

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3165

By: Bryant of the House

and

Douglass of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to amusements and sports; amending Section 2, Chapter 240, O.S.L. 1994, as amended by Section 1, Chapter 202, O.S.L. 1995, Section 4, Chapter 240, O.S.L. 1994, as last amended by Section 1, Chapter 339, O.S.L. 1997, Section 7, Chapter 240, O.S.L. 1994, as amended by Section 5, Chapter 202, O.S.L. 1995, Section 17, Chapter 240, O.S.L. 1994, as amended by Section 9, Chapter 202, O.S.L. 1995 and Section 11, Chapter 202, O.S.L. 1995 (3A O.S. Supp. 1997, Sections 602, 604, 607, 617 and 622), which relate to the Oklahoma Professional Boxing Licensing Act; modifying and adding certain definitions; modifying the membership of the Oklahoma Professional Boxing Advisory Committee; requiring booking agents to make application to the Department of Labor for a license; providing for certain assessment on vendor's total gross receipts; defining vendor's gross receipts; modifying the time a telecast promoter must file an assessment with the Department; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 240, O.S.L. 1994, as amended by Section 1, Chapter 202, O.S.L. 1995 (3A O.S. Supp. 1997, Section 602), is amended to read as follows:

Section 602. A. As used in the Oklahoma Professional Boxing Licensing Act:

1. "Administrator" means the administrator of professional boxing licensing within the Department of Labor;
2. "Amateur boxer" means a person who has never received or competed for any purse or other article either for the expenses of

training therefor or for participating in any boxing contest or professional exhibition which exceeds in monies or other things of value a sum to be determined by the Commissioner upon recommendation of the Oklahoma Professional Boxing Advisory Committee. After July 1, 1997, any modification in such determination shall be made by the Commissioner of Labor;

3. "Applicant" means any individual, club, association, corporation, partnership or trust which submits to the Commissioner of Labor an application for a license or permit pursuant to the Oklahoma Professional Boxing Licensing Act;

4. "Booking agent" means independent contractors who act as bookers, agents, agencies and representatives who secure engagements and contracts for boxers;

5. "Boxing" means any form of competitive pugilism or unarmed combat in which a blow is usually struck which may reasonably be expected to inflict injury including but not limited to boxing, wrestling and kickboxing, but shall not include the martial arts as defined by the provisions of this section;

~~5.~~ 6. "Broadcast" means any audio or visual transmission sent by any means of signal within, into or from this state, whether live, or taped or time delayed and includes any replays thereof;

~~6.~~ 7. "Cable system operator" means any person who makes available or provides its customers a closed-circuit telecast which is pay-per-view or a direct broadcast satellite provider;

~~7.~~ 8. "Closed-circuit telecast of professional boxing events" means telecast rights, including television, cable television or pay-per-view telecasts, acquired by paying a licensing fee or by paying a contractual price by a business or individual including but not limited to arenas, entertainment or meeting centers, restaurants, bars, taverns, hotels, motels, clubs and organizations, which offers the viewing of the event to the public or to private residences. Such events shall include local and state professional boxing contests and professional exhibitions as defined in this section. For purposes of Sections ~~10~~ 621 and ~~11~~ 622 of this ~~act~~ title, "closed-circuit telecast" means any such telecast of a professional boxing event as described herein which

is not intended to be available for viewing without the payment of a fee, collected for or based upon each event viewed, for the privilege of viewing the telecast, and includes pay-per-view;

~~8.~~ 9. "Club" means an incorporated or unincorporated association or body of individuals voluntarily united and acting together for some common or special purpose;

~~9.~~ 10. "Committee" means the Oklahoma Professional Boxing Advisory Committee;

~~10.~~ 11. "Commissioner" means the Commissioner of Labor;

~~11.~~ 12. "Contest" means a boxing match in which it is reasonable to anticipate that the participants strive earnestly in good faith to win;

~~12.~~ 13. "Corner person" means, but shall not be limited to, a trainer, a second or any other individual who attends the participant during a match;

