

State of Rhode Island and Providence Plantations  
Department of Business Regulation Commercial  
Licensing Division

Public Notice of Proposed Rule-Making  
Racing and Athletics Regulation 9  
Racing And Athletics Criminal Background Investigation

Pursuant to the provisions of R.I. Gen. Laws §§ 41-1-1, 42-14-17, and 42-35-1 *et seq.*, the Racing and Athletics Section of the Commercial Licensing Division of the Department of Business Regulation ("Department") hereby gives notice of its intent to adopt Racing and Athletics Regulation 9 entitled *Racing and Athletics Criminal Background Investigation* ("R&A 9") as amended after hearing on January 25, 2011.

The purpose of R&A 9 is to establish a process and criteria to be used in determining whether to approve an application for a license or permit or an application to renew a license or permit filed with the Racing and Athletics Section of the Department based on information obtained pursuant to a criminal records check conducted pursuant to R.I. Gen. Laws § 41-1-1.

The amendments reflected in this proposed regulation are the amendments to the Racing and Athletics proposed Regulation 9, which was previously noticed for hearing on January 25, 2011 pursuant to R.I. Gen. Laws § 42-35-3.

R&A 9 is available for public inspection at [www.dbr.ri.gov](http://www.dbr.ri.gov) or in person at the Department of Business Regulation, 1511 Pontiac Avenue, Building 68-1, Cranston, RI 02920 or requested by email to: Neena Sinha Savage at [Neena.Savage@dbr.ri.gov](mailto:Neena.Savage@dbr.ri.gov) or by calling Neena Sinha Savage at (401) 462-9540.

In the development of the proposed adoption of R&A 9 consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. The Department is also filing a Concise Explanatory Statement of the basis for its amendments as well as document highlighting amendments and deletions to R&A 9.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by April 28, 2011 to Neena Sinha Savage, Department of Business Regulation, 1511 Pontiac Avenue, Building 68-1, Cranston, RI 02920, or by email to: [Neena.Savage@dbr.ri.gov](mailto:Neena.Savage@dbr.ri.gov). A public hearing to consider the proposed adoption shall be held on April 28, 2011 at 9:30 a.m. at 1511 Pontiac Avenue, Building 68-1, Cranston, RI 02920 at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462-9540 or TDD 711.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
DIVISION OF COMMERCIAL LICENSING AND RACING & ATHLETICS  
1511 PONTIAC AVENUE  
BUILDINGS 68 AND 69  
CRANSTON, RI 02920

CONCISE EXPLANATORY STATEMENT

RACING AND ATHLETICS REGULATION 9-  
RACING AND ATHLETICS CRIMINAL BACKGROUND INVESTIGATION

The Department of Business Regulation ("Department") hereby proposes to adopt Racing and Athletics Regulation 9, entitled *Racing And Athletics Criminal Background Investigation* ("Regulation" or "Post-hearing Amended Regulation") and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The purpose of R&A 9 is to establish a process and criteria to be used in determining whether to approve an application for a license or permit or an application to renew a license or permit filed with the Racing and Athletics Section of the Department based on information obtained pursuant to a criminal records check conducted pursuant to R.I. Gen. Laws § 41-1-1. The actions and information required by this Regulation are hereby declared to be necessary and appropriate to the public interest.

The amendments reflected in this proposed regulation are the amendments to the Racing and Athletics proposed Regulation 9, which was previously noticed for hearing on January 25, 2011 pursuant to R.I. Gen. Laws § 42-35-3. A redlined version of the Regulation is attached hereto so that the amendments to the proposed Regulation may be viewed and delineated.

There are numerous differences between the text of the Proposed Regulation as published in accordance with R.I. Gen. Laws § 42-35-3 and the Post-hearing Amended Regulation. The changes to the Post-hearing Amended Regulation are delineated in the attached redlined document that delineates all changes between the Proposed Regulation and the Post-hearing Amended Regulation. There were editing changes made to improve content for readability, capitalization of all defined terms, outlining changes, formatting changes, and other self-explanatory amendments.

The Department conducted a hearing on January 25, 2011 and also considered pre-hearing written comments submitted by the American Civil Liberties Union ("ACLU"). Given the substantive changes made to the Post-hearing Amended Regulation, the Department will be providing additional notice and hearing on the amendments.

