



REGULATORY AGENCY ACTION

FUTURE MEETINGS:

July 25 in Los Angeles.
September 5 in Sacramento.
October 17 in San Diego.
December 5 in Sacramento.

HORSE RACING BOARD

Executive Secretary:
Dennis Hutcheson
(916) 920-7178

The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Division 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

In January, the Board membership changed. Commissioner Phoebe H. Cooke was not reappointed to fill another four-year term. Commissioner Paul R. Deats resigned from his position (which is due to expire in July 1991) to fill

Commissioner Cooke's four-year term. On January 4, Ralph M. Scurfield was appointed by Governor Deukmejian to fill the remainder of Commissioner Deats' position. Governor Wilson must fill a new vacancy on the Board due to the recent death of Commissioner John T. La Follette.

MAJOR PROJECTS:

1990 Annual Report. On January 31, CHRB released the *Twentieth Annual Report of the California Horse Racing Board*, summarizing the Board's activities and statistics between July 1, 1989 and June 30, 1990.

According to the report, during the 1990 racing year, California racing associations and simulcast wagering facilities reported a total parimutuel handle of almost \$3 billion (\$2,881,907,838), an increase of 5.2% over the total reported for 1989. The on-track handle was almost \$1.2 billion, which represents a reduction in on-track handle of almost \$6 million from 1989. This number is quite significant when compared to the enormous reduction in on-track handle of \$54.1 million from 1988 to 1989. According to CHRB, it appears that the impact of simulcast wagering on on-track handle has somewhat stabilized, at least for the 1990 racing year. Parimutuel wagers placed at off-track simulcast wagering facilities totaled \$1.1 billion, an increase of almost \$150 million (or 15.9%) over 1989.

Also during 1990, pursuant to federal law, the Board completed negotiations with the Sycuan Band of Mission Indians, the Viejas Band of Mission Indians, and the San Manuel Band of Mission Indians for the conduct of simulcast wagering on their lands. With the expected approval of the Secretary of the U.S. Department of the Interior, these Indian tribes will be able to commence simulcast wagering during 1991.

The Board also utilized over \$400,000 in budget augmentations to create a new position of Assistant Secretary of Licensing and Enforcement, to provide oversight and supervision of its Enforcement Branch; add two Associate Medication Stewards and one additional Official Veterinarian, and continue the position of two existing Medication Stewards; and purchase FAX machines, personal computers and terminals for the field offices and headquarters, and a photocopier for headquarters. The Board also created a new Legislative Unit to assist CHRB in analyzing legislation and to give the Board greater involvement in the legislative process. CHRB also established a Policy and Regulations Unit to address the overwhelming num-

ber of necessary regulatory changes and to follow up on Board policy directives.

Trifecta Wagering Approved. At its January 25 meeting, the Board held another public hearing on a revised version of its proposed amendments to regulatory section 1979, which will allow trifecta wagering in California on an experimental basis for one year. The original amendments were rejected by the Office of Administrative Law (OAL) in September 1990. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 141; Vol. 10, No. 4 (Fall 1990) p. 173; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 202-03 for background information.) The Board published its revised amendments on January 2. Among other things, the revisions clarify that:

-no trifecta pool shall be established for any race in which there are fewer than nine racing interests which officially start the race;

-no person other than the person obtaining a parimutuel ticket by contributing his/her money to the trifecta pool shall cash a winning or refundable trifecta ticket; resale of any such trifecta ticket is prohibited; and

-each racing association is limited to one trifecta race per day.

Following the hearing, CHRB adopted the proposed amendments. CHRB resubmitted the rulemaking file to OAL in mid-February; OAL approved it on March 15. The first trifecta race in California was offered at Santa Anita Park on March 20 and had a payoff of \$1,685.

Horsemen's Split Sample. At a special meeting on January 11, the Board held a public hearing on the revised textual modifications of proposed amendments to regulatory section 1859.25, regarding the horsemen's split sample drug testing program. The original amendments adopted by CHRB were rejected by OAL in September 1990. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 141; Vol. 10, No. 4 (Fall 1990) p. 174; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 203 for background information.)