~~13.~~ 14. "Department" means the Department of Labor;

~~14.~~ 15. "Exhibition" means a boxing match in which the participants show or display their skill without necessarily striving to win, such as sparring;

~~15.~~ 16. "Judge" means an individual other than a referee who shall have a vote in determining the winner of any contest;

~~16.~~ 17. "Kickboxing" means any form of competitive pugilistic professional contest in which blows are delivered with the hand and any part of the foot. Such contests take place in a rope-enclosed ring and are fought in timed rounds;

~~17.~~ 18. "License" means a certificate issued by the Department to participants of sanctioned professional boxing contests and professional exhibitions and is a mandatory requirement for participation in such events;

~~18.~~ 19. "Manager" means an individual who controls or administers the affairs of any professional boxer, including acting as a booking agent. "Manager" shall include the representative of a manager as defined by the Department;

~~19.~~ 20. "Martial arts" means any form of karate, kung fu, tae kwon-do or any other forms of martial arts or self-defense;

~~-20.~~ 21. "Matchmaker" means an individual who brings together professional boxers or arranges professional boxing contests or professional exhibitions;

~~-21.~~ 22. "Participant" means a professional who takes part in a professional boxing contest or professional exhibition;

~~-22.~~ 23. "Pay-per-view telecasts of professional boxing events" means telecasts offered by cable television companies to subscribers at a cost in addition to the monthly cable television subscription rate. Such events shall include local and state professional boxing contests and professional exhibitions as defined in this section;

~~-23.~~ 24. "Person" means any individual, partnership, limited liability company, club, association, corporation or trust;

~~-24.~~ 25. "Physician" means an individual licensed under the laws of this state to engage in the general practice of medicine or osteopathic medicine;

~~-25.~~ 26. "Professional boxer" means an individual eighteen (18) years of age or older who competes for money, prizes or purses, or who teaches, instructs or assists in the practice of boxing or sparring as a means of obtaining pecuniary gain;

~~-26.~~ 27. "Professional boxing contest and professional exhibition" means a boxing match conducted within this state in which the participants are persons who must be licensed pursuant to the provisions of the Oklahoma Professional Boxing Licensing Act;

~~-27.~~ 28. "Promoter" means any individual, a resident or nonresident of Oklahoma, club or corporation, which is domesticated or not domesticated in Oklahoma, who produces or stages professional contests or professional exhibitions conducted within this state and shall include any officer, director or employees as defined by the Department;

~~-28.~~ 29. "Pugilism" means boxing or the skill or practice of fighting with the fists;

~~-29.~~ 30. "Purse" means the financial guarantee or any other remuneration or thing of value for which a professional boxer participates in a professional boxing contest or professional

exhibition and shall include the participant's share of any payment received for radio broadcasting, television, including cable television, pay-per-view television and closed-circuit television, and motion picture rights. "Purse" shall also include gate receipts and any other prizes;

~~30.~~ 31. "Ring official" means any individual who performs an official function during the progress of a professional boxing contest or professional exhibition including but not limited to timekeepers, judges, referees and attending physicians;

~~31.~~ 32. "Sanctioning permit" means a permit issued by the Department to promoters who make application for official approval of professional boxing contests and professional exhibitions;

~~32.~~ 33. "Sparring" means to engage in a form of boxing with jabbing or feinting movements, and the exchange of few heavy blows, such as occurs in a practice or exhibition boxing match;

~~33.~~ 34. "Telecast promoter", for purposes of Sections ~~10~~ 621 and ~~11~~ 622 of this ~~act~~ title, means any promoter who shows or causes to be shown in this state a closed-circuit telecast of any professional boxing event, whether or not the telecast or event originates in this state. "Telecast promoter" shall not include a cable system operator;

~~34.~~ 35. "Trainer" means an individual who assists, coaches, or instructs any professional boxer with respect to physical conditioning, strategy, techniques or preparation for competition, professional boxing contests or professional exhibitions; and

~~35.~~ 36. "Vendor" means any individual, firm, organization, club or corporation who participates in the conduct of a professional boxing contest or professional exhibition by offering for sale food or merchandise including but not limited to wearing apparel, alcoholic and nonalcoholic beverages, souvenirs and programs.