## RESPONSE TO COMMENTS SUBMITTED BY ACLU

Consistent with the purpose of the Regulation, the Department has delineated a process and criteria in order to ensure that the process and criteria fit the scope of regulatory review for a variety of license and permit types.

With respect to the ACLU's specific comment about the "expansive," "open-ended" nature of the criteria, it should be noted that the Department has limited the scope of the review to information on the CHRI that is relevant to the license or permit sought by the applicant. Additionally, the information on the CHRI will include only those incidents in which a fingerprint was taken by the charging official. This limitation (of only including fingerprint events) will prevent any non-fingerprinting charge from being included from the review.

The ACLU also states that "[a]n arrest not followed by a conviction has no real probative value whatsoever." In the civil context, such as a Departmental administrative process, the burden of proof standard is by a preponderance of the evidence. That is substantially less stringent than the criminal burden of proof of "beyond a reasonable doubt." Therefore, contrary to the ACLU's assertion, a non-conviction criminal issue on the CHRI may be directly relevant to an application for a license or permit because of the differing burdens of proof. Additionally, the process allows for consideration of the relevance of the event to the license or permit sought, an explanation by the applicant, and is limited to only those events in which a fingerprint was taken.

The time frames for consideration in the regulation are taken directly from the application currently used, which has been in place for over five years (and was the result of intense negotiation with the union for the workers at Twin River and Newport Grand). There has been no objection to or complaint regarding the Department's consideration of convictions, arrests, charges, or offenses for the time frames.

The ACLU also requests that the Department set up disqualifying criteria such as those used for assisted living residence employees, teachers, and nursing service agencies. The nature and type of assisted living, teaching, and nursing services sought to be regulated is inherently and substantively different than the issues that are sought to be regulated in the gaming industry. The Departmental process currently in place (and delineated in this Regulation) allows the applicant to explain the negative record and requires the Department to determine the relevance of the record to the license or permit sought, and then allows the applicant to have a hearing on the denial of the application. This process has afforded a more equitable consideration of information than would a process that disqualifies an applicant based on the type of conviction alone. Additionally, there are many types of licenses and permits that will be subject to the review process and a conviction that may disqualify an individual from one type of license or permit may not necessarily disqualify that individual from another type of license or permit. Further, an individual may become licensed even with certain disqualifying criteria if that individual meets the mitigation requirements. It is the Department's position that the process

currently proposed best meets the needs of the applicants and the Department based on the varying types of licenses and permits.

The Department has also clarified that the CHRI process is applicable to both new applicants for licenses or permit and the renewal of those applications. Licensees and permit holders have always had the duty to inform the Department of their criminal record issues pursuant to questions asked on applications and renewal applications. Given this fact, it is necessary (in order to adequately protect the public) to ensure that current licensees are held to the same licensing requirements and criteria as new applicants. To do otherwise would result in an improper circumvention of the protections provided by this regulation.

With respect to the issue regarding the notice to the applicant regarding the basis for denial, every applicant will be notified of the basis for the denial and will have an opportunity for hearing consistent with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 *et seq.* and the Department's Central Management Regulation 2 entitled *Rules of Procedure for Administrative Hearings*. Additionally, the applicant will also have the right to appeal that Departmental determination pursuant to R.I. Gen. Laws § 42-35-15.

#### SUMMARY OF MATERIAL, NON-TECHNICAL CHANGES

In accordance with R.I. Gen. Laws § 42-35-3, that the following is a summary of the non-technical amendments to Racing and Athletics Regulation 9 (Post-hearing Amended Regulation).

1. There were no substantive amendments to Sections 1, 2, and 3 of the Proposed Regulation in the Post-hearing Amended Regulation.
2. In Section 4 the definitions for "Arrest" and "Offense" were clarified to include actual information that is received on a CHRI and to narrow the definitions to state that only "Offenses" relevant to the type of license or permit would be considered.
3. In Section 5 (A), the categories of "Offenses" and "Arrests" and "Charges" and the respective time frames for consideration are consistent with long-standing Departmental applications with similar questions.
4. In Sections 5(B), the aggravating factors (as applicable) were modified to: (i) include a criteria for relevance to the type of license or permit sought by the applicant; (ii) limit information reviewed to what is actually on the CHRI; and (iii) limit consideration to defined "Arrests," "Charges," or "Offenses."

