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RECODIFY RACING LAW

House Bill 4526 (Substitute H-4**)
First Analysis (11-8-95)

Sponsor: Rep. Gary Randall
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Michigan's race horse industry, described by former Governor William Milliken as "Michigan's invisible industry", has long been a vital part of the agriculture and economy of the state. According to a report by Public Sector Consultants, Inc. entitled The Economic Impact of Horse Racing in Michigan (February 1995), horse racing is a \$1.2 billion industry creating "42,300 jobs, \$233 million in personal income, and total economic output of \$439 million." A unique aspect of the industry is that horse racing reaches far beyond the activities at the track. For example, it is directly and indirectly tied also to the pleasure horse industry and state-wide support for county fairs, 4-H programs, and other horse programs, including equine research. Additionally, horse racing provides a revenue and employment source for farmers, veterinarians, tack suppliers, farm equipment dealers, feed dealers, truck drivers, and others.

In 1994, over two million people attended 865 race dates at Michigan's eight racecourses (one thoroughbred, six harness, and one mixed breed track). Pari-mutuel wagering, a system in which the holders of winning tickets divide the money in the betting pool in proportion to their wagers after a percentage has been deducted for taxes and the track, was over \$365 million. State wagering tax revenue was over \$17 million, with a total state and local tax revenue of \$31 million. (The \$31 million figure is the wagering tax revenue plus additional revenue from non-payroll taxes, personal income taxes, and farm sales and use tax.)

As impressive as these figures appear, industry experts fear that Michigan's horse racing industry may be on the verge of collapse. According to the Public Sector report, state racing tax revenue has declined 31 percent since peaking in the late 1970s. Recent competition from casinos, lotteries, and other forms of entertainment has taken a significant toll. The 1994 Annual Report issued by the Office of Racing Commissioner (ORC) records drops in pari-mutuel wagering and state revenue of \$45 million and \$2 million respectively from 1993 totals. Attendance decreased by 400,000. Several tracks had to cancel parts of race meetings last year due to horse shortages. (A race meeting is a licensed event consisting of one or

more dates that races are held at a particular track. A typical race meeting would be several months long.) Ladbroke DRC, a thoroughbred track near Detroit, was forced to cancel the 46th running of the Michigan Mile, a historically prestigious thoroughbred race, due to significant drops in attendance and wagering at the track coinciding with the opening of the Windsor Casino. The Michigan Mile purse monies, expected to have been \$250,000, were needed instead to fund purses for the balance of the race meeting's daily races. In a March 1995 report to the Senate Appropriations Subcommittee on Agriculture, the ORC reported that four out of the eight racetracks in Michigan "are in imminent danger of closing and going out of business". The four -- Ladbroke DRC, Muskegon Race Course, Saginaw Harness Raceway, and Mt. Pleasant Meadows -- collectively accounted for 37 percent of the state's revenue from racing in 1994.

Reportedly, several racing states experiencing similar declines in their racing industry have seen turnarounds after offering simulcasting along with live races. Simulcasting involves the televising via satellite transmissions of live races from other tracks in the state or from out-of-state tracks to the receiving track for wagering by its patrons. Current law restricts Michigan tracks to no more than one simulcast race per day and 25 per year. Many in the industry would like to see the removal of the simulcasting restrictions, as well as other reforms, to update the horse racing laws. Legislation has been proposed to address these concerns, and is seen as a crucial first step in preserving and protecting Michigan's horse racing industry.

THE CONTENT OF THE BILL:

House Bill 4526 would repeal and replace the Racing Law, Public Act 327 of 1980, with a new act that would include provisions for full card simulcasting, eliminate the wagering tax on live races, establish the Michigan Agriculture Equine Industry Development Fund, and allow for telephone account wagering. The bill would retain many provisions of the current law, but would replace outdated language. Throughout the bill, the terms "pari-mutuel", "simulcasting", and

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"telephone account wagering" would be included in references to horse racing and wagering. Among the major substantive changes included in the bill are the following:

Definitions. The bill would provide the following definitions relating to these new provisions:

"Simulcasting" would be defined to mean the live transmission of video and audio signals conveying a horse race held either inside or outside the state to a licensed race meeting in the state. An "intertrack simulcast" would mean a simulcast from one racetrack to another within the state; and a simulcast from a racetrack outside the state to one inside the state would be called an "interstate simulcast." "Telephone account wagering" would be defined under the bill to mean pari-mutuel wagering received within a racetrack enclosure by telephone, or any other electronic signal. ("Pari-mutuel wagering" is a system of betting in which the total amount of money wagered on a race is divided, after deducting management expenses, among winning bettors in proportion to the sums individually wagered.)