Under the revised amendments, in addition to the urine sample of horses transmitted to the official laboratory for testing as provided in section 1859, CHRB shall retain a portion of the sample, which is called the "horsemen's split sample." If the CHRB Executive Secretary is notified of a positive finding by the official laboratory, the owner and trainer will be confidentially notified and will have 72 hours to request that the horsemen's split sample be tested by a Board-approved independent laboratory. The test results of the horsemen's split sample will be made available only to the owner or trainer and CHRB's Execu-



tive Secretary and Equine Medical Director. CHRBR adopted the revised amendments subject to several additional changes made at the hearing. The Board released the modified version for an additional public comment period ending on February 21, and resubmitted the rulemaking file to OAL in mid-March.

Blocking of Legs and Ankles. On January 24, OAL approved CHRBR's proposed amendments to regulatory section 1847, which define and prohibit procedures which constitute the blocking of horses' legs and ankles. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 141 and Vol. 10, No. 4 (Fall 1990) p. 174 for background information.) The amended version of section 1847 became effective on February 23.

At its January 25 meeting, CHRBR held a public hearing on its proposed addition of section 1405.1, which would set forth severe penalties for trainers who are found guilty of running a horse with blocked legs or ankles and veterinarians who are found guilty of blocking a horse's legs or ankles. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 141 for background information.) However, the Board decided to take no action on the proposal at this time.

Occupational Licenses and Fees. At this writing, CHRBR is still working on the proposed text of an amendment to regulatory section 1486, which would change CHRBR license expiration dates from December 31 to coincide with the licensee's birth month. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 141-42 and Vol. 10, No. 4 (Fall 1990) p. 174 for background information.) OAL rejected the amendment in December 1990 because it found the language to be inconsistent with section 1481(i), which expressly provides that certain CHRBR licenses and registrations expire (and are renewed) on December 31. Because the amendment would accelerate the expiration of some licenses, OAL argued that the effect of the proposed amendment would be the retrospective taking of an individual's occupational license, contrary to constitutional due process. The Board hoped to release modified language for a new public comment period by the end of April.

Coupling of Horses. On January 25, CHRBR held a public hearing on its proposed amendment to section 1606, to require the coupling of two or more horses as one entry (thus one betting unit) whenever a horse entered in a race is trained by a trainer who holds an ownership interest in another horse or horses also entered in the race. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 142 for back-

ground information.) Because several witnesses opposed the proposed amendment at the hearing, CHRBR sent it back to the Parimutuel Committee for language revisions.

License Applications. On January 25, CHRBR held a public hearing and subsequently adopted proposed amendments to section 1483, which will require every license identification card issued by the Board to include a current Board photograph of the licensee. Additionally, the amendment will eliminate the current exemption of horse owners, directors, or partners in a racing association from the license application requirements of section 1483. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 142 for background information.) The Board submitted the proposed action to OAL in late February.

Drug Residue Penalties. At its January 25 meeting, CHRBR held a public hearing on its proposal to add two new sections (1405.2 and 1842.1) to the CCR to establish the penalties for the finding of drug residues in post-race test samples. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 142 for background information.) Pursuant to staff recommendations, however, CHRBR decided not to take action at this time due to difficulties with the proposed language of the amendments.

Prohibited Veterinary Practices. At this writing, CHRBR is still preparing the proposed language of new regulatory section 1840.5, which will prohibit a veterinarian from administering veterinary treatment to any horse entered in the same race in which a horse owned or trained by the veterinarian is also entered. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 142 for background information.) CHRBR staff is expected to notice the proposed regulatory change in time to allow the Board to hold a public hearing at its May or June meeting.

Auditor General's Report. In March, the Office of the Auditor General (OAG) released its latest review of CHRBR's contracting for equine drug testing and aspects of its personnel practices. Report No. P-945 also follows up on recommendations made by OAG in Report No. P-730 (February 1988). (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 36-37 for background information.)