5. In Section 5(C), the mitigating factors (as applicable) were modified to: (i) limit consideration of information on the CHRI record; limit certain factors to relevance to the type of license or permit sought by the applicant; (iii) limit consideration to defined "Arrests," "Charges," or "Offenses;" and, (iv) require documentation of certain mitigating factors.
  
6. With respect to Section 5(D) the clause was modified/narrowed to clarify that the Department must evaluate the limited CHRI (as opposed to "information at issue") to determine if the defined terms ("Arrest," "Charge," and/or "Offense") are relevant to the type of license or permit sought by the Applicant.

STATE OF RHODE ISLAND DEPARTMENT  
OF BUSINESS REGULATION COMMERCIAL  
LICENSING DIVISION  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920

RACING AND ATHLETICS REGULATION 9  
RACING AND ATHLETICS CRIMINAL BACKGROUND INVESTIGATION

TABLE OF CONTENTS

Section 1. AUTHORITY  
Section 2. PURPOSE  
Section 3. SEVERABILITY  
Section 4. DEFINITIONS  
Section 5. CRITERIA FOR ~~APPLICATION APPROVAL~~ REVIEW  
Section 6. EFFECTIVE DATE

Section 1. AUTHORITY

This Regulation ("Regulation") is promulgated pursuant to the authority granted to the Department of Business Regulation ("Department") by R.I. Gen. Laws §§ 41-1-1 (as amended July 1, 2010), 42-14-17, and 42-35-1 *et seq.*

Section 2. PURPOSE

The purpose of this Regulation is to establish ~~a process and~~ criteria to be used in determining whether ~~a:n application for a license or permit or an application to renew a license or permit filed with the Racing and Athletics Section of the Department to approve a Racing and Athletics Section application~~ should be approved based on information obtained pursuant to a criminal records check conducted pursuant to R.I. Gen. Laws § -1 ffiiliWITA ffi\*ffi.

Section 3. SEVERABILITY

If any provision of this Regulation or the application thereof to any Person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 4. DEFINITIONS

Unless otherwise provided by this Regulation or unless context clearly requires otherwise, terms used in this Regulation shall have the same meaning as the

terms defined in Title 41 of the Rhode Island General Laws. and are capitalized in this Regulation.

A. "Arrest" any detaining, holding or taking into custody by any police or other law enforcement authorities cause that a person has committed a crime to answer for the alleged performance of any Offense.

B. "Charge" any indictment, complaint, information, summons, or other notice of the alleged commission of a crime any Offense

C. "Criminal History Record Information" or "CHRI" means information received by the Department, Rhode Island State Police, Rhode Island Department of Attorney General from the Federal Bureau of Investigation ("FBI").

D. "Director" means the Director of the Department or his or her designee.

"Offense" includes means conviction for any all felonies, crimes, misdemeanors, disorderly person offenses, driving while intoxicated/impaired motor vehicle offenses, violation of probation or any other court order Alford plea, a plea of nolo contendere and/or a civil offense on a CHRI which is relevant to the type of license or permit sought. Juvenile offenses are not will not be considered unless the juvenile has been charged as an adult. reportable.

F. "Racing and Athletics Section" means the section of the Department authorized to issue permits and licenses to Twin River and Newport Grand and its employees, vendors and their employees.

**CRITERIA TO BE USED IN DETERMINING WHETHER BASED ON A CHRI, FOR APPLICATION FOR A LICENSE OR PERMIT OR RENEWAL THEREOF APPROVAL WILL BE APPROVED**

Section 5.

A. Types of CHRI That May Warrant Denial of Application for License or Permit or Renewal a ..... or file: r m, il- t- : p; H- J. + + n-

- 1. Convictions of Offenses that occurred within the last twenty years; and Arrests and/or Charges convictions or Offenses that occurred within the last ten (10) years.

Aggravating factors related to the CHRI which may to be considered the Department in connection with an application for a license or

permit or a renewal thereof in the denial of the application for license or renewal-include, but are not limited to:

**Relevance and seriousness of the applicant's CHRI record to the type of license or permit sought**~~Prior disciplinary history;~~  
**Number of Arrests, Charges, and/or Offenses on the applicant's CHRI that are relevant to the type of license or permit sought;**  
~~P~~**Pattern of similar violations Arrests, Charges, and/or Offenses on the applicant's CHRI that are relevant to the type of license or permit sought;**  
**Evidence of Ssignificant harm to a victim(s) or community as reflected in the investigation of the applicant's CHRI;**  
**Applicant's Rrefusal, delay, or inadequate explanation of facts and circumstances of information reflected on CHRI or obtained during the investigation of information on the CHRIat issue;**  
~~f. Evidence of willfulness or intentional commission of Offense;~~  
~~Evidence of gross negligence;~~