B. The Department may define any term which is not defined in the Oklahoma Professional Boxing Licensing Act.

SECTION 2. AMENDATORY Section 4, Chapter 240, O.S.L. 1994, as last amended by Section 1, Chapter 339, O.S.L. 1997 (3A O.S. Supp. 1997, Section 604), is amended to read as follows:

Section 604. A. There is hereby re-created, until July 1, 2003, in accordance with the Oklahoma Sunset Law, the Oklahoma Professional Boxing Advisory Committee, which shall be composed of nine (9) members appointed by the Commissioner of Labor. Each member shall be appointed for a term ending June 30, 1997.

B. On or after July 1, 1997, the Commissioner of Labor shall appoint the membership as follows:

1. One person with experience in professional boxing promotions or other business enterprises, who shall serve until July 1, 1998;

2. One person who is a cable system operator, who shall serve until July 1, 1998;

3. One person who is ~~a member of the Athletic Trainers Advisory Committee of~~ an athletic administrator or an athletic trainer who is licensed by the State Board of Medical Licensure and Supervision, who shall serve until July 1, 1998;

4. One person with experience in sports medicine, who shall serve until July 1, 1999;

5. One person with experience in sports organizations as an athlete, trainer or coach, who shall serve until July 1, 1999;

6. One person with experience in marketing, who shall serve until July 1, 1999;

7. Two lay members, who shall serve until July 1, 2000; and

8. One member who shall be the administrator of professional boxing licensing of the Department. The administrator shall serve at the pleasure of the Commissioner.

After the initial appointments as provided for in this section, each member, except for the administrator, shall serve for a three-year period.

Each member shall be a citizen or a permanent resident of the United States and shall be a resident of this state.

C. No member of the Committee or any person related to a member within the third degree by consanguinity or affinity shall promote, sponsor or have any financial interest in the promotion or sponsorship of any professional boxing contest or professional exhibition while a member of the Committee.

D. The Commissioner may remove any member of the Committee for incompetence, ~~wilful~~ willful neglect of duty, corruption in office, or malfeasance in office. A vacancy on the Committee for an unexpired term shall be filled by appointment made by the Commissioner within thirty (30) days of such vacancy to complete the term of the member whose position was vacated.

E. The administrator shall serve as chairperson of the Committee. The members of the Committee shall elect from their membership a vice-chairperson to serve for one (1) year. Thereafter, the vice-chairperson shall be elected annually. No member of the Committee shall serve more than two successive terms as vice-chairperson.

F. A majority of the appointed membership shall constitute a quorum for the purpose of conducting the business of the Committee.

G. The Committee shall meet at least quarterly, and special meetings may be called by the chairperson or the Commissioner.

H. Regular meetings shall be held at the established offices of the Department. Provided however, the Commissioner may authorize that meetings, hearings or proceedings may be held at any other designated place within this state.

I. The proceedings of all meetings of the Committee shall comply with the provisions of the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes.

J. Except as otherwise provided by law, all proceedings by the Committee shall be subject to the provisions of the Administrative Procedures Act.

K. Members of the Committee shall be reimbursed for expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

L. The Committee shall:

1. Assist and advise the Commissioner on all matters pertaining to the formation of rules necessary to carry out the purposes of the Oklahoma Professional Boxing Licensing Act;

2. Assist and advise the Department on all matters relating to the licensing of professional boxers, trainers, managers,

corner persons, matchmakers, promoters, referees, judges, timekeepers, clubs, corporations or any other individuals or entities associated with boxing, sparring, contests and exhibitions related thereto;

3. Assist and advise the Department in the formulation of license and permit fees pursuant to the requirements of the Oklahoma Professional Boxing Licensing Act;

4. Conduct investigations into the qualifications of applicants for licensure and registration at the request of the Department;

5. Conduct investigations and proceedings, at the request of the Department, for alleged violations of the Oklahoma Professional Boxing Licensing Act;

6. Develop and administer examinations for applicants for licenses and permits at the request of the Department;

7. Assist and advise the Department in such other matters upon request of the Department; and

8. By July 1 of each year, the Committee shall propose revisions to such rules to the Commissioner necessary to carry out the purpose of the Oklahoma Professional Boxing Licensing Act.