OAG found that CHRBR deviated from its original budget assumptions by verbally instructing one drug testing contractor, Truesdail Laboratories, Inc., to conduct more drug testing than budgeted for in the contract. Truesdail subsequently increased its testing, which contributed to cost overruns of \$190,565 in fiscal year 1988-89 and \$165,921 in fiscal year 1989-90. OAG noted that the

Board's actions placed the state at risk of being sued by the contractor if the Department of General Services had not approved contract amendments for funding the additional work. The report also stated that, contrary to state law, CHRBR authorized the state Controller's office to pay the contractor \$52,988 in higher rates for certain tests before the Department of General Services approved the higher rates. According to the report, CHRBR staff did not adequately analyze the cost impact of the increased testing; did not monitor its contract expenditures to determine whether the expenditures were meeting the constraints of the contract budget; and did not verify contractors' invoices against documents received from race tracks.

OAG recommended that CHRBR accurately analyze the cost of changes to the terms of its contracts, including verbal changes, to stay within budgetary limits; refrain from significantly deviating from the terms of a contract without formally amending the contract; obtain approval from the Department of General Services before authorizing any work or payment outside the scope of its contracts or contract amendments; and verify the test sample numbers on contractors' invoices against the sample numbers on Board-generated documents to ensure that CHRBR requested the testing for which it is being billed.

OAG next reviewed CHRBR's personnel practices, stating that as of March 1, 1990, the Board's staffing had reached 51 full-time employees. Despite a State Personnel Board (SPB) requirement that each agency or department with 50 or more full-time employees establish an effective affirmative action program to achieve full representation for minorities and women, as of November 28, 1990, the Board had not yet developed such a program. However, on December 28, 1990, CHRBR submitted an affirmative action plan to SPB; the plan was approved by SPB on February 20. OAG noted that CHRBR has eleven positions classified as supervisory or managerial; of those positions, three are held by women and two are held by ethnic minorities (both Asians). OAG noted that the establishment of an affirmative action plan should allow CHRBR to formalize methods for maintaining and increasing the number of women and minority employees working for the Board.

Finally, OAG reviewed the status of recommendations it made in February 1988 to improve CHRBR's control over its regulatory activities. OAG stated that CHRBR had implemented five of OAG's eight previous recommendations and



REGULATORY AGENCY ACTION

plans to implement some or all of the remaining three recommendations.

LEGISLATION:

AB 834 (Floyd), as introduced February 27, would require CHRB to adopt regulations specifying the types of wagers and conventional or exotic parimutuel pools authorized by law, and would further provide that these regulations are not subject to certain provisions of the Administrative Procedure Act. This bill is pending in the Assembly Governmental Organization Committee.

AB 1782 (Floyd), as introduced March 8, would require CHRB to establish standards governing the uniformity and content of racetrack facilities, and to designate a steward at all horse racing meetings to be responsible for maintaining safety standards. This bill would also prohibit the issuance of a license to a track unless the track has been inspected by the Board within thirty days prior to the date of application for the license, and has been approved by the Board as conforming to the Board's specified racetrack safety standards. This bill is pending in the Assembly Governmental Organization Committee.

AB 507 (Floyd), as introduced February 13, would create the California Horseracing Industry Commission and prescribe its membership; the Commission would be responsible for promoting the horse racing industry and for conducting market research related to horseracing. The bill would authorize the Commission to establish and levy assessments and authorize the expenditure of those funds for purposes of carrying out the provisions of the bill. This bill is pending in the Assembly Governmental Organization Committee.

AB 520 (Floyd). Existing law requires CHRB to maintain a current listing of its temporary and permanent licensees, and to include in the listing certain identifying information as to each licensee. As introduced February 13, this bill would require the Board to also include the licensee's telephone number in the listing. This bill would also require the Board to provide a copy of the listing to various governmental entities or racing associations, and require the Board to require reimbursements for its costs of providing the information. This bill is pending in the Assembly Governmental Organization Committee.

AB 786 (Floyd), as introduced February 26, would require CHRB to establish a coordinated and uniform policy on the use of fair racing facilities for the training and stabling of horses during periods in which the facilities are not conducting

live racing, and prohibit the Board from approving any racing meeting at a fair facility or issuing a license to a fair facility if the facility does not comply with that policy. This bill is pending in the Assembly Governmental Organization Committee.

