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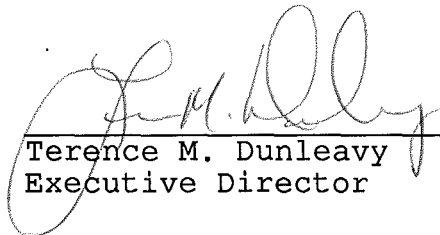
APR 10 1990
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STATE OF WISCONSIN)
)
WISCONSIN RACING BOARD) SS CLEARINGHOUSE RULE 89-49

I, Terence M. Dunleavy, Executive Director of the Wisconsin Racing Board and custodian of the official records, certify that the annexed rules, relating to the operation of pari-mutuel racing in Wisconsin, were duly approved and adopted by this Board on October 27, 1989.

I further certify that this copy has been compared by me with the original on file in this Board and that it is a true copy of the original, and of the whole original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 150 East Gilman, Room 1000, in the City of Madison this 10th day of April, 1990.



Terence M. Dunleavy
Executive Director

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ORDER OF THE WISCONSIN RACING BOARD CREATING RULES

The Wisconsin Racing Board proposes an order to create Chapter RACE 1 and to create Chapter RACE 5, relating to the licensing of on track pari-mutuel wagering in Wisconsin, as permanent rules.

ANALYSIS BY THE WISCONSIN RACING BOARD

Statutory Authority: s. 562.02(1)(a) and s. 562.05(2), Stats.

Statutes Interpreted: s. 562.02(1)&(4) and s. 562.05(1)-(11), Stats.

1) RACE 5.03 sets forth the parameters for filing an application with the Wisconsin Racing Board for licensing under s. 562.05(1)(a) and (1)(b), Stats. In addition, this rule establishes a time period within which the Wisconsin Racing Board will review and make a determination on the licensing application as required by s. 227.116, Stats.

2) RACE 5.04 sets forth the requirements that an Applicant for license under 562.05(1) file the appropriate application with the Board on forms established by the Board. In addition, the rule sets forth the requirements for full and accurate disclosure of all information requested, using the "best efforts" of the Applicant, as defined, in RACE 1.01(2). The rule sets forth the right of the Board to request any and all supporting documents used in the preparation of the application which, in conjunction with Rule RACE 5.12, allows the Board to acquire any additional information it deems relevant to a licensing determination.

3) RACE 5.05 sets forth the administrative requirements for submitting the application to the Board for consideration. The rule also sets forth the required application fees for filing. The fees were established in conjunction with the fees set for investigation per RACE 5.13 and fees for the issuance of licenses per RACE 5.18, at levels sufficient to cover anticipated costs of processing, reviewing and ruling upon a pari-mutuel application. The fees established are in accordance with industry expectations and, in fact, are significantly less than other recently created pari-mutuel jurisdictions.

4) RACE 5.06 establishes the criteria by which the Board will judge each application submitted for pari-mutuel license under s. 562.05(1)(a). The criteria reflect considerations used in most

other pari-mutuel jurisdictions for determining the suitability of an Applicant for a pari-mutuel license. The specific mandate of s. 562.05(2) directs the Board to establish these criteria. Each criteria used has a specific relevance to the overall goal of the Wisconsin Racing Board which is to do everything necessary to ensure the public interest is protected in relation to racing as directed in s. 562.02(1)(a).

5) RACE 5.07 is similar to RACE 5.06 in that it establishes licensing criteria for the issuance of a license under s. 562.05(1)(b) for the management and sponsorship of races. The analysis of this rule is essentially the same as the analysis of RACE 5.06 specified above.

6) RACE 5.08 sets forth the criteria to be considered in allocating available race days to successful licensees. The criteria set forth are standard considerations used in the pari-mutuel industry for determining and establishing the most efficient and economical allocation of available race dates.

7) RACE 5.09 sets forth the requirements for the disclosure of relevant background and personal information about the Applicant and individuals affiliated with the Applicant. This rule enables the Board to conduct thorough investigations of the background and integrity of not only the Applicant but any persons related to the Applicant for purposes of determining the suitability of such Applicant for pari-mutuel license in Wisconsin. The rule establishes the means for compliance with s. 562.05(5)(a)&(b); (5)(c); (7).

8) RACE 5.10 sets forth the mechanism which the Applicants shall use to receive clarifications of the application requirements and the requirements of Chapter 562 and the administrative rules relating thereto. The rule serves the administrative function of establishing one authority as the source and spokesman for the Board's interpretation of the application and rule requirements.

9) RACE 5.11 sets forth the requirement that an Applicant notify the Board of any material change in the information disclosed in its application on a timely basis. The rule creates an affirmative duty of the Applicant to keep the Wisconsin Racing Board informed of any and all information which is relevant to a licensing determination. The rule also allows the Board discretion in whether to consider the information submitted pursuant to this rule. The Board can thereby rule whether such information actually represents an attempt by the Applicant to submit information which was not originally contained in its application or which amends inaccurate or erroneous disclosures.