M. The Commissioner shall report the findings and recommendations of the Committee along with the Commissioner's own recommendations to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives by November 1 of each year.

SECTION 3. AMENDATORY Section 7, Chapter 240, O.S.L. 1994, as amended by Section 5, Chapter 202, O.S.L. 1995 (3A O.S. Supp. 1997, Section 607), is amended to read as follows:

Section 607. A. The Commissioner of Labor shall promulgate rules necessary to implement a process for issuing sanctioning permits for professional boxing contests and professional exhibitions held or given in this state and licenses for participants of sanctioned contests and exhibitions, except those events and persons specifically exempt by the provisions of the Oklahoma Professional Boxing Licensing Act.

B. All persons or entities who participate in any professional boxing contest or professional exhibition sanctioned by the Department, including but not limited to professional boxers, trainers, managers, corner persons, booking agents, matchmakers, promoters, referees, judges, timekeepers, vendors, physicians, announcers, clubs and corporations associated with a professional boxing contest or professional exhibition sanctioned by the Department, shall be required to make application to the Department for a license to participate in this state in any professional boxing contest or professional exhibition sanctioned by the Department.

C. An application for a sanctioning permit or a license shall be on such form and require such information as shall be prescribed by the Department.

D. The Department shall determine reasonable cost and fees associated with issuing sanctioning permits and licenses. All costs and fees for sanctioning an event shall be payable by the promoter making application for a sanctioning permit. Cost and fees for a license may be paid by the participant making application or by the promoter of an event sanctioned by the Department.

E. A sanctioning permit shall be in effect upon the date issued by the Department and shall expire upon the conclusion of the event, unless the sanctioning permit is suspended or revoked for just cause by the Department. Licenses shall be in effect upon the date issued by the Department and all licenses shall expire June 30, unless the license is suspended or revoked for just cause by the Department. Any license issued pursuant to the Oklahoma Professional Boxing Licensing Act prior to June 30, 1995, shall not expire until June 30, 1996.

F. Only promoters whose professional boxing contests and professional exhibitions have been sanctioned by the Department are authorized to place a notice of sanction on printed and promotional materials associated with the sanctioned event, which shall include but not be limited to advertising, tickets, programs, posters, souvenirs, wearing apparel, billboards,

marquees and promotional signs inside and outside the venue where the event is to be held, and broadcasting including but not limited to radio, television, including cable television, pay-per-view television and closed-circuit television and motion pictures of the event. The notice of sanction shall substantially state the following:

"Pursuant to the provisions of Section 601 et seq. of Title 3A of the Oklahoma Statutes and the rules of the Department of Labor, THIS EVENT IS SANCTIONED BY THE DEPARTMENT OF LABOR. Sanctioning Permit No. _____."

G. All fees and other monies resulting from sanctioning professional boxing contests and professional exhibitions and licenses shall be placed to the credit of the Oklahoma Professional Boxing Licensing Revolving Fund.