Racing stewards. The bill would increase, from two to three, the number of state stewards that the racing commissioner may designate as special deputies for each race meeting. (Historically, a third steward has been appointed by the association conducting the race meeting. The bill would eliminate a reference to the association steward in another section of the act.)

Licenses. As under existing law, the racing commissioner would be authorized to issue three types of licenses -- track licenses, race meeting licenses, and occupational licenses. Changes to license provisions are as follows:

Track licenses.

* A track license would be issued, without further application, to an individual who held a valid track license under Public Act 327 of 1980, and who maintained or operated a licensed horse racetrack on the effective date of the bill at which wagering by pari-mutuel methods on the results of horse racing had been conducted by a race meeting licensee.

* A track license could be transferred to a new racetrack owner with the racing commissioner's consent.

* Currently, an applicant whose track license application has been denied may later be granted a license when certain requirements are met. Under the

bill, the circuit court could review the commissioner's decision to deny a track license.

* A license could be revoked in situations where a licensed race meeting had not been held on the premises for two consecutive years.

* The present restriction that no more than three racetracks may be licensed in a city area would be retained, except that the racing commissioner could issue one additional license to a city with a population over 900,000. A city area would be defined as a city with a population of 750,000, including counties that lie within 30 miles of the city limits. (Currently, a city area is defined to mean a city with a population of one million or more, including counties that lie within 30 miles of the city limits.)

* Under current law, a track license may be denied if the racing commissioner determines that approval of the license would result in "harmful competition" among existing tracks. The bill would eliminate this provision.

Pari-mutuel occupational licenses.

* The current list of individuals who qualify for occupational licenses would be expanded to include the owners and operators of off-track training centers, farms, or stables where racehorses are kept, and vendors operating within the off-track training center, farm, or stable where racehorses are kept.

* The bill would also permit veterinarians who were not licensed under the act to provide emergency veterinary care or treatment to any horse "intended to be entered" in a pari-mutuel horse race or nonbetting workout conducted at a licensed race meeting. Under the bill, "emergency veterinary care or treatment" would mean "care or treatment necessary and appropriate to save the life of a horse or prevent permanent physical injury or damage to a horse in a situation requiring immediate veterinary action." A horse that is "intended to be entered" would mean a horse that had its name put into the draw for a specific race. However, the bill specifies that only veterinarians who were licensed under the provisions of the act could provide non-emergency treatment to a horse that was intended to be entered in a pari-mutuel race. The bill also specifies that only licensed personnel or persons authorized by the commissioner could enter the restricted grounds of a licensed race meeting where horses were kept.

* The bill, as does current law, would exempt an applicant, who, when tested for drugs, had a controlled substance in his or her blood from being penalized by

the commissioner if the substance had been obtained by prescription. However, the bill would allow the commissioner to take into consideration "the person's need for prescribed controlled substances in determining the person's fitness to be licensed to participate in pari-mutuel horse racing".

* The bill would retain the current provision that specifies that a licensed trainer is responsible for the condition of the horses entered to race, but would additionally specify that the trainer would be responsible for the "fitness, eligibility, and qualification" of the horses. The bill would add to this that the provision could not be construed or interpreted to determine civil tort liability of any racehorse owner or trainer, but is only for purposes of enforcement of the act. The bill would also specify that, if a horse under a trainer's care was found with a drug or foreign substance in its body, then the horse's trainer would be strictly liable and subject to disciplinary action.

* The bill would rewrite the current provision which requires that a hearing, held following the commissioner's action in refusing to issue an occupational license, has no bearing on other provisions for appeals of the commissioner's decision in these matters, and would instead provide that an applicant could appeal a license denial to the circuit court according to provisions in the Revised Judicature Act (MCL 600.631), and that a suspension or revocation could be appealed according to the Administrative Procedures Act (MCL 24.201 et al).

Race meeting licenses. Major changes to the provisions are as follows:

* All race meeting license applications would have to be filed before July 1st, rather than September 2nd, of the year preceding the year in which the person proposed to conduct racing. However, a race meeting license issued for 1996 under the current act could be amended to conform with the provisions of the bill within 30 days of its effective date. All applications would be approved or denied before November 1st of the year preceding the year for which application was made. A license would cover any period of up to one year. As a condition for simulcast approval, a licensee would be required to conduct at least 9 live races on each live racing date, unless an agreement in writing between the racing commissioner and the horsemen's association with which the licensee had contracted waived this requirement.