6. **Rrefusal to acknowledge** ~~vi:HH!.:H:H+-)F...t.tu<!.e~~  
**responsibility for Arrest and/or Charge and/or Offense;**  
**Applicant's** ~~black~~ **lack of cooperation with the Department's investigation;**  
**Applicant's & submission of false or misleading statements or evidence to the Department,** ~~or other deceptive practices;~~ **and,**  
**Applicant's ±intimidation of or threats to witnesses or others involved with the** ~~investigation.~~

Mitigating factors related to the CHRI which may be considered by the Department in connection with an application for a license or permit a renewal thereof in the denial of the application for license or renewal-include, but are not limited to:

**Relevance and seriousness of the applicant's CHRI record to type of license or permit sought;**  
~~Length-Duration of time since the date of violation of Arrest and/or Charge and/or Offense;~~  
**Lack of extensive relevant** ~~No-criminal history prior disciplinary history;~~  
~~No other complaints;~~**Lack of Arrests, Charges, or Offenses currently pending against- licensee/applicant;**  
~~No-Lack of pattern of similar Ooffenses~~ ~~to~~ ~~or~~  
**permit sought;**  
~~e.No evidence that the Arrest, Charge, Offense, or Conviction was willful or intentional;~~

~~f. No evidence that the Arrest, Charge, Offense, or Conviction was grossly negligent;~~

~~Age of the applicant, position, and/or license at time of Arrest, Charge, and/or Offense, and/or Conviction;~~

~~Documented Evidence of the applicant's rehabilitation since Arrest, Charge, and/or Offense, and/or Conviction;~~

~~Applicant's Cooperation with the Department's investigation;~~

~~No evidence of significant harm to a victim(s) or public as reflected in the investigation of applicant's CHRI Little or no harm to public;~~

~~Documented evidence that the applicant has Timely mitigation or made any required restitution;~~

1. ~~acknowledgment, and remorse for Arrest, Charge, and/or Conviction;~~ ~~and~~ ~~Understanding, Offense, and/or Conviction;~~

~~Documented explanation by the applicant regarding circumstances related to Arrest, Charge and/or~~

~~Offense; Reasonable explanation that is not contradicted by other witnesses or evidence;~~

~~n. Personal problems at time of Arrest, Charge, Offense and/or Conviction that have been addressed;~~

~~m. Arrest, Charge, Offense and/or Conviction are not related to position or license sought.~~

The Department will also evaluate the ~~CHRI information at issue to determine if the~~ **Arrest, Charge and/or Offense is relevant to the type of license or permit sought by the applicant.** ~~is a relationship between the information at issue and position sought by the applicant for license or renewal application.~~

Upon review and evaluation ~~and investigation of the CHRI, of all information,~~ the Department may deny the application for license or renewal application, grant the application for license or renewal application without conditions, or grant the application for license or renewal application with conditions.

## Section 6. EFFECTIVE DATE

This Regulation is proposed to be effective on February ~~INSERT~~ 2-h--2011.

STATE OF RHODE ISLAND DEPARTMENT  
OF BUSINESS REGULATION COMMERCIAL  
LICENSING DIVISION  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920

RACING AND ATHLETICS REGULATION 9

RACING AND ATHLETICS CRIMINAL BACKGROUND INVESTIGATION

TABLE OF CONTENTS

Section 1. AUTHORITY  
Section 2. PURPOSE  
Section 3. SEVERABILITY  
Section 4. DEFINITIONS  
Section 5. CRITERIA FOR REVIEW  
Section 6. EFFECTIVE DATE

Section 1. AUTHORITY

This Regulation ("Regulation") is promulgated pursuant to the authority granted to the Department of Business Regulation ("Department") by R.I. Gen. Laws §§ 41-1-1 (as amended July 1, 2010), 42-14-17, and 42-35-1 *et seq.*

Section 2. PURPOSE

The purpose of this Regulation is to establish criteria to be used in determining whether an application for a license or permit or an application to renew a license or permit filed with the Racing and Athletics Section of the Department should be approved based on information obtained pursuant to a criminal records check conducted pursuant to R.I. Gen. Laws§ 41-1-1.

