funds and administering funds received under this section. If the division enters such an order, the permitholder shall make the payments authorized in this section to the division for deposit into the Pari-mutuel Wagering Trust Fund; and any

funds in the Florida Thoroughbred Breeders' Association account shall be immediately paid to the Division of Pari-mutuel Wagering for deposit to the Pari-mutuel Wagering Trust Fund. The division shall authorize payment from these funds to any breeder or stallion owner entitled to an award that has not been previously paid by the Florida Thoroughbred Breeders' Association in accordance with the applicable rate.

Section 3. Subsection (4) of section 550.5251, Florida Statutes, is amended to read:

550.5251 Florida thoroughbred racing; certain permits; operating days.—

(4) A thoroughbred racing permitholder may not begin any race later than 7 p.m. ~~However, Any thoroughbred permitholder in a county in which the authority for cardrooms has been approved by the board of county commissioners may elect not to operate a cardroom and, when conducting live races during its current race meet, may and instead to receive and rebroadcast out-of-state races after the hour of 7 p.m. on any day during which the permitholder conducts live races. However, such permitholder may not engage in both operating a cardroom and receiving or rebroadcasting out-of-state races after 7 p.m. Permitholders shall be required to elect between either operating a cardroom or engaging in simulcasting after 7 p.m. at the time of submitting its application for its annual license pursuant to this section.~~

Section 4. Paragraph (a) of subsection (2), subsections (5), (7), and (8), and paragraphs(a) and (d) of subsection (13) of section 849.086, Florida Statutes, are amended to read:

849.086 Cardrooms authorized.—

(2) DEFINITIONS.—As used in this section:

(a) “Authorized game games” means a game or series of games of poker only those games authorized by s. 849.085(2)(a) and which are played in a nonbanking manner.

(5) LICENSE REQUIRED; APPLICATION; FEES.—No person may operate a cardroom in this state unless such person holds a valid cardroom license issued pursuant to this section.

(a) Only those persons holding a valid cardroom license issued by the division may operate a cardroom. A cardroom license may only be issued to a licensed pari-mutuel permitholder and an authorized cardroom may only be operated at the same facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities. Cardroom licenses are not transferable.

(b) After the initial cardroom license is granted, the application for the annual license renewal shall be made in conjunction with the applicant's annual application for its pari-mutuel license. If a permitholder has operated a cardroom during any of the 3 previous fiscal years and fails to include

a renewal request for the operation of the cardroom in its annual application for license renewal, the permit holder may amend its annual application to include operation of the cardroom. In order for a cardroom license to be renewed the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permit holder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior thereto. If the application is for a harness permit holder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior thereto. If more than one permit holder is operating at a facility, each permit holder must have applied for a license to conduct a full schedule of live racing.

(c) Persons seeking a license or a renewal thereof to operate a cardroom shall make application on forms prescribed by the division. Applications for cardroom licenses shall contain all of the information the division, by rule, may determine is required to ensure eligibility.

(d) The annual cardroom license fee for each facility shall be \$1,000 for the first table and \$500 for each additional table to be operated at the cardroom. This license fee shall be deposited by the division with the Treasurer to the credit of the Pari-mutuel Wagering Trust Fund.

(7) CONDITIONS FOR OPERATING A CARDROOM.—

(a) A cardroom may ~~only~~ be operated only at the location specified on the cardroom license issued by the division, and such location may only be the location at which the pari-mutuel permit holder is authorized to conduct pari-mutuel wagering activities pursuant to such permit holder's valid pari-mutuel permit or as otherwise authorized by law and current license.

(b) A cardroom may be operated at the facility only when the facility is authorized to accept wagers on pari-mutuel events during its authorized meet. A cardroom may operate between the hours of 12 noon and 12 midnight on any day a pari-mutuel event is conducted live as a part of its authorized meet. However, a permit holder who holds a valid cardroom license may operate a cardroom between the hours of 12 noon and 12 midnight on any day that live racing of the same class of permit is occurring within 35 miles of its facility if no other holder of that same class of permit within 35 miles is operating a cardroom at such time and if all holders of the same class of permit within the 35-mile area have given their permission in writing to the permit holder to operate the cardroom during the designated period. Application to operate a cardroom under this paragraph must be made to the division as part of the annual license application, begin operations within 2 hours prior to the post time of the first pari-mutuel event conducted live at the pari-mutuel facility on which wagers are accepted and must cease operations within 2 hours after the conclusion of the last pari-mutuel event conducted live at the pari-mutuel facility on which wagers are accepted.

(c) A cardroom operator must at all times employ and provide a nonplaying dealer for each table on which authorized card games which traditionally

utilize a dealer are conducted at the cardroom. Such dealers may not have any participatory interest in any game other than the dealing of cards and may not have an interest in the outcome of the game. The providing of such dealers by a licensee shall not be construed as constituting the conducting of a banking game by the cardroom operator.

(d) Each cardroom operator shall conspicuously post upon the premises of the cardroom a notice which contains a copy of the cardroom license; a list of authorized games offered by the cardroom; the wagering limits imposed by the house, if any; any additional house rules regarding operation of the cardroom or the playing of any game; and all costs to players to participate, including any rake by the house. In addition, each cardroom operator shall post at each table a notice of the minimum and maximum bets authorized at such table and the fee for participation in the game conducted.

(e) The cardroom facility shall be subject to inspection by the division or any law enforcement agency during the licensee's regular business hours. The inspection will specifically encompass the permitholder internal control procedures approved by the division.

(f) A cardroom operator may refuse entry to or refuse to allow to play any person who is objectionable, undesirable, or disruptive, but such refusal shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, physical handicap, or age, except as provided in this section.

(8) METHOD OF WAGERS; LIMITATION.—

(a) No wagering may be conducted using money or other negotiable currency. Games may only be played utilizing a wagering system whereby all players' money is first converted by the house to tokens or chips which shall be used for wagering only at that specific cardroom.

(b) The cardroom operator may limit the amount wagered in any game or series of games, but the maximum bet winnings of any player in a single round, hand, or game may not exceed \$2 \$10 in value. There may not be more than three raises in any round of betting. The fee charged by the cardroom for participation in the game shall not be included in the calculation of the limitation on the bet amount pot-size provided in this paragraph.

(13) TAXES AND OTHER PAYMENTS.—

(a) Each cardroom operator shall pay a tax to the state of 10 percent of the cardroom operation's monthly gross receipts.

(d) Each greyhound and jai alai permitholder ~~that which~~ operates a cardroom facility shall use utilize at least 4 percent of such permitholder's cardroom monthly gross receipts to supplement greyhound purses or jai alai prize money, respectively, during the permitholder's next ensuing pari-mutuel meet. Each thoroughbred and harness horse racing permitholder ~~that which~~ operates a cardroom facility shall use utilize at least 50 percent of such permitholder's cardroom monthly net proceeds as follows: 47 percent to supplement purses and 3 percent to supplement breeders' awards during the permitholder's next ensuing racing meet.

Section 5. This act shall take effect July 1, 2003.

Became a law without the Governor's approval August 6, 2003.

Filed in Office Secretary of State August 5, 2003.