* A license application would have to specify, in addition to current requirements, the time period requested for licensing, whether telephone account

wagering by pari-mutuel methods and/or simulcasting would be conducted, and, for live races, the breed of the horse. An application from a corporation would have to include -- in addition to current requirements -- the names and addresses of all corporate directors, officers, partners, and shareholders. An application would also have to demonstrate that an applicant -- and all persons association with an applicant's business activities -- possessed, among other traits, good character and business ability, and did not "pose a threat to the public interest of the state or to the security and integrity" of horse racing and pari-mutuel wagering.

* The bill would retain the current prohibition on live or simulcast thoroughbred racing after 6:45 p.m. and standardbred racing before 6:45 p.m. on any day except Sunday. The provision would be rewritten to provide an exception to this rule if agreed to by the city area tracks. The racing commissioner would be authorized to further grant exceptions if no other licensed race meeting had received authorization to conduct a race at the same time, or upon a written agreement by the city area tracks to waive the 6:45 p.m. time restriction.

* Applicants for a thoroughbred, quarter horse, Appaloosa, or Arabian race meeting license would be committed to a program of at least 9 live horse races per day for a specified number of days, including Saturdays and Sundays. The required number of days would vary according to the location of the race meeting, as follows:

a) In a county outside a city area, at least 45 days of racing for at least 3 days per week.

b) In a city area, at least 160 days of racing for at least 5 days per week.

* Applicants for a standardbred race meeting license would be committed to a program of at least 9 live horse races per day for a specified number of days, including Saturdays and Sundays. The required number of days would vary according to the location of the race meeting, as follows:

a) In a county with a population of less than 250,000 and that is not part of a city area, at least 75 days of harness horse racing for at least 4 days per week.

b) In a county with a population greater than 250,000 but less than 750,000 and that is not part of a city area, no less than 100 days of harness horse racing at least 4 days per week.

Provisions relating to requirements for standardbred licensees in a city area would remain the same.

* Regarding a section that permits the racing commissioner to transfer race dates from one licensee to another in case fire or other disaster damages a racetrack, the bill would specify that all tracks within a 50-mile radius would have to consent to the transfer.

* In the case of a licensee not meeting the license requirements, current law permits the racing commissioner to issue a fine or revoke the license (the bill would add license suspension as an option). Further, at present, the license action does not take effect until 10 days after the licensee has been notified. The bill would allow for immediate suspension, revocation, or fine if the "public health, safety, or welfare requires emergency action and immediate effect of the commissioner's order".

* The bill would repeal provisions 1) requiring the national anthem to be played before the start of each race day, and 2) prohibiting more than 6 days of racing per week. All other provisions pertaining to race meeting licensees are substantially the same as under current law.

Live race pari-mutuel wagering. Major changes include the following:

* All taxes on live race wagering would be eliminated. This would include the 4 1/2 percent tax on pari-mutuel wagers, the 6 percent tax on special sweepstakes pool wagering, and the 50 percent of the breaks. ("Breaks" are the cents over any multiple of 10 otherwise payable to a patron on a (winning) wager of \$1.00.) The bill would specify that, by eliminating the tax on live racing, it was not the intent of the legislature to diminish funding and appropriations for the Michigan agriculture equine industry fund and related programs. The bill would state that the pari-mutuel tax reduction was intended to allow for the improvement of the horse racing and breeding industry in the state by increasing purses and making additional revenue available for capital improvements at racetracks.

* The bill would specify that unless otherwise provided by contract, 50 percent of all commissions on live racing would be paid to the horsemen's purse pool at the track where the races were held.

* All breaks would be retained by the race meeting licensee and paid directly to the city or township where the track was licensed as a fee for services provided such as police, fire, and traffic protection for the track and its patrons.

* A provision restricting pari-mutuel wagering to within the enclosure of a licensed track would include an exemption for simulcasting, telephone account wagering, and intertrack or interstate common pool wagering conducted inside or outside the state.

* The bill would add provisions for special sweepstakes pari-mutuel pools. Under the bill, a special sweepstakes pari-mutuel would constitute a single bet and, if the bet was made with respect to simulcast races, such races would constitute a single simulcast race for licensing purposes.

* Currently, the racing law prohibits pari-mutuel wagering on horse races conducted at the Michigan State Fairgrounds in Detroit. The bill would remove this prohibition.

Simulcasts. Current law restricts Michigan racetracks to no more than one simulcast race per day and 25 per year. The bill would rewrite simulcasting provisions to permit full card simulcasting. Among the major provisions are the following:

* The bill would define full card simulcast as "an entire simulcast racing program of 1 or more race meet licensees located in this state, or an entire simulcast racing program or 1 or more races simulcasted from 1 or more racetracks located outside of this state" with simulcasting being the live transmission of video and audio signals conveying a horse race. "Intertrack simulcast" would be defined as a simulcast from 1 racetrack in the state to another track in the state, and "intertrack simulcast" as a simulcast from a racetrack outside the state to a track within the state.

* Permits would be issued to race meeting licensees for individual and full card simulcasts to be televised during, between, before, or after programmed live horse races on days when live races are held, or during the term of the race meeting license on days that live races are not scheduled, subject to the following conditions:

--The applicant had a current contract with a certified horsemen's organization.

--The applicant applied for and was allocated the minimum number of live racing days.

--The applicant made a good faith effort to conduct at least 9 live races on each race date.

--The horsemen's organization consented to the requested simulcasts for any live racing days that the

applicant was unable to program and conduct the minimum 9 races.

--An applicant waived any rights under the federal Interstate Horse Racing Act of 1978 (15 U.S.C. 3001 et al.) to restrict interstate simulcasts by other race meeting licensees in the state.

--Race meetings outside a city area would be prohibited from conducting interstate simulcasts before or after 6:45 p.m. unless they also received all city area intertrack simulcasts that were available during the respective time slots.

--City area applicants made the signals of their live horse races available for intertrack simulcasting to all licensed race meetings in the state located more than 12 miles away. The broadcasting track would be permitted to charge the same fee to all receiving tracks of no more than 3 percent of the total amount wagered on the simulcast.

--Unless agreed on by all city area licensees and the horsemen's groups they contract with, city area licensees would be prohibited from conducting interstate simulcasts unless they received all available intertrack simulcasts from other city area race meetings more than 12 miles away.

--City area licensees would also be required to grant all other licensees in the state the right to conduct simulcasts of any breed of horse, regardless of what breed they are licensed to race live. (For example, a thoroughbred track would be prohibited from restricting a harness track from simulcasting interstate thoroughbred races.)

--Licensees would be prohibited from televising interstate simulcasts for different breeds than what they are licensed to race live unless they had written permission of all city area tracks that race that breed. City area tracks could charge the receiving track a permit fee for such permission. The fee could not be more than 1.5 percent of the total amount wagered at city area race meetings, and no more than 0.5 percent of the total amount wagered at tracks outside a city area, on the interstate simulcast signal that the permission was given for. The permit fee would have to be calculated and paid separately from the amount paid by the receiving track to the out-of-state sending track. When simulcasting permission would be required from more than one city area track, any permit fee would be shared on a pro rata basis according to the percentage of total wagering that each track had produced in the previous calendar year on live and simulcast races of the breed for which the simulcasting

permission was requested.

* All authorized simulcasts would be required to comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. 3001 et al).

Simulcast pari-mutuel wagering.

* For 1996, the wagering tax would be 2.5 percent of all money wagered on interstate and intertrack simulcast races. For 1997 and following, the tax rate would be 3.5 percent. (This tax would replace the wagering tax on live races. The tax would be taken out of the track's gross commission. In pari-mutuel wagering, approximately 80 cents out of each dollar would be divided among the winning tickets. The remaining 20 cents would be the commission. After taxes and permit fees are deducted, the remaining amount would be divided according to percentages specified in the bill.) Pari-mutuel wagering on simulcasts other than horse racing would be prohibited.

* For interstate simulcasts, the receiving track would pay a sum equal to 40 percent of the net commission to the horsemen's purse pool from all money wagered on the interstate simulcast after deducting the wagering tax due and the permit fee paid to the sending track. Subsequent rebates of fees paid would be shared equally by the track and the horsemen's purse pool.

* Money wagered on interstate simulcasts would be put in a separate pari-mutuel pool at the receiving track. If two or more licensees received the same interstate signal, the money wagered would be combined in a common pool. The licensees would designate at which race meeting the pool would be located. The commissioner could permit pari-mutuel pools in this state to be combined with pari-mutuel pools on the same races created at the sending track if the sending state's law allowed. For intertrack simulcasts, the money wagered at the receiving track would be added to the pari-mutuel pool at the sending track.

* Michigan tracks would be permitted to simulcast live races out of state according to the Interstate Horse Racing Act of 1978. Pari-mutuel pools created at the receiving track could be combined with pari-mutuel pools created in this state on the same races. A Michigan track sending its signal out of state would pay 50 percent of the receiving fee to the horsemen's purse pool after making the required deductions for the wagering tax and cost of sending the signal out of state.

* City area licensees would be required to provide equipment necessary to send intertrack simulcasts of their live horse races to all other licensees in the state.