10) RACE 5.12 gives the Wisconsin Racing Board the unqualified right to seek additional information it considers necessary or relevant to a licensing decision. This rule is particularly important to the Board in order to allow it to require an

Applicant to provide supporting documentation for the disclosures contained in the application.

11) RACE 5.13 sets for the requirement that an Applicant make payment, at the time it submits its application, of fees necessary to conduct the required background checks of the Applicant and related parties. These background checks are required pursuant to s. 562.05(7)(a)-(bg), Stats. The time and expense required to conduct the proper background checks as required by statute is an extremely expensive process, which expense is generally charged back to an Applicant for a pari-mutuel license. The rule also allows the Board to seek additional expense reimbursement from an Applicant in the event the background investigation required of the particular Applicant exceeds the amount originally requested.

12) RACE 5.14 sets forth the parameters under which an Applicant is permitted to make an oral presentation of its application prior to a licensing decision. As required by s. 562.02(1)(am) the Board must hold a hearing prior to any licensing decision. As part of this public hearing, the board determined that it was in the best interest of the pari-mutuel application process to allow an Applicant to make an oral presentation of the application. It allows the Applicant a more direct and meaningful participation in the application review process and is consistent with a fundamental fairness and due process approach to the licensing process.

13) RACE 5.15 sets forth the right of the Wisconsin Racing Board to require the Applicant to commence racing as of the dates disclosed in its application. Generally, the disclosures of an Applicant relating to the commencement of racing is an important factor in determining whether or not an Applicant should receive a license, particularly in an intra-county/competitive situation. It is therefore important that the Board have the ability to require the Applicant to adhere to the construction and completion schedules which the Applicant itself sets in the application. The rule also provides for flexibility in the dates set for completion and commencement of racing for events not within the control of the Applicant. This rule has been developed pursuant to the broad rulemaking authority granted to the Wisconsin Racing Board and after consultation with several other racing jurisdictions in which the timely completion of the facility and commencement of racing was a concern.

14) RACE 5.16 sets forth the administrative process for the review and approval of certain contracts to which a licensee is a party, as mandated by s. 562.02(1)(d), Stats. The rule sets forth various criteria by which the contracts submitted will be analyzed including the extent to which the contract may affect the integrity of pari-mutuel racing or otherwise jeopardize the security of the facility. Paragraph 3 of RACE 5.17 seeks to define and give meaning to s. 562.05(3) by closing certain avenues of potential abuse of the "one person-one license"

restriction contained in s. 562.05(3). Finally, the rule sets forth the right of the Board to revoke or otherwise suspend a license in the event the licensee attempts to receive or provide goods and services pursuant to a contract which was not received the required approval of the Wisconsin Racing Board.

15) RACE 5.17 establishes the requirements for a licensee to transfer its license once it has been issued. This rule is necessary to protect the public health, welfare and safety, as well as the integrity of pari-mutuel racing in Wisconsin. The background, integrity and experience of the Applicant for a license is of critical importance to the Board in determining the eligibility of an Applicant for license initially. Such factors should be no less important in situations where the licensee wishes to transfer its license to a person or entity heretofore unknown to the Wisconsin Racing Board. This rule allows the Board to conduct similar review and analysis of the proposed transferee prior to the transfer of any pari-mutuel license.

16) RACE 5.18 sets forth the parameters for acceptance of a license award and payment of the required license fee. The fees for the various licenses involved were set after significant consultation with other racing jurisdictions and review of the budgetary requirements for conducting the licensing process. As mandated by s. 562.05(3wr), the first license issued for a particular location under s. 562.05(1)(a) is a five-year license. The fee for such license as reflected in RACE 5.19(1)&(2) is \$300,000 payable in 5 installments. Subsequent to the initial five year licensing period an annual renewal fee of \$50,000 is required. A license issued under s. 562.05(1)(b) is for a one year period and the fee associated with such license is based upon the number of racing performances awarded in such license.

17) RACE 5.19 is critical to the effective administration of the licensing process and the general, overall integrity of pari-mutuel racing in Wisconsin. This rule places a burden upon the Applicant to provide information which is truthful, accurate and not misleading. The Applicant is the unconditional insurer of the contents of the application. This not only allows the Board to reject an application if untruthful and misleading information is contained in the application but also allows the Board to revoke or suspend a license in the event it is later revealed that any information submitted to the Board by an Applicant is false or misleading.

18) RACE 5.20 sets forth the affirmative requirement of the Applicant that it at all times comply with all statutes, rules or regulations relating to pari-mutuel racing and wagering. This is a condition to the issuance and continued validity of any license held.

19) RACE 5.21 is a companion rule to the Rule RACE 5.16 in that it requires an Applicant for license to adhere to the plans and specifications for its facility and racing schedule as disclosed

and represented in its application. The representations made by an Applicant in its application relating to the size, type of facility and costs of development are an important factor in the determination of whether to grant such Applicant a license. This rule allows the Board to impose a requirement that the facility be built as proposed, without alteration, unless the Board approves such alteration or amendment to the development plan. This will insure that the Applicant will build the facility upon which a license was granted and not scale the facility back after it successfully receives a license. This rule was developed after discussing this potential problem with other racing jurisdictions.

20) RACE 5.22 was developed in accordance with s. 562.05(4), Stats., wherein the Applicant is required to submit a performance bond along with its application to manage and sponsor races under s. 562.05(1)(b). The rule also allows the Board to require an Applicant to file a performance/construction bond to insure completion of the facility sought to be licensed under s. 562.05(1)(a). This allows some additional protection to the pari-mutuel industry in Wisconsin, by better insuring that the facilities which are licensed will be built as proposed.

This concludes the analysis of Chapter RACE 1 and Chapter RACE 5.

SECTION 1. Chapter RACE 1 and Chapter RACE 5 are created to read:

CHAPTER RACE 1

RACE 1.01 DEFINITIONS. The following definitions shall apply in all rules adopted by the Wisconsin racing board unless otherwise indicated:

- (1) "Applicant" means a person or entity who files an application for a license from the board.
- (2) "Best Efforts" means an active and serious attempt which is made in good faith, and goes beyond due diligence, to provide the information required to be disclosed.
- (3) "Board" means the Wisconsin racing board.
- (4) "Parent Corporation" means any corporation which has an ownership interest of 25% or more in another corporation.
- (5) "Race" means any animal race licensed under s. 562.05 (1), Stats.
- (6) "Race Day" means a 24-hour period ending at midnight during a race meet on which races are conducted.
- (7) "Race Meeting" means that period of time, both consecutive and non-consecutive days, for which the applicant has been issued a license under s. 562.05 (1) (b), Stats., by the board to sponsor and manage races on which pari-mutuel wagering is conducted.
- (8) "Race Performance" means a schedule of races of either a matinee or night program conducted on any racing day.
- (9) "Resident of this State" means for purposes of s. 562.05 (3w) (a), Stats.:
 - (a) Any person who is and has been domiciled in this state for at least 1 year immediately prior to the filing of an application for a license under s. 562.05 (1) (a), Stats.
 - (b) Any corporation, partnership, association or other entity which is incorporated or otherwise formed in this state, has its principal place of business in this state, and is and has been actively doing business in

this state for at least 1 year immediately prior to the filing of any application for a license under s. 562.05 (1) (a), Stats.

(10) "Serious Violation" means for purposes of s. 562.05 (5) (a) 5, Stats., any violation which resulted in a sentence of a fine of \$10,000 or more or imprisonment for 9 months, or both.

(11) "Year" means a calendar year.

CHAPTER RACE 5

LICENSURE

RACE 5.01 AUTHORITY. Sections 562.02 (1) (a) and 562.05 (2), Stats., authorize the board to adopt rules relating to the issuance of and qualifications for a license to conduct racing and on-track pari-mutuel wagering activities.

RACE 5.02 PURPOSES. The purposes of this chapter are as follows:

(1) To ensure that the public health, welfare and safety is protected in relation to racing.

(2) To establish application and licensure criteria for the issuance of licenses to conduct activities relating to racing and pari-mutuel wagering.

(3) To ensure that the process for the issuance of licenses for activities relating to racing and pari-mutuel wagering is fair and equitable.

RACE 5.03 TIME FOR FILING AND APPROVAL OF APPLICATIONS FOR LICENSE.

(1) Any person or entity wishing to own and operate a race track at which pari-mutuel wagering is conducted under s. 562.05 (1) (a), Stats., which person or entity has not previously been licensed, shall file an application as set forth in s. RACE 5.04 with the board on or after September 15 and not later than October 15 of any calendar year or by such other date as the board may declare during a meeting of the board. The board may, in its discretion, determine that no applications for license pursuant to 562.05 (1) (a) or (b), Stats., will be accepted for any given period.

(2) Any person or entity wishing to sponsor or manage any race on which pari-mutuel wagering is conducted and which is not located at a fair under s. 562.05 (1)(b), Stats., which person or entity has not previously been licensed, shall file an application as set forth in s. RACE 5.04 with the board on or after September 15 and not later than October 15 of any calendar year or by such other date as the board may declare. The board may, in its discretion, determine that no applications for license pursuant to 562.05 (1)(a) or (b), Stats., will be accepted for any given period.

(3) Promptly after an application has been filed, the director shall deliver the application to the board for review. After review and investigation of each application by the board and after each applicant has had the opportunity to make an oral presentation as provided in s. RACE 5.14, the board shall, within 150 days of filing, make a final determination and ruling on each application.

RACE 5.04 APPLICATION FORM AND AFFIDAVIT.

(1) An applicant for a license under s. 562.05 (1)(a) or (b), Stats., shall file with the board an affidavit and application and any exhibits thereto, in the form and manner prescribed by the board and on forms furnished by the board.

NOTE: Application and related forms are available at the board's office, P. O. Box 7975, Madison, WI 53707-7975, or by calling 608/267-3291.

(2) The applicant shall use best efforts, to provide all information required to be disclosed in the application. In the event an applicant is unable, despite best efforts, to provide the information required, the applicant shall fully explain and document to the satisfaction of the board, its inability to provide the information.

(3) The applicant shall provide only information relevant to disclosures requested by the board.