AB 832 (Floyd), as introduced February 27, would prohibit CHRB from granting a trainer's license unless the applicant's liability for workers' compensation is secured. This bill is pending in the Assembly Governmental Organization Committee.

AB 1004 (Floyd). Under existing law, CHRB may authorize an association conducting a racing meeting in this state to accept wagers on the results of out-of-state feature races having a gross purse of at least \$100,000 during the period the association is conducting the racing meeting on days when live races are being run. As introduced March 4, this bill would limit the application of that provision to an association conducting a thoroughbred racing meeting. This bill would also permit the Board to authorize an association conducting harness and quarter horse racing meetings in this state to accept wagers on the results of any out-of-state feature quarter horse and harness races, on days when live races are being run without any limitation as to the amount of the purse. This bill is pending in the Assembly Governmental Organization Committee.

AB 1441 (Cortese), *AB 1623 (Kelley)*, *AB 1786 (Floyd)*, and *AB 1887 (Harvey)*. Existing law, which is to be repealed on January 1, 1992, distributes the funds deducted from wagers at satellite wagering facilities in the northern zone in a different manner than in the central and southern zones. Upon the repeal of these provisions, another provision which becomes operative on January 1, 1992, requires that the total percentage deducted from wagers at satellite wagering facilities in all zones be distributed in the same manner.

AB 1441 (as introduced March 7), *AB 1623* (as introduced March 8), *AB 1786* (as introduced March 8), and *AB 1887* (as introduced March 8), would each repeal the provision which becomes operative on January 1, 1992, and would continue the existing law beyond January 1, 1992, by deleting that repeal date.

AB 1441 would also require each association conducting a live meeting within the northern zone to retain a prescribed surcharge from the winning wagers at satellite wagering facilities and to distribute an unspecified percentage of the revenues from the surcharge to the association as a commission, the

horsemen participating at the racing meeting, and the operator of the satellite wagering facility where the wagers were placed. These bills are all pending in the Assembly Governmental Organization Committee.

SB 365 (Dills) and *AB 299 (Floyd)*. Existing law authorizes the Board to allocate racing weeks of four days for quarter horse racing in the northern zone, if the association and the organization representing the horsemen agree to that allocation. *SB 365* (as introduced February 14) and *AB 299* (as introduced January 23) would each, subject to that agreement, authorize the Board to allocate racing weeks of four days for quarter horse racing in the central and southern zones during either or both of the weeks in which December 25 and January 1 occur in any year. *SB 365* is pending in the Senate Governmental Organization Committee; *AB 299* is pending in the Assembly Governmental Organization Committee.

SB 729 (Maddy). Existing law permits CHRB to authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility on races conducted in the northern zone at its racetrack enclosure, subject to certain conditions. As introduced March 6, this bill would delete the requirement that the wagering at the satellite wagering facility be on races conducted in the northern zone and authorize the Board to permit a northern zone association to operate satellite wagering facilities at its racetrack enclosure and at up to three sites other than fairgrounds which are located within the northern zone, if the specified conditions are met. This bill is pending in the Senate Governmental Organization Committee.

SB 944 (Maddy). Existing law requires that a specified percentage of the amount handled in a wagering pool by the satellite wagering facility be distributed to the state as license fees. As introduced March 8, this bill would instead require that this percentage of the amount handled be distributed to the racing association for payment to the state as license fees, thus imposing the responsibility for the payment of the state license fee on the racing association. This bill is pending in the Senate Governmental Organization Committee.

AB 228 (Clute), as introduced January 10, would delete an existing provision requiring applicants for steward positions to have completed high school or its equivalent. This bill is pending in the Assembly Governmental Organization Committee.



SB 168 (Hill), as introduced January 14, would make it unlawful for any person to sell or offer for sale any horse or foal bred for horse racing if the person knows or has reason to know that steroids have been administered to the horse or foal, and that the horse or foal is or will be entered in a horse race. This bill is pending in the Senate Governmental Organization Committee.

AB 244 (Floyd). Existing law requires CHRB to provide a method to estimate the aggregate handle for each association's proposed meeting and provides that estimates may be revised during the course of a meeting. As introduced January 14, this bill would authorize an association to revise its estimate for the aggregate handle during the meeting only if CHRB determines that the revision is necessary. This bill is pending in the Assembly Governmental Organization Committee.

