
RACING COMMISSION

Penalty for violating rule or order

- Increases to \$50,000 the maximum penalties that the Racing Commission (RAC) or a horse racing steward or judge may impose on a person who violates a RAC order or rule.
- Allows RAC to impose an additional fine in an amount equal to RAC's costs in hearing the matter or in hearing an appeal of a decision of a steward or judge.

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(R.C. 3769.03 and 3769.091)

The bill increases to \$50,000 the maximum penalty that RAC or a horse racing steward or judge may impose on a person who violates a RAC rule or order. And, the bill allows RAC to impose additional fines in an amount equal to the costs RAC incurs in hearing an enforcement matter.

Under continuing law, RAC may enforce its rules and orders by (1) denying, suspending, or revoking a person's horse racing permit or occupational license, or (2) imposing a monetary fine. The bill increases the maximum fine RAC may impose from \$10,000 to \$50,000, and allows RAC to impose an additional fine to cover the cost of the hearing. RAC fines are deposited in RAC's operating fund.

Additionally, continuing law allows RAC to delegate its enforcement authority to the stewards and judges who oversee local horse racing meetings. Stewards or judges may suspend a license for up to a year, as long as at least two officials concur in the suspension. A steward or judge also may impose a monetary fine. Any penalty imposed by a steward or judge may be appealed to RAC, and the penalty is stayed until RAC decides on the appeal. The bill increases the maximum fine a steward or judge may impose from \$10,000 to \$50,000. If the violator appeals the officials' decision to RAC and loses, the bill allows RAC to impose an additional fine in an amount equal to RAC's costs in hearing the appeal.

By allowing RAC to recover its hearing costs, the bill creates an exception to the Administrative Procedure Act (APA) for RAC proceedings. Current law specifies that any RAC action to issue, deny, suspend, or revoke a participant's license is subject to APA hearing procedures. When an alleged violator prevails against an agency in a hearing held under the APA, in some situations, the APA allows the hearing officer to order that the agency pay the prevailing party's attorney fees. But, the APA does not allow an agency to recover its own attorney fees from any party.¹¹⁶

The bill does not provide any factors for RAC or a steward or judge to follow in determining whether to impose the increased maximum fine on a violator or whether to require

¹¹⁶ R.C. 119.092, not in the bill.

the violator to pay RAC's hearing costs. Depending on the circumstances, a court might consider whether the U.S. Constitution limits RAC's ability to take those actions.

The Fourteenth Amendment prohibits an agency from conditioning a person's right to an administrative hearing, or the person's right to appeal a penalty, based on the person's ability to pay the costs.¹¹⁷ Because the bill does not require RAC to waive the payment of costs if a person is unable to pay, a person facing a RAC hearing might decline to contest a decision, based solely on a concern about being unable to pay. The courts also have held that the Eighth Amendment prohibits an agency from imposing a civil fine on a person when it is "grossly disproportional to the gravity of the [person's] offense."¹¹⁸ Finally, if fine revenue makes up a substantial portion of an agency's operating funds, courts sometimes find that under the Fourteenth Amendment, the agency has an impermissible conflict of interest when it imposes a fine.¹¹⁹

¹¹⁷ *Burns v. Ohio*, 360 U.S. 252 (1959); *Boddie v. Connecticut*, 401 U.S. 371 (1971); and *State v. Cowan*, 103 Ohio St.3d 144 (2004)

¹¹⁸ *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). See also *Timbs v. Indiana*, 586 U.S. 146 (2019) and *State v. O'Malley*, 2022-Ohio-3207 (2022).

¹¹⁹ *Tumey v. Ohio*, 273 U.S. 510, 523 (1927); *Dugan v. Ohio*, 277 U.S. 71 (1928); *Ward v. Monroeville*, 409 U.S. 57 (1972); *Gibson v. Berryhill*, 411 U.S. 564 (1973); *DePiero v. City of Macedonia*, 180 F.3d 770 (6th Cir. 1999); *Cain v. White*, 937 F.3d 446 (5th Cir. 2019); *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019); *Harper v. Professional Probation Services*, 976 F.3d 1236 (11th Cir. 2020); *McNeil v. Community Probation Services*, 2021 U.S. Dist. LEXIS 20151, Case No. 1:18-CV-00033 (M.D. Tenn. February 3, 2021); and *State v. McGowan*, 2022-Ohio-4124 (6th Dist. Ct. App. 2022).