(4) Upon request of the board or its agents, the applicant shall provide copies of any documents used in the preparation of its application.

RACE 5.05 APPLICATION SUBMISSION. An applicant for a license under s. 562.05 (1)(a) and (b), Stats., shall submit to the board's office not later than the time and dates specified in s. RACE 5.03:

(1) All documents which are part of its application as a single assemblage and sequentially numbered, including exhibits, with each exhibit properly identified.

(2) In the event an applicant for the ownership and operation of a race track under s. 562.05 (1)(a), Stats., at a particular location is not also an applicant for a license under s. 562.05 (1)(b), Stats., for the same location, the applicant shall file as part of its application under s. 562.05 (1)(a), Stats., a true and correct copy of any agreements for the sponsorship and management of races to be conducted at such location with a person who is licensed or is an applicant for a license under s. 562.05 (1)(b), Stats., for that location.

(3) In the event an applicant for the sponsorship and management of any race under s. 562.05 (1)(b), Stats., at a particular location is not also an applicant for a license under s. 562.05 (1)(a), Stats., for the same location, the applicant shall file as part of its application under s. 562.05 (1)(b), Stats., a true and correct copy of any agreements for the sponsorship and management of any race with a person who is licensed or is an applicant for a license under s. 562.05 (1)(a), Stats., for that location.

(4) A letter of transmittal to the board and one manually signed, and 15 copies of the application.

(5) A cashiers or certified check payable to the board as a non-refundable application fee in the following amounts:

<u>Type of License Applied For</u>	<u>Fee</u>
Application Under 562.05 (1)(a)	\$25,000
Application Under 562.05 (1)(b)	\$25,000
Joint Application Under 562.05 (1)(a) & (b)	\$45,000

RACE 5.06 OWNERSHIP AND OPERATION LICENSING CRITERIA. The board may issue a license under s. 562.05 (1)(a), Stats., if the board determines that the applicant meets all of the requirements under ch. 562 Stats.; and that on the basis of all the facts before it:

(1) The applicant is qualified and financially able to operate a race track.

(2) At least 51% of the ownership interest in the applicant is held by one or more persons or entities who are residents of this state.

(3) The race track will be operated in accordance with all applicable laws and rules.

(4) The appropriate governing body has approved the race track location as required by s. 562.05 (3r), Stats.

(5) The issuance of a license will not adversely affect the public health, safety and welfare.

(6) In making the required determinations before licensure under s. 562.05 (1)(a), Stats., the board ~~may~~ shall consider the following criteria and any other indices which it considers important or relevant to its determination of whether an applicant is qualified to hold a license under s. 562.05 (1)(a), Stats., as long as the same indices are considered with regard to all applicants, including without limitation the following:

(a) The integrity of the applicant, its partners, directors, officers, policymakers, managers, owners, directly or indirectly, of any equity security or other ownership interest in the applicant, including:

1. Criminal record.
2. Whether a party to litigation over business practices, disciplinary actions over a business license or permit or refusal to renew a license or permit, proceedings in which unfair labor practices, discrimination, or government regulation of pari-mutuel wagering was an issue or bankruptcy proceedings.
3. Failure to satisfy judgments, orders or decrees.
4. Delinquency in filing of tax reports or remitting taxes.

(b) The quality of physical improvements and equipment proposed or existing in the applicants facility, including:

1. Race track or tracks.
2. Kennels and kennel compound.
3. Stables and stable area.
4. Detention barn.
5. Paddock.
6. Jockeys' and drivers' quarters.
7. Grandstand.
8. Totalisator equipment.
9. Parking.
10. Access by road and public transportation.

11. Perimeter fence.
12. Other security improvements and equipment.
13. Starting, timing, photo finish, photo-patrol or video equipment.
14. Board work areas.
15. Concessions areas.
16. Pari-mutuel management areas

(c) The schedule for completion of facility.

(d) The financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully, including:

1. Ownership and control structure.
2. Amounts and reliability of development costs.
3. Certainty of site acquisition or lease.
4. Current financial condition.
5. Sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment.
6. Provisions for cost overruns, non-receipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity.
7. Feasibility of financial plan.

(e) The status of governmental actions required by the applicant's facility, including:

1. Necessary road improvements.
2. Necessary public utility improvements.
3. Required governmental approvals for development, ownership and operation of the facility.
4. Acceptance of any required environmental assessment and preparation of any required environmental impact statement.

(f) The management ability of the applicant, including:

1. Qualifications of managers, consultants, and other contractors to develop, own, or operate a pari-mutuel facility.
2. Security plan.
3. Plans for human and animal health and safety.
4. Marketing promotion and advertising plans.
5. Concession plan.
6. Personnel training plan.
7. Equal employment and affirmative action plans.

(g) Whether applicant is also a licensee or applicant for a license under s. 562.05 (1)(b), Stats., to manage and sponsor races at the facility for which the applicant seeks a license under s. 562.05 (1)(a), Stats., and if not, whether the applicant has a valid agreement for the sponsorship and management of races with another person who is licensed or an applicant for a license under s. 562.05 (1)(b), Stats., for that facility.