The city area tracks would charge an agreed upon fee not to exceed 3 percent of the total amount wagered on the race at the receiving track for the signal.

* Each sending track would pay 50 percent of the simulcast fee received for sending a simulcast signal to the horsemen's purse pool. Receiving tracks would pay 40 percent of the net commission from the wagering on the intertrack simulcast after deducting the wagering tax and any permit fee paid to the sending track for the signal.

Horsemen's purse pools.

* All participating certified horsemen's organizations would designate a depository from which monies earmarked for the horsemen's simulcast purse pool would be deposited and distributed by a designated escrow agent as follows:

--Fifty percent of funds generated from thoroughbred simulcasts and 35 percent of funds from standardbred simulcasts designated for horsemen's purse pools would be divided between all thoroughbred purse pools. The division would be on a pro rata basis between all thoroughbred race meeting licensees based upon the percentage of total thoroughbred handle, from all sources, for the previous calendar year. (Handle is the total amount wagered.)

--Fifty percent of funds generated from thoroughbred simulcasts and 65 percent of funds from standardbred simulcasts designated for horsemen's purse pools would be divided between all standardbred purse pools. The division would be on a pro rata basis between all standardbred race meeting licensees based upon the percentage of total standardbred handle, from all sources, for the previous calendar year.

*The certified horsemen's groups and race meeting licensees would have audit rights of these funds.

Telephone wagering.

* Requests for authority to conduct and accept telephone account wagering on live and simulcast races programmed and conducted at the licensed race meeting could be included on the application for a race meeting license. Telephone account wagering would be required to be conducted by the pari-mutuel method of wagering.

* Telephone wagers would be included in the total amount of money wagered on live and simulcast races for purposes of determining the licensee's commission and paying the wagering tax due.

* A track would only be permitted to be accept and tabulate telephone account wagers from patrons who had funds on deposit at the track.

Michigan Agriculture Equine Industry Development Fund.

* The bill would specify that it would be the policy of the state to, among other things, encourage the breeding of horses of all breeds in the state, along with ownership of such horses by residents of Michigan, and to establish and preserve the agricultural and commercial benefits of the horse racing and breeding industry by creating the Michigan Agriculture Equine Industry Development Fund in the Department of Treasury, to be administered by the director of the Department of Agriculture with the assistance of the racing commissioner.

* State revenue from horse racing would be deposited into the state treasury for deposit into the equine fund. Money in the fund would be appropriated by the legislature and expended by the director of the Department of Agriculture with the assistance of the racing commissioner to provide funding for agriculture and equine industry development programs. Most of the programs and amounts allocated to them are in current law. Major changes or additions are as follows:

--In regards to purses for standardbred harness horse races offered by fairs and races, purses for overnight races at fairs supplemented by the fund could not exceed the lowest purse offered for overnight races of the same breed at the nearest licensed race meeting.

--Currently, 3/10 of 1 percent of all money wagered on standardbred races each year is used for a sire stakes fund. The bill would change the amount to 0.25 percent.

--The bill would create an owner's award program for Michigan bred thoroughbred horses that placed first, second, or third in races open to non-Michigan bred horses.

--The 27 and 1/2 percent cap on money allotted for certain thoroughbred programs would be eliminated.

--Purse supplements to licensed thoroughbred race meetings for special 4-year-old and older filly and colt horse races would be allotted.

--The 3/10 of 1 percent of all money wagered on thoroughbred races each year used for a sire stakes fund would be changed to 0.25 percent of all wagered money.

--The bill would require that a "Michigan sired thoroughbred horse" be a horse sired by a stallion registered with the Department of Agriculture.

--Provisions requiring that Appaloosa and Arabian mares and stallions be registered with the department of agriculture would be eliminated.

--Out of the fund, an equine industry research, planning, and development grant fund program would award grants for research projects conducted by persons affiliated with a university or governmental research agency or institution or other private research entity, approved by the commissioner, that benefits the state horse racing and breeding industry. Equine research would be defined as "the study, discovery and generation of accurate and reliable information, findings, conclusions, and recommendations" useful or beneficial to the state racing and breeding industry through "improvement of the health of horses; prevention of equine illness and disease, and performance-related accidents and injuries;" compilation and study of valuable and reliable statistical data regarding the size, organization, and economics of the industry in the state; and strategic planning for the effective promotion, growth, and development of the industry in the state. (Note: The definition appears to have a typographical error and/or a missing phrase.)

* The bill would prohibit money in this fund from reverting to the general fund, and would allow the money to be carried forward from year to year until disbursed to fund grants for research projects benefitting the industry.

FOIA exemption. The bill would exclude any personal information such as the name, address, or financial information of any patron or licensee provided to the Office of Racing Commissioner from the disclosure requirements of the Freedom of Information Act (MCL 15.231 et al).

Drugs and foreign substances. Among other things, the bill would do the following:

* Current law prohibits the administration of certain drugs or procedures to horses intended to be entered, entered, or participating in a race with pari-mutuel wagering. The bill would add to all references "horses in a nonbetting race or workout that is conducted at a licensed race meeting". The bill would exempt veterinarians from this prohibition for any drug or foreign substance "necessary and appropriate for the emergency veterinary care and treatment of the horse under accepted standards of veterinary practice" in the state, but would require the veterinarian and trainer to

report immediately to the racing commissioner, state veterinarian, or state steward. The stewards would be required to scratch the horse from any race it was entered or intended to be entered.

* Current law grants authority to the commissioner to promulgate rules pertaining to the condition of the horse that must exist in order to permit authorization for the use of certain drugs. The bill would authorize the commissioner to also issue written orders on the subject. Written orders would have to be available for review in the office of the commissioner at each licensed race meeting.

* Currently, the law contains a provision setting penalties for administering certain drugs or knowingly starting a horse that has been administered a drug within 24 hours of starting a race. Under the bill, the 24 hour-designation has been deleted; the provision applies to drugs administered after a horse was entered or intended to be entered in a race.

* If used according to accepted veterinarian practice, the following would not be prohibited when used within the confines of a racetrack or grounds of a licensed race meeting: possession and use of drugs, foreign substances, controlled substances, hypodermic needles and syringes, nasogastric tubes, endotracheal tubes, endoscopes, or other instruments or equipment.

Penalties. Many of the current penalties are retained in the bill. Changes are as follows:

* Currently, the racing commissioner may assess penalties and fines of up to \$5,000 for violations of the act. The bill would specify, instead, that the commissioner could revoke or suspend licenses, exclude from racetrack grounds, or impose a fine of up to \$25,000 for each violation committed by a licensee or other person. Sanctions could be appealed under the contested case provisions of the Administrative Procedures Act.

* Currently, a person who fails to appear, who refuses to testify, or who testifies falsely when summoned by the racing commissioner as a witness, is guilty of a misdemeanor, punishable by a fine of up to \$5,000, or imprisonment for not more than 6 months, or both. Under House Bill 4526, the penalty for failing to appear or refusing to testify would be reduced to \$1,000, imprisonment for not more than 6 months, or both. In addition, the offender could also be sanctioned by the racing commissioner. The penalty for a person who gave false testimony while under oath would be a fine of up to \$10,000, imprisonment for up to 4 years, or both, and could also include sanctions.

BACKGROUND INFORMATION:

Michigan's horse race tradition began in 1933 at the Michigan State Fairgrounds track in Detroit with a season of 31 days of racing. Over 100,000 fans placed bets of over \$3.5 million, generating \$123,783 in state wagering tax revenue. Today, Michigan has eight tracks: Ladbroke DRC in Livonia, the state's only all thoroughbred track; Mount Pleasant Meadows, offering mixed breed racing; and six harness tracks -- Northville Downs, Hazel Park Harness Raceway, Jackson Harness Raceway, Saginaw Harness Raceway, Muskegon Race Course, and Sports Creek Raceway in Swartz Creek. The industry is heavily regulated by statute and overseen by the Office of Racing Commissioner (ORC) within the Department of Agriculture.

The ORC issues track licenses, race meeting licenses, and occupational licenses to individuals whose jobs bring them into direct contact with the horses and riders or could in any way affect the outcome of the race or wagers. Two state stewards, along with state veterinarians, state investigators, licensing clerks, and a drug detection unit are at each licensed race meeting to oversee and regulate the conduct of horse racing and pari-mutuel wagering according to current law. The ORC retains the authority to issue various sanctions and penalties for violations of the law.

Historically, a percentage tax on the total amount wagered at the licensed race meetings each year has been the principal source of direct revenue for the state. In 1994, the tax on wagering amounted to over \$17 million. In addition, "breaks" or "breakage", defined in the Racing Law as "the cents over any multiple of 10 otherwise payable to a patron" on a (winning) wager of \$1.00, are split 50/50 between the state and the tracks.

Breakage in 1994 was over \$900,000. A portion of the state's share of the tax and breakage revenue is funnelled back to the local governments in which the tracks are located to be used by the local government to offset costs associated with providing such things as police, fire, and traffic protection for the people in and around the track. Other direct revenue for the state comes from license fees and fines assessed for violations. In 1994, these amounted to revenues of over \$241,000 for license fees and \$125,472 in fines.