SECTION 4. AMENDATORY Section 17, Chapter 240, O.S.L. 1994, as amended by Section 9, Chapter 202, O.S.L. 1995 (3A O.S. Supp. 1997, Section 617), is amended to read as follows:

Section 617. A. In addition to the payment of any other fees and monies due pursuant to the Oklahoma Professional Boxing Licensing Act and the rules promulgated by the Commissioner of Labor, an assessment in an amount equal to five percent (5%) of the total gross receipts of any professional boxing contest or professional exhibition, exclusive of any federal tax or tax imposed by any political subdivision of this state, shall be hereby levied and shall be remitted by every promoter and vendor to the Oklahoma Tax Commission. Provided, however, if the promotion originates in Oklahoma, the promoter and vendor shall only be liable for assessments on the total gross receipts specified in ~~subsection~~ subsections B and C of this section and shall not also be liable for the assessments specified in Section ~~11~~ 622 of this ~~act~~ title.

B. For the purpose of this section, total gross receipts of every promoter shall include:

1. The gross price charged by the promoter for the sale, lease or other use of broadcasting including but not limited to radio, television, including cable television, pay-per-view

television and closed-circuit television, or motion picture rights of boxing contest, event or exhibition conducted within this state, without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

2. The face value of all tickets sold; and

3. Proceeds from a vendor, or the promoter's gross price charged for the sale of food, alcoholic and nonalcoholic beverages, or merchandise including but not limited to wearing apparel, souvenirs and programs.

C. For the purpose of this section, total gross receipts of every vendor shall include the gross price charged for the sale of food, alcoholic and nonalcoholic beverages, and merchandise including, but not limited to, wearing apparel, souvenirs and programs, excluding that portion paid to any promoter.

D. Payment of the assessment on gross receipts, excepting for motion picture rights, shall be due within seventy-two (72) hours after the holding of the professional boxing contest or professional exhibition and shall be accompanied by a report in such form as shall be prescribed by the Oklahoma Tax Commission.

~~D.~~ E. The payment of the assessment on gross income received from the sale of motion picture rights shall be due at the end of the month after the date of the sale of the motion picture rights and continue every thirty (30) days thereafter, during the presentation of the picture, and shall be accompanied by a gross receipts report in such form as shall be prescribed by the Oklahoma Tax Commission.

~~E.~~ F. Gross receipts reports signed under oath shall also include:

1. The name of the promoter;

2. The boxing contest or professional exhibition sanctioning permit number;

3. The promoter's business address and any license or permit number required of such promoter by law;

4. Gross receipts as specified by this section, during the period specified by this section; and

5. Such further information as the Oklahoma Tax Commission may require to enable it to compute correctly and collect the assessment levied pursuant to this section.

~~F.~~ G. In addition to the information required on reports, the Oklahoma Tax Commission may request and the promoter shall furnish any information deemed necessary for a correct computation of the assessment levied pursuant to this section.

~~G.~~ H. All levies pursuant to this section shall be collected by the Oklahoma Tax Commission and shall be placed to the credit of the Oklahoma Professional Boxing Licensing Revolving Fund.

~~H.~~ I. The monies collected from the assessment levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the Department of Labor.

~~I.~~ J. The promoter shall compute and pay to the Oklahoma Tax Commission the required assessment due. If the payment of the assessment is not postmarked or delivered to the Oklahoma Tax Commission as specified in subsection ~~C~~ D or E of this section, whichever is appropriate, the assessment shall be delinquent from such date.

~~J.~~ K. It shall be the duty of every promoter required to make a gross receipts report and pay any assessment pursuant to the provisions of this section to keep and preserve suitable records and documents which may be necessary to determine the amount of assessment due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the Oklahoma Tax Commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the Oklahoma Tax Commission or by any of its authorized employees.

SECTION 5. AMENDATORY Section 11, Chapter 202, O.S.L. 1995 (3A O.S. Supp. 1997, Section 622), is amended to read as follows:

Section 622. A. Where the Oklahoma distribution rights for a closed-circuit telecast to be viewed in this state are in whole owned by, sold to, acquired by or held by any person who intends to or subsequently sells or, in some other manner, extends such

rights in part to another, then such person is deemed to be a telecast promoter and must, prior to the telecast, be licensed as a telecast promoter by the Department of Labor. The Department may provide, by rule, for additional licensed telecast promoters to participate in the distribution rights and share in the liability for assessments to be paid to the Department. Closed-circuit telecasts of a boxing event shall not be telecast from, in or into this state except under the auspices of a telecast promoter licensed in this state. The telecast promoter shall be responsible for filing the appropriate reports with and paying assessments to the Department.