(h) For purposes of determining whether any applicant is attempting to circumvent the prohibition against holding more than one license issued under s. 562.05 (1)(a), Stats.:

1. Whether the applicant or any of the applicant's officers or directors, or any holder of 5% or more of the ownership interest in the applicant is also an applicant for a license under s. 562.05 (1)(a), Stats., for any other location in this state.
2. Whether any entity in which the applicant or any of the applicant's officers or directors, or any holder of 5% or more of the ownership interest in the applicant, has an ownership interest of more than 5%, is also an applicant for a license under s. 562.05 (1)(a), Stats., for any other location in this state.
3. Whether any entity which is a parent corporation of any holder of 5% or more of the ownership interest in the applicant is also an applicant, for a license under s. 562.05 (1)(a), Stats., for any other location in this state.

(i) The compliance with applicable statutes, charters, ordinances or regulations.

(j) The efforts to promote, develop and improve the racing industry in Wisconsin and educate the public with respect to pari-mutuel wagering.

(k) The impact of facility, including:

1. Employment created, purchases of goods and services, public and private investment and taxes generated.

2. Ecological impact.

3. Social impact.

4. Cost of public improvements.

5. Any other indices related to the impact of the proposed facility which the board considers important or relevant to its determination and which are not inconsistent with s. 562.05 (2m) and (3wmr), Stats., as long as the same indices are considered with regard to all applicants.

(l) The extent of public support or opposition to racing and pari-mutuel wagering at the location sought to be licensed.

(m) The effects of competition, including:

1. Number, nature and relative location of other licenses.

2. Minimum and optimum number of racing days sought by the applicant.

3. Any other indices relating to competitive effect which the board considers important or relevant to its determination and which are not inconsistent with s. 562.05 (2m) and (3wmr), Stats., as long as the same indices are considered with regard to all applicants.

(n) The board may consider any other information which the board considers important or relevant to a proper determination by the board.

RACE 5.07 SPONSORSHIP AND MANAGEMENT LICENSING CRITERIA.

The board may issue a license under s. 562.05 (1) (b), Stats., if the board determines that the applicant meets all

the requirements of ch. 562 Stats., and that on the basis of all facts before it:

- (1) The applicant is fit to sponsor and manage racing.
- (2) The race track will be operated in accordance with all applicable laws and rules.
- (3) Issuance of a license will not adversely affect the public health, safety and welfare.
- (4) In making the required determinations before licensure under s. 562.05 (1)(b), Stats., the board ~~may~~ shall consider the following criteria and any other indices which it considers important or relevant to its determination of whether an applicant is qualified to hold a license under s. 562.05 (1)(b), Stats., as long as the same indices are considered with regard to all applicants, including without limitation the following:

(a) The integrity of the applicant, its partners, directors, officers, policymakers, managers, owners, directly or indirectly, of any equity security, or other ownership interest in the applicant, including:

1. Criminal record.
2. Whether a party to litigation over business practices, disciplinary actions over a business license or permit or refusal to renew a license or permit, proceedings in which unfair labor practices, discrimination, or government regulation of pari-mutuel wagering was an issue or bankruptcy proceedings
3. Failure to satisfy judgments, orders or decrees
4. Delinquency in filing of tax reports or remitting taxes

(b) The types and variety of pari-mutuel horse or greyhound racing which applicant seeks to offer.

(c) The quality of physical improvements and equipment proposed or existing applicant will use, including:

1. Race track or tracks.
2. Stabling.
3. Grandstand.
4. Detention barn.

5. Paddock, jockeys' and drivers' quarters and equipment.
6. Totalisator equipment.
7. Parking.
8. Access by road and public transportation.
9. Perimeter fence.
10. Other security improvements and equipment.
11. Starting, timing, photo finish, and photo-patrol or video equipment.
12. Board work areas.
13. Concessions areas.
14. Pari-mutuel management areas.

(d) Financial ability to sponsor and manage pari-mutuel racing successfully, including:

1. Ownership and control of structure.
2. Terms and conditions of applicant's authorization to use facility.
3. Current financial condition.
4. Sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment.
5. Provision for cost overruns, non-receipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity.
6. Feasibility of financial plan.

(e) Status of necessary government approvals and compliance with applicable statutes, charters, ordinances and regulations.

(f) Management ability of the applicant, including:

1. Qualifications of managers, consultants and other contractors to manage pari-mutuel racing.
2. Security plans.
3. Plans for human and animal health and safety.

4. Marketing, promotion and advertising plans.
5. Plans for conducting racing.
6. Plans for purses.
7. Plans for conducting various types of pari-mutuel wagering.
8. Concessions plan.
9. Plans for personnel training.
10. Plans for equal employment and affirmative action.

(g) Whether applicant is also a licensee or applicant for a license under s. 562.05 (1) (a), Stats., for the facility at which the applicant seeks a license under s. 562.05 (1) (b), Stats., and if not, whether the applicant has a valid agreement for the sponsorship and management of races with another person who is licensed or an applicant for a license under s. 562.05 (1) (a), Stats., for such facility.