What makes horse racing a \$1.2 billion industry is that it encompasses much more than what happens at the track. According to the ORC, horse racing is a very labor intensive sport that creates jobs both on and off the tracks for "trainers, drivers, jockeys, blacksmiths, grooms, veterinarians, racing officials, pari-mutuel clerks, guards, admission clerks, concession workers, restaurant workers, vendors, office workers, and

numerous other personnel." Indirectly, horse racing provides jobs for farmers, grain elevator operators, transportation workers, sportscasters and writers, maintenance and repair workers at tracks and facilities, and provides employment at hotels and restaurants located near tracks. In addition, the racing industry is committed to funding support programs such as 4-H programs and equine research and breeding programs, along with contributing to purses for races at county fairs, believing that these and other programs are crucial to the existence of the industry.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, state revenues from simulcast wagering taxes would total about \$10 million in fiscal year 1995-96. State revenues for fiscal year 1996-97 are estimated at about \$15 million. Payments to local units of government, which will receive the "breakage" revenue, would be about \$3 million by 1997. (11-7-95)

ARGUMENTS:

For:

Quite simply, the horse race industry in Michigan is about to collapse -- most likely within the next year or two according to industry experts. The current law does not allow the industry to compete successfully for consumers' entertainment dollars, given the current environment of many other available choices, including Casino gambling in Windsor. The racing industry is not asking for a bail-out, but to restructure the laws regulating the industry to better reflect the needs of the changing times and to afford a competitive edge lacking under the present system.

For instance, current law restricts a track to only one simulcast race per day, with no more than 25 a year. Yet, a track in Windsor, near Ladbroke DRC's thoroughbred track in Livonia, broadcast nearly 100 races from the United States and Canada on Breeder's Cup Day this past October. Racing Commissioner Nelson Westrin was quoted in a Detroit Free Press article (dated 11-3-95) as saying that revenue at Detroit area tracks had dropped from 25 to 30 percent in the past year and a half. Simulcasting increases a bettor's choices, and provides a larger betting pool, doing for pari-mutuel wagering what Powerball has done for state lotteries. Statistics are already confirming that bettors and their dollars will go where the choices are greater and the pot bigger.

However, industry insiders see simulcasting as being one part of the solution; other provisions of the bill are necessary as well. For example, the elimination of the

wagering tax on live races will allow a greater percentage of the handle (gross receipts of the pari-mutuel betting pool) to go to the tracks for such things as capital improvements -- very necessary for some of the state's aging tracks -- and to the horsemen's purse pool. A larger purse pool enables larger purses to be offered, thus attracting a better quality horse and preventing the cancellation of race days or programs due to a shortage of horses. Better horses in turn draw larger crowds who in turn make more wagers. Telephone account wagering will enable patrons of a particular track to place bets from home via a pre-established account at the track. Restructuring the way breakage is treated will better serve the communities in which the tracks are located. The creation of the Michigan Agriculture Equine Industry Development Fund to further research and fund various activities and aspects of the industry is seen by industry members as crucial to the future of the racing industry. For example, the fund would establish owner's awards for Michigan-bred horses. It is believed that this incentive award, common in other states, should prove to be an important vehicle for industry growth and maintenance by keeping capital investment in the state, encouraging new participation, and providing incentive to breed a quality product that can compete in more competitive company.

Finally, it must be remembered that the horse race industry is unlike most businesses or industries; horse racing is a complicated intermingling of tens of thousands of people who exist in a close network. The inter-play and dependence within the industry make it particularly vulnerable to certain forces. Indeed, the past decade has seen racecourses across the country fold from such things as casinos opening up within miles of the tracks. With that in mind, industry members have worked hard to come up with legislation that gives fair and equitable treatment to the needs and concerns of the horsemen and tracks alike. Indeed, there has been an unprecedented spirit of cooperation among industry members in bringing needed reform to revitalize their industry. Defeat of the bill, or major changes to key provisions, could upset the tenuous balance of the industry. The collapse of a \$1.2 billion industry that affords employment to over 42,000 people would have a far-reaching and devastating effect on Michigan's economy.

Against:

Any expansion of gambling should be discouraged. Statistics have proven that crimes increase in areas surrounding gaming establishment. Relationships and families have been ravaged by gambling addictions. Though supporters of the bill talk of patrons using their so-called "entertainment" dollars to place bets, the

"dollars" are likely to be a family's rent money. And now, with telephone wagering, it would be even easier for people to gamble away money needed for household expenses from the comfort of their own homes. Further, there is no proof that unlimited simulcasting will save the race horse industry, but there is proof as to the destructive nature that gambling has on society.