B. In the case of closed-circuit telecasts other than pay-per-view, the telecast promoter shall notify the Department of the names and addresses of all facilities to or through which the closed-circuit telecast will be shown fourteen (14) days prior to the date of the closed-circuit event and shall provide daily updates to the Department of any additions and deletions of facilities.

C. Any person or facility owner or operator intending to show the closed-circuit telecast, whether or not an admission fee will be charged, must receive authorization to show the telecast from the telecast promoter prior to the telecast. The showing of a closed-circuit telecast, whether or not an admission fee is charged, without the authorization of the licensed telecast promoter is prohibited. This includes the delayed showing of a closed-circuit telecast when the showing requires the authorization of the telecast promoter. Information received by the Department of the names of persons showing a closed-circuit telecast in violation of this section shall be furnished to the appropriate district attorney's office for prosecution.

D. 1. In the case of facilities at or through which the closed-circuit telecast is shown other than a cable system operator's pay-per-view facilities, the telecast promoter shall, within eight (8) days after the telecast inclusive of mailing time, file with the Department a written report detailing the name, address, telephone number, contact person's name and the

details of the payment arrangement for the right to receive the telecast for each facility to which the broadcast was transmitted.

2. The report shall be accompanied by an assessment payment equal to four percent (4%) of the total amount paid to the telecast promoter for the right to broadcast the telecast.

3. The Department may require the owner or operator of the facility where the telecast is being shown to file a report containing information regarding the amount paid to the telecast promoter for the right to broadcast the telecast, the quality of the audio and video signal, and any other information the Department deems appropriate.

E. 1. In the case of a cable system operator's pay-per-view facilities at or through which a closed-circuit telecast was shown, the telecast promoter shall, except as provided for in subsection A of Section ~~9~~ 617 of this ~~act~~ title, within ~~seventy-five (75)~~ thirty (30) days following receipt of the notice of the assessment from the Department, file with the Department an assessment payment equal to four percent (4%) of the total gross receipts excluding any federal, state or local taxes.

2. The Department shall require the cable system operator to file reports containing information regarding the number of orders sold and the price charged for orders and any other information the Department deems appropriate.

3. Cable system operators shall not be liable to the Department for the assessment payment. Nothing in this section shall be deemed to prevent a cable system operator from billing its customer for the assessment payment.

4. The Department shall provide the telecast promoter with a report detailing the number of orders and the assessment payment due.

F. Any promoter who willfully makes a false and fraudulent report under this section is guilty of perjury and, upon conviction, is subject to punishment as provided by law. This penalty shall be in addition to any other penalties imposed in this section.

G. Any telecast promoter who willfully fails, neglects, or refuses to make a report or to pay the assessment as prescribed or who refuses to allow the Department to examine the books, papers, and records of any promotion is guilty of a misdemeanor, punishable as provided by law.

H. By rule, the Department shall establish administrative penalties as specified in this act for the late payment of assessments, noncompliance with this act, and the late filing of reports and shall prescribe conditions, if any, under which a fine may be waived.

I. No cable system operator shall be prohibited from:

1. Broadcasting any boxing event for which it has a contract or other legal obligation to broadcast any event with any promoter or distributor irrespective of whether or not the promoter or distributor is in compliance with the provisions of this act;

2. No cable system operator shall be required to modify, delete or cancel any programming for which it has a contractual or legal obligation to air such programming as a result of any noncompliance with the provisions of this act by any promoter or distributor; and

3. This act shall not apply in any manner to any basic or premium channel programming broadcast on cable television systems within the State of Oklahoma, but shall apply only to "pay-per-view" broadcasts of boxing events for which a separate one time fee is charged the cable subscriber.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-11712 MCD