(h) For purposes of determining whether any applicant is attempting to circumvent the prohibition against holding more than one license issued under s. 562.05 (1) (b), Stats.,:

1. Whether the applicant or any of the applicant's officers or directors, or holders of 5% or more of the ownership interest in the applicant is also an applicant for a license under s. 562.05 (1) (b), Stats., for any other location in this state.

2. Whether any entity in which the applicant or any of the applicant's officers or directors, or holders of 5% or more of the ownership interest in the applicant, has an ownership interest of more than 5%, is also an applicant for a license under s. 562.05 (1) (b), Stats., for any other location in this state.

3. Whether any entity which is a parent corporation of any holder of 5% or more of the ownership interest in the applicant, is also an applicant for a license under s. 562.05 (1) (b), Stats., for any other location in this state.

(i) Efforts to promote, develop and improve the racing industry in Wisconsin and educate the public with respect to pari-mutuel wagering.

(j) Economic impact, including:

1. Employment created.
2. Purchases of goods and services.
3. Tax revenues generated.
4. Any other indices related to economic impact which the board considers important or relevant to its determination and which are not inconsistent with s. 562.05 (2m) and (3wmr), Stats., as long as the same indices are considered with regard to all applicants.

(k) Extent of public support or opposition to racing and pari-mutuel wagering at the location sought to be licensed.

(l) Effects of competition, including:

1. Number, nature and relative location of other licenses.
2. Minimum and optimum number of racing days sought by the applicant.
3. Any other indices relating to competitive effect which the board considers important or relevant to its determination and which are not inconsistent with s. 562.05 (2m) and (3wmr), Stats., as long as the same indices are considered with regard to all applicants.

(m) The board may consider any other information which the board considers important or relevant to a proper determination by the board.

RACE 5.08 ASSIGNMENT OF RACE MEETINGS. In determining the assignment of race meetings to licensees under s. 562.05 (1)(b), Stats., the board shall consider factors relating to the economic and practical feasibility of conducting race meetings at various tracks. Factors to be considered shall include, without limitation:

- (1) The types and dates of race meetings being held elsewhere, both within and outside this state
- (2) The effects that various types of pari-mutuel racing have on one another.
- (3) The quality of racing provided at various tracks.

- (4) Past dates.
- (5) Past performance of the licensee.
- (6) Whether the licensee has complied with all applicable laws and rules relating to racing.
- (7) Whether the assignment will maximize revenues to the state.
- (8) Whether the assignment will adversely affect the public health, welfare and safety.
- (9) Stability of dates.
- (10) The stability of the racing circuit.

RACE 5.09 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a license under s. 562.05 (1)(a) or (b), Stats., the applicant shall include the following with respect to each individual required to be identified in the application form, or otherwise required to be identified by this chapter or s. 562.05 (5), Stats., as an applicant, partner, director, officer, or owner, directly or indirectly, of 5% of any equity security or other ownership interest in the applicant and such other individuals as shall be required by the board:

(1) Full name, business and residence addresses and telephone numbers, list last 5 residence addresses, date of birth, place of birth, and 2 references.

(2) An authorization for release of personal information, in the form prescribed by the board, signed by the individual and providing that such individual:

(a) Authorizes a review by and full disclosure to any agent of the Wisconsin department of justice, division of criminal investigation of all records concerning the individual, relating to the information provided in the application form, whether the records are public, non-public, private or confidential.

(b) Recognizes the information reviewed or disclosed may be used by the state of Wisconsin, its employes, the board, board staff and agents of the board, to determine the signer's qualifications for a license under s. 562.05 (1)(a) or (b), Stats.

(c) Releases authorized providers and users of the information from any liability under state or federal data privacy laws.

RACE 5.10 CLARIFICATION OF LICENSE APPLICATION.

REQUIREMENTS. The director or director's designee shall clarify license application requirements upon the written request of a potential applicant. The director may consult counsel, staff or members of the board, but shall respond to clarification requests promptly upon the receipt of the request, either orally or in writing. Interpretations of application requirements by any other person shall not be binding on the board.

RACE 5.11 CHANGES IN LICENSE APPLICATIONS.

(1) An applicant shall furnish written notification to the board of any material change in the information originally submitted in its application. This notification shall be made within 5 days following the event of such change and provide details to the degree of specificity required in the application.

(2) Notwithstanding an applicant's timely notification of a material change in the information submitted in its application, the board may refuse to consider any substantive amendment to an application after the initial submission of the application, provided, however, that nothing shall prevent the board from considering amendments to an application which are made by the applicant under s. 562.05 (5) (b) 4, Stats.

RACE 5.12 ADDITIONAL INFORMATION. The board may require any additional information it considers necessary or relevant from any applicant to clarify, support, or otherwise explain information contained in the applicant's application under s. 562.05 (1) (a) or (b), Stats., for the purpose of ruling on a license application.

RACE 5.13 INVESTIGATION FEE FOR LICENSES. An applicant for a license under s. 562.05 (1) (a) or (b), Stats., shall submit to the board, at the time of application, a certified check or bank draft payable to the order of the board in the amount of \$10,000 to cover the costs of the investigation mandated by s. 562.05 (7) (a), Stats. If costs of the investigation exceed \$10,000, the applicant shall remit the amount of the difference by certified check or bank draft within ten (10) days after receipt of an invoice from the board. An individual or other entity which is simultaneously applying for licenses under both s. 562.05 (1) (a) and (b), Stats., for the same location, shall submit one \$15,000 investigation fee. If costs of the investigation exceed \$15,000, the applicant shall remit the

amount of the difference by certified check or bank draft within ten (10) days after receipt of an invoice from the board.

RACE 5.14 ORAL PRESENTATION BY APPLICANT. The board shall provide the applicant for a license under s. 562.05 (1) (a) or (b), Stats., an opportunity to make an oral presentation of its application to the board prior to the board ruling on the application. The presentation shall be made by an applicant, under oath, at a session of the board. The presentation shall be limited to the information contained in the applicant's application. The board is not required to afford an applicant more than one opportunity to make an oral presentation on the same application prior to a board determination, provided, however, the board may require an applicant to appear before the board to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a license.

RACE 5.15 DELAY IN COMPLETION OF RACE TRACK FACILITY. Failure of a licensee under s. 562.05 (1) (a), Stats., to begin the types of racing authorized under the license as specified by the board under s. 562.05 (3wt), Stats., shall be cause for the license to be void as provided in s. 562.05 (3wt), Stats. The board may re-specify a later date for the commencement of the types of racing authorized and determine that the license shall not be void if the licensee proves that any delay arose out of causes beyond the control and without the fault of negligence of the licensee, its contractors and subcontractors. Such causes may include, but are not restricted to, acts of God or enemies of the United States, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay shall be beyond the control and without fault or negligence of the licensee, its contractors and subcontractors. If the cause of delay is the default of a contractor or subcontractor and if the licensee proves to the satisfaction of the board that the default arose out of causes beyond the control of the licensee, its contractors and subcontractors, the license shall not be void unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time to permit the licensee to meet the completion date.

RACE 5.16 CONTRACTS WITH A LICENSEE; APPROVAL BY BOARD.

(1) Any contract in excess of \$10,000 for the provision of goods and services, including but not limited to concession contracts, entered into by any licensee under s. 562.05 (1),

Stats., shall be subject to the approval of the board. The board shall determine whether the contract may affect the integrity of pari-mutuel racing. Until approved by the board, the contract is not valid or binding on any licensee under s. 562.05 (1), Stats. The board shall, within 45 days after submission of a contract to the board, approve or disapprove the contract and if not acted upon by the board within 45 days after submission, the contract shall be considered approved by the board, unless additional information regarding the contract is requested by the board and action is taken within 30 days of the date of receipt of the additional information. In making a determination that a contract may affect the integrity of racing, the board may consider such factors as it considers relevant including without limitation:

- (a) The value and duration of the contract.
- (b) The extent to which the contractor will be on the premises of the licensee.
- (c) The relationship of the contract to the general security of a facility including opportunity for contact between the contractor and race animals, occupational licensees, or patrons.
- (d) Opportunity for the contractor to influence the management and conduct of pari-mutuel racing.
- (e) Contact with admission, pari-mutuel or concession money.
- (f) Whether the board has reason to believe that the contractor is incompetent, financially irresponsible, or not of good character.

(2) Any contract for \$10,000 or less for the provision of goods and services, including but not limited to concession contracts, entered into by any licensee under s. 562.05 (1), Stats., shall be filed with the board.

(3) A licensee under s. 562.05 (1), Stats., for a particular location may not receive services from another person or entity at such location, if the performance of the services by that person or entity requires a license under s. 562.05 (1), Stats., unless that person or entity is licensed to provide those services at that particular location.

(4) In the event any licensee under s. 562.05 (1), Stats., takes actions or otherwise receive goods and services pursuant to any contract which has not been approved or filed as provided in sub. (1) or (2), or which is not

permitted as provided in sub. (3), the board may suspend or revoke the license held by the licensee.

RACE 5.17 TRANSFERS OF LICENSES. A license issued under s. 562.05 (1)(a) or (b), Stats., is for the benefit of the licensee only, and is applicable only to the location for which the license is issued. The license may not be sold or otherwise transferred and shall terminate upon a substantial change of ownership of the licensee, unless the board has granted prior written approval of the substantial change. The sale, pledge, encumbrance or other transfer of 5% or more of the equity securities or other ownership interest of a partnership, association or corporation holding a license under s. 562.05 (1)(a) or (b), Stats., shall be considered a substantial change of ownership. Any request for approval of a substantial change in ownership shall contain, where applicable, the same information about the proposed transferee as is required to be furnished under s. RACE 5.04. Upon receipt of all information required by the board with regard to a proposed substantial change in ownership, the board shall, within 60 days, make a determination whether to authorize and approve the substantial change in ownership of a licensee.