Response:

First, though the bill would expand simulcast wagering, there is no physical expansion of gambling. Provisions allowing for electronic gaming at tracks that were contained in the bill as introduced were removed for some of the reasons cited. Secondly, the horse racing industry is heavily regulated to prevent illegal activity. In fact, the bill would increase fines and jail times for violators. Also, in 1994, the ORC established a confidential hotline for industry members to report suspected law and rule violations and safety hazards. In the first eight months of operation, the ORC received 55 calls. Thirdly, telephone wagering is merely a "convenience" wagering system. A patron must first go to a specific track and establish an account there. Wagers placed from home would then be debited or credited to that account. Lastly, industry members do not see simulcasting as a cure- all measure, but as a necessary step to level the playing field with casinos and tracks in nearby states and provinces that offer full-card simulcasting.

Against:

Where there is a general consensus of support among industry members, a few concerns have been raised regarding the following:

* A committee amendment removed "harmful competition" from the criteria that the racing commissioner may use in determining whether to approve or deny an application to build a racecourse. A second committee amendment would allow the Detroit area to build a fourth racecourse. Some industry members feel that these amendments would be self-defeating, as a geographic area can only support a limited number of racecourses because there is a finite supply of horses, personnel, and agricultural resources. Too much competition lessens the quality of racing, increases the possibility of fraud, and often results in horse shortages, causing tracks to cancel race dates and possibly forcing one or more tracks out of business. The resulting economic impact on the local community and agricultural support community would be disastrous.

* Track attendance dropped by 400,000 people last year, yet the bill would allow for people to place bets from their homes. Unless a geographic restriction is included in the bill, such as prohibiting patrons within

a 90 mile radius from placing telephone wagers, the attempt to increase track attendance would be compromised.

* A provision of the current act that requires that 85 percent of a track's employees be Michigan residents or registered voters for at least two years prior to being hired has been carried over to the new bill. This provision is outdated and should be eliminated, according to labor union representatives.

* The bill would grant the racing commissioner broad authority to promulgate rules relating to many areas of the horse racing industry. In light of the current litigation regarding the status of the Joint Committee on Administrative Rules, it would be prudent to include language that would provide for legislative or statutory oversight of the commissioner's rule-making authority.

* Current law permits the racing commissioner to suspend a person with an occupational license for 90 days pending a hearing and investigation on the basis of receiving a written complaint, under oath. Though a license revocation or suspension can be reviewed by the circuit court, if the employee is proved innocent of the complaint, there is no provision in the law for the employee to receive back pay or other compensation. Language should be included in the bill to allow a suspension pending a hearing only in the case where the public health, safety, or welfare requires immediate action.

* Under the Interstate Horse Racing Act of 1978 (15 U.S.C. 3001), and under certain conditions, a licensed track may receive interstate simulcast signals only with the approval of any tracks within a 60-mile radius. The bill would require Michigan tracks to waive any rights they have under this act to restrict interstate simulcasts by other race meeting licensees in the state as a requirement to receive a permit for conducting simulcasts. Some people have questioned whether the provision in the bill would still be superseded by the federal legislation.

POSITIONS:

The Office of the Racing Commissioner supports the bill. (11-6-95)

The Department of Agriculture supports the bill. (11-6-95)

The Michigan Farm Bureau supports the bill. (11-7-95)

The Michigan Harness Horsemen's Association supports the bill. (11-3-95)

The Michigan Horsemen's Benevolent Protection Association supports the bill. (11-4-95)

The Michigan Horse Council supports the bill. (11-7-95)

The Thoroughbred Owners and Breeders Association of Michigan supports the bill. (11-7-95)

Michigan State University supports the bill. (11-7-95)

The Michigan Racing Association supports the bill. (11-6-95)

The Michigan Standardbred Breeders Association supports the bill. (11-7-95)

The Michigan Association of Fairs and Exhibitions supports the bill. (11-6-95).

The Michigan Veterinary Medical Association supports the bill. (11-6-95)

The Michigan Equine Practitioners Association supports the bill. (11-5-94)

Ladbroke DRC supports the bill, but is concerned that the rate of the simulcast wagering tax is too high. (11-8-95)

The Service Employees International Union, Local 79, would support the bill with amendments to address certain issues of concern to track employees (see *Arguments*). (11-7-95)

A representative of the Michigan Interfaith Council on Alcohol Problems testified against the bill. (11-2-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.