Section 3. SEVERABILITY

If any provision of this Regulation or the application thereof to any Person or circumstance is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 4. DEFINITIONS

Unless otherwise provided by this Regulation or unless context clearly requires otherwise, capitalized terms used in this Regulation shall have the same meaning as the terms defined in Title 41 of the Rhode Island General Laws.

- A. "Arrest" means any detaining, holding or taking into custody by any police or other law enforcement authorities based on probable cause that a person has committed a crime.
- B. "Charge" means any indictment, complaint, information, summons, or other notice of the alleged commission of a crime.
- C. "Criminal History Record Information" or "CHRI" means information received by the Department, Rhode Island State Police, and/or Rhode Island Department of Attorney General from the Federal Bureau of Investigation ("FBI").
- D. "Director" means the Director of the Department or his or her designee.
- E. "Offense" means conviction for any felony, misdemeanor, Alford plea, a plea of nolo contendere and/or a civil offense on a CHRI which is relevant to the type of license or permit sought. Juvenile offenses will not be considered unless the juvenile has been charged as an adult.
- F. "Racing and Athletics Section" means the section of the Department authorized to issue permits and licenses to Twin River and Newport Grand and its employees, vendors and their employees.

Section 5. CRITERIA TO BE USED IN DETERMINING WHETHER BASED ON A CHRI, APPLICATION FOR A LICENSE OR PERMIT OR RENEWAL THEREOF WILL BE APPROVED

- A. Types of CHRI That May Warrant Denial of Application for License or Permit or Renewal of a License or Permit
  - 1. Convictions of Offenses that occurred within the last twenty (20) years; and
  - 2. Arrests and/or Charges that occurred within the last ten (10) years.
- B. Aggravating factors related to the CHRI to be considered by the Department in connection with an application for a license or permit or a renewal thereof include, but are not limited to:

1. Relevance and seriousness of the applicant's CHRI record to the type of license or permit sought;
2. Number of Arrests, Charges, and/or Offenses on the applicant's CHRI that are relevant to the type of license or permit sought;
3. Pattern of similar Arrests, Charges, and/or Offenses on the applicant's CHRI that are relevant to the type of license or permit sought;
4. Evidence of significant harm to a victim(s) or community as reflected in the investigation of the applicant's CHRI;
5. Applicant's refusal, delay, or inadequate explanation of facts and circumstances of information reflected on CHRI or obtained during the investigation of information on the CHRI;
6. Applicant's refusal to acknowledge responsibility for Arrest and/or Charge and/or Offense;
7. Applicant's lack of cooperation with the Department's investigation;
8. Applicant's submission of false or misleading statements or evidence to the Department; and,
9. Applicant's intimidation of or threats to witnesses or others involved with the Department's investigation.

C. Mitigating factors related to the CHRI which may be considered by the Department in connection with an application for a license or permit or a renewal thereof include, but are not limited to:

1. Relevance and seriousness of the applicant's CHRI record to type of license or permit sought;
2. Duration of time since the date of Arrest and/or Charge and/or Offense;
3. Lack of extensive relevant criminal history;
4. Lack of Arrests, Charges, or Offenses currently pending against licensee/applicant;
5. Lack of pattern of similar Offenses relevant to the license or permit sought;

6. Age of the applicant at time of Arrest, Charge, and/or Offense;
  7. Documented evidence of the applicant's rehabilitation since Arrest, Charge, and/or Offense;
  8. Applicant's cooperation with the Department's investigation;
  9. No evidence of significant harm to a victim(s) or public as reflected in the investigation of applicant's CHRI;
  10. Documented evidence that the applicant has timely made any required restitution;
  11. Documented evidence of the applicant's understanding, acknowledgment, and remorse for Arrest, Charge, and/or Offense; and,
  12. Documented explanation by the applicant regarding circumstances related to Arrest, Charge and/or Offense;
- D. The Department will also evaluate the CHRI to determine if the Arrest, Charge and/or Offense is relevant to the type of license or permit sought by the applicant.
- E. Upon review and evaluation and investigation of the CHRI, the Department may deny the application for license or renewal application, grant the application for license or renewal application without conditions, or grant the application for license or renewal application with conditions.

Section 6. EFFECTIVE DATE

This Regulation is proposed to be effective on February INSERT 2011.