RACE 5.18 ACCEPTANCE AND PAYMENT OF LICENSE FEE. When the board approves an application for license under s. 562.05 (1)(a) or (b), Stats., or renewal of a license and notifies the applicant of its approval, setting forth the effective date of the license, the dates by which each type of racing shall commence and, if applicable, the number and dates of race performances authorized, the applicant shall, within 10 days after the receipt of the board's notice of approval, file a written acceptance with the board and make payment of the required license fee. The fee shall be payable to the board by certified check or bank draft in the amount required as follows:

(1) A non-refundable fee of \$300,000 for an initial 5 year license issued for any location under s. 562.05 (1)(a), Stats., as provided in s. 562.05 (3wr), Stats., payable \$100,000 upon the filing of written acceptance of the license and \$50,000 on or before January 10 of each of the 4 calendar years thereafter commencing on January 10 of the calendar year immediately following the year in which the license under s. 562.05 (1)(a), Stats., is first issued.

(2) An annual non-refundable fee of \$50,000 for a license issued for any location under s. 562.05 (1)(a), Stats., as provided in s. 562.05 (3wr), Stats., payable upon the filing of written acceptance of the license for each race year following the initial 5 year license period.

(3) An annual non-refundable fee equal to \$125 times the number of race performances authorized in a license issued under s. 562.05 (1) (b), Stats., payable upon the filing of written acceptance of the license.

(4) Failure to comply with the 10 day period for license acceptance and submission of appropriate license fees or to otherwise make payment of license fees when due, shall cause the application for license to be considered withdrawn and of no effect or the license to be suspended or revoked.

RACE 5.19 VALIDITY OF APPLICATION INFORMATION. False or misleading information, omission of required information, or substantial deviation from representations in the application for license under s. 562.05 (1) (a) or (b), Stats., is cause for denial, revocation or suspension of a license or imposition of a fine as provided in s. 562.13, Stats.

RACE 5.20 ENFORCEMENT OF RULES. Each licensee under s. 562.05 (1) (a) and (b), Stats., has a duty to comply with the rules of the board at all times and acknowledge that the rules are a condition under which the licenses are granted.

RACE 5.21 CONSTRUCTION, EXPANSION, REDUCTION, ALTERATION, OR MODIFICATION OF PROPOSED OR EXISTING FACILITY. No licensee under s. 562.05 (1) (a) or (b), Stats., may construct, expand, reduce, alter, or otherwise modify an existing or proposed race track facility after a license has been issued under s. 562.05 (1) (a) or (b), Stats., for that facility, which would result in an increase or decrease of \$10,000 or more in the development costs of the facility as proposed at the time the license was granted or which would cost in excess of \$10,000 at an existing facility, without the prior approval of the board. If a licensee fails to obtain the required approval, the board may revoke or suspend the licensee's license and impose a fine under s. 562.13, Stats.

RACE 5.22 BOND REQUIREMENTS FOR LICENSING.

(1) The board may require an applicant for a license under s. 562.05 (1) (a), Stats., to file with the board as a condition of licensure, a bond payable to the board in an amount sufficient to guarantee the proposed costs of development of the facility sought to be licensed under s. 562.05 (1) (a), Stats. This bond shall be executed by the applicant and a surety company or companies licensed to do business in this state, and conditioned upon the completion of the facility as proposed by the applicant, subject to any

reduction or modification approved by the board pursuant to s. RACE 5.22.

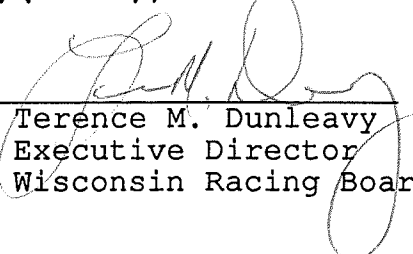
(2) An applicant for a license to sponsor and manage a race under s. 562.05 (1)(b), Stats., shall file with the board at the time the applicant files its application, a bond payable to the board in the amount of \$250,000 for pari-mutuel racing. The board may require the applicant to increase the amount of the bond prior to the board issuing a license under s. 562.05 (1)(b), Stats., to the applicant but in any case not more than the estimated total financial liability of the applicant throughout the race meeting for which the license under s. 562.05 (1)(b), Stats., is requested, as determined by the board. The bond shall be executed by the applicant and a surety company or companies authorized to do business in this state, and conditioned on the payment by the licensee under s. 562.05 (1)(b), Stats., of all fees, taxes and other money due, including animal owner's purses, pay-outs on winning wagers or other amounts payable pursuant to the provisions of the ch. 562 Stats.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in 5.225.22(2)(intro), Stats.

Dated

4/10/90

Agency:


Terence M. Dunleavy
Executive Director
Wisconsin Racing Board



Executive Director
Terence M. Dunleavy

Governor
Tommy G. Thompson

WISCONSIN RACING BOARD

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RECEIVED

April 10, 1990

APR 10 1990

Revisor of Statutes
Bureau

Mr. Gary Paulson
Revisor of Statutes
30 W. Mifflin, Room 702
Madison, WI 53702

re: Clearinghouse Rule 89-49

Dear Mr. Paulson:

Enclosed please find certified copies of the above captioned rules for publication in the Wisconsin Administrative Register.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Michael B. McClure'.

Michael B. McClure
General Counsel

MBM/sls

enclosure