AB 326 (Floyd), as introduced January 28, would permit the Board to authorize any association which is licensed to conduct harness or quarter horse racing in Orange County to operate a satellite wagering facility, for the purpose of conducting satellite wagering on night harness or quarter horse races conducted in the northern zone. This bill is pending on the Assembly floor.

AB 385 (Mountjoy). Under existing law, the Board is authorized to allocate twelve weeks of harness racing to the 22nd District Agricultural Association, but restricts the allocation of those weeks to the months of January, October, November, and December. This bill would delete that restriction. This bill is pending in the Assembly Governmental Organization Committee.

SB 204 (Maddy), as introduced January 18, would delete an existing provision which states that no California State Lottery game may include a horse racing theme. This bill is pending in the Senate Governmental Organization Committee.

The following is a status update on bills described in detail in CRLR Vol. 11, No. 1 (Winter 1991) at pages 142-43:

AB 159 (Floyd), as introduced December 19, would require CHRB to adopt regulations to eliminate the drug-ging of horses entered in horse races, and to adopt regulations on the medication of racehorses sold at horse sales or horse auction sales sufficient to protect the horses, owners, and the general public. This bill is pending in the Assembly Governmental Organization Committee.

AB 160 (Floyd), as introduced December 19, would revise and recast the provisions relating to CHRB's authority to regulate stewards and racing officials, and would cre-

ate a stewards' committee to advise the Board on matters relating to stewards and racing officials. This bill would also repeal the existing requirement that the Board designate a steward at the track where a meeting is being conducted to monitor the satellite wagering activities at the track and at all facilities receiving the signal. Instead, the Board would be required to set forth requirements for the position of satellite facility supervisor for all satellite wagering facilities operated by the state or on public land. This bill is pending in the Assembly Governmental Organization Committee.

SB 31 (Maddy), as introduced December 3, would prohibit the administration by any means of any substance to a horse entered to race in a horse race within 72 hours of the race in which the horse is entered, unless CHRB has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. This bill passed the Senate on March 14 and is pending in the Assembly Governmental Organization Committee.

RECENT MEETINGS:

At its January 25 meeting, the Board designated Cornell University and the Iowa State Racing Chemist Laboratory as the laboratories which are authorized under Business and Professions Code section 19577 to accept samples from the horsemen's split sample program.

At its February 22 meeting, the Board discussed the enforcement of regulatory section 1468. The rule requires a racing association to provide the services of an ambulance and properly qualified attendants at all times during the running of races at its meeting, or during the hours the association permits the use of its race course for training purposes. For several years, the Board has allowed racing associations to contract with an ambulance company to provide on-call service rather than requiring the ambulance service to be physically at the track. The on-call service is supposed to provide emergency care within five minutes of being called. On several occasions, however, an ambulance service did not arrive for more than 20 minutes after a rider was injured. Due to the serious risks involved, the Board concluded that section 1468 should be strictly enforced, and that racing associations must now provide ambulance service at the track at all times during the running of races at its meeting, and during the hours the association permits the use of its race course for training.

Also in February, the Board discussed a request to amend regulatory section 1970, which prohibits an owner, autho-

rized agent, or trainer with a horse entered in a race from wagering on any other horse competing in that race, except in races with exacta wagering where a wager may be made on a competing horse to finish second. The Board was asked to amend section 1970 to exclude from the prohibition other types of exotic wagering, such as pick-six and pick-nine. The amendment request was referred to the Parimutuel Committee for recommendations and proposed language.

Also at its February 22 meeting, the Board granted a request from Pacific Racing Association (the association that provides thoroughbred racing at Golden Gate Fields) to amend its application and license to provide a seven-week Thursday afternoon twilight program with a first post-time of approximately 3:30 P.M.

FUTURE MEETINGS:

July 26 in Del Mar.
August 30 in Del Mar.
September 27 in San Mateo.
October 25 in Monrovia.
November 15 in Los Angeles.
December 13 in Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings
(916) 445-